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FOREWORD

The United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, established under General Assembly resolution 2099 (XX) of 20 December 1965, includes among its goals the dissemination, through United Nations information media, of information about international law and activities in this field. In connection with this goal, the production of a publication on the work of the International Law Commission was suggested. In accordance with this suggestion, the first edition of the present publication was prepared by the Secretariat in 1966. The second, third, fourth, fifth and sixth editions were produced by the Secretariat in 1972, 1980, 1988, 1996 and 2004, respectively, further to requests of the International Law Commission which were endorsed by the General Assembly. The present, seventh edition brings up to date the previous edition by incorporating therein a summary of the latest developments of the work of the Commission, as well as texts of new Commission drafts and a new codification convention. This edition reflects developments as of 31 January 2007.

Under Article 13, paragraph 1, of the Charter of the United Nations, the General Assembly is required to “initiate studies and make recommendations for the purpose of . . . encouraging the progressive development of international law and its codification.” As a means for the discharge of these responsibilities, the General Assembly, in 1947, established the International Law Commission.

The present publication is intended to provide a general introduction to the work of the International Law Commission, with sufficient references to facilitate further research. Accordingly, the publication contains, in Part I, a brief historical outline of the various attempts at the development and codification of international law up to the inception of the Commission’s work and, in Part II, an account of the organization, programme and methods of work of the Commission, with particular reference to the Statute under which the Commission functions. Finally, Part III is devoted to brief descriptions of the various topics and sub-topics of international law considered by the International Law Commission. An account is also given of the actions decided upon by the General Assembly following the consideration of the topics or sub-topics by the Commission, and of the results achieved by diplomatic conferences convened by the General Assembly to consider drafts prepared by the Commission.

Annexes are appended, containing the text of the Commission’s Statute, a list of present and former members of the Commission, the text of the decision of the Swiss Federal Council regarding the juridical status of the members of the Commission at the place of its permanent seat, and the full texts of final draft articles prepared by the Commission or, where appropriate, of multilateral conventions based on such draft articles, as adopted by diplomatic conferences convened under the auspices of the United Nations or the General Assembly itself.[[1]](#footnote-1) The multilateral conventions contained in annex V appear in volume II.

PART I

ORIGIN AND BACKGROUND OF THE DEVELOPMENT AND CODIFICATION OF INTERNATIONAL LAW

1. Historical antecedents

The idea of developing international law through the restatement of existing rules or through the formulation of new rules is not of recent origin. In the last quarter of the eighteenth century Jeremy Bentham proposed a codification of the whole of international law, though in a utopian spirit.[[2]](#footnote-2) Since his time, numerous attempts at codification have been made by private individuals, by learned societies and by Governments.

Enthusiasm for the “codification movement”—the name sometimes given to such attempts—generally stems from the belief that written international law would remove the uncertainties of customary international law by filling existing gaps in the law, as well as by giving precision to abstract general principles whose practical application is not settled.

While it is true that only concrete texts accepted by Governments can directly constitute a body of written international law, private codification efforts, that is, the research and proposals put forward by various societies, institutions and individual writers, have also had a considerable effect on the development of international law. Particularly noteworthy are the various draft codes and proposals prepared by the Institut de Droit International, the International Law Association (both founded in 1873) and the Harvard Research in International Law (established in 1927), which have facilitated the work of various diplomatic conferences convened to adopt general multilateral conventions of a law-making nature.[[3]](#footnote-3)

Intergovernmental regulation of legal questions of general and permanent interest may be said to have originated at the Congress of Vienna (1814–15), where provisions relating to the regime of international rivers, the abolition of the slave trade and the rank of diplomatic agents were adopted by the signatory Powers of the Treaty of Paris of 1814. Since then, international legal rules have been developed at diplomatic conferences on many other subjects, such as the laws of war on both land and sea, the pacific settlement of international disputes, the unification of private international law, the protection of intellectual property, the regulation of postal services and telecommunications, the regulation of maritime and aerial navigation and various other social and economic questions of international concern.[[4]](#footnote-4)

Although many of these conventions were isolated events dealing with particular problems and in some cases applied only to certain geographic regions, a substantial number of them resulted from a sustained effort of Governments to develop international law by means of multilateral conventions at successive international conferences.

The protection of industrial property, for instance, has been the subject of successive conferences held since 1880, and the Paris Convention on the subject, first adopted on 20 March 1883, has been progressively revised six times and amended once. Similarly, the codification of international humanitarian law contained in the four Geneva Conventions of 12 August 1949 regarding the protection of war victims and in the Protocols Additional to the Geneva Conventions of 8 June 1977[[5]](#footnote-5) and 8 December 2005[[6]](#footnote-6) is the direct descendant of the Geneva Red Cross Convention of 22 August 1864.

The Hague Peace Conferences of 1899 and 1907, drawing upon the work and experience of preceding conferences on the laws of war and upon the previous practice of some Governments regarding the pacific settlement of international disputes, reached agreement on several important conventions and thus greatly stimulated the movement in favour of codifying international law. The Second Peace Conference of 1907, however, feeling the lack of adequate preparation for its deliberations, proposed that some two years before the probable date of the Third Peace Conference, a preparatory committee should be established “with the tasks of collecting the various proposals to be submitted to the conference, of ascertaining what subjects are ripe for embodiment in an international regulation, and of preparing a programme which the Governments should decide upon in sufficient time to enable it to be carefully examined by the countries interested.”[[7]](#footnote-7) Arrangements for the Third Peace Conference were being made when the First World War broke out.

2. League of Nations Codification Conference

The intergovernmental effort to promote the codification and development of international law made a further important advance with the resolution of the Assembly of the League of Nations of 22 September 1924, envisaging the creation of a standing organ called the Committee of Experts for the Progressive Codification of International Law, which was to be composed so as to represent “the main forms of civilization and the principal legal systems of the world.”[[8]](#footnote-8) This Committee, consisting of seventeen experts, was to prepare a list of subjects “the regulation of which by international agreement” was most “desirable and realizable” and thereafter to examine the comments of Governments on this list and report on the questions which were “sufficiently ripe,” as well as on the procedure to be followed in preparing for conferences for their solution. This was the first attempt on a worldwide basis to codify and develop whole fields of international law rather than simply regulating individual and specific legal problems.

After certain consultations with Governments and the League Council, the Assembly decided, in 1927, to convene a diplomatic conference to codify three topics out of the five that had been considered to be “ripe for international agreement” by the Committee of Experts, namely: (1) nationality, (2) territorial waters and (3) the responsibility of States for damage done in their territory to the person or property of foreigners.[[9]](#footnote-9) The preparation of the conference was entrusted to a Preparatory Committee of five persons which was to draw up reports showing points of agreement or divergency which might serve as “bases of discussion,” but not to draw up draft conventions as had been proposed by the Committee of Experts.

Delegates from forty-seven Governments participated in the Codification Conference which met at The Hague from 13 March to 12 April 1930; but the only international instruments which resulted from its work were on the topic of nationality.[[10]](#footnote-10) The Conference was unable to adopt any conventions on the topics of territorial water or State responsibility. Although the Conference provisionally approved certain draft articles on territorial waters which later exerted influence to the extent that Governments accepted them as a statement of existing international law, it failed to adopt even a single recommendation on the subject of State responsibility.

No further experiment in codification was made by the League of Nations after 1930. But on 25 September 1931, the League Assembly adopted an important resolution on the procedure of codification, the main theme of which was the strengthening of the influence of Governments at every stage of the codification process.[[11]](#footnote-11) This underlying theme was subsequently incorporated in the Statute of the International Law Commission of the United Nations, together with certain other recommendations stated in the resolution, such as the preparation of draft conventions by an expert committee, and the close collaboration of international and national scientific institutes.

3. Drafting and implementation of Article 13, paragraph 1, of the Charter of the United Nations

The Governments participating in the drafting of the Charter of the United Nations were overwhelmingly opposed to conferring on the United Nations legislative power to enact binding rules of international law. As a corollary, they also rejected proposals to confer on the General Assembly the power to impose certain general conventions on States by some form of majority vote. There was, however, strong support for conferring on the General Assembly the more limited powers of study and recommendation, which led to the adoption of the following provision in Article 13, paragraph 1:[[12]](#footnote-12)

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

“a.  . . . encouraging the progressive development of international law and its codification.”

During the second part of its first session, the General Assembly, on 11 December 1946, adopted resolution 94 (I) establishing the Committee on the Progressive Development of International Law and its Codification, sometimes known as the “Committee of Seventeen.” The Committee was directed to consider the procedures to be recommended for the discharge of the General Assembly’s responsibilities under Article 13, paragraph 1.

The Committee held thirty meetings from 12 May to 17 June 1947 and adopted a report recommending the establishment of an international law commission and setting forth provisions designed to serve as the basis for its statute.[[13]](#footnote-13)

Several important questions of principle relating to the organization, scope, functions and methods of an international law commission were thoroughly discussed by the Committee. Some members of the Committee saw no marked distinction between the progressive development of international law and its codification. In both cases, they observed, it would be necessary to conclude international conventions before the results were binding on States. Most of the other members, however, thought that there were differences of a substantive nature between codification and progressive development, although there were divergencies in the emphasis they placed on one or the other of the two concepts.[[14]](#footnote-14)

As to the composition of an international law commission, the majority of the Committee favoured the idea that members should not be representatives of Governments but rather should serve in their individual capacities as persons of recognized competence in international law. While some members of the Committee stressed the scientific and non-political nature of the work to be performed by the proposed commission, the majority of the Committee took the view that the work of the commission should always be carried out in close cooperation with the political authorities of States and that actions in respect of the drafts prepared by the Commission should be decided upon by the General Assembly.

During the second session of the General Assembly, a large majority of the Sixth (Legal) Committee[[15]](#footnote-15) favoured the setting up of an international law commission, and a draft Statute of the International Law Commission was prepared by a subcommittee of the Sixth Committee.[[16]](#footnote-16) On 21 November 1947, the General Assembly adopted resolution 174 (II), establishing the International Law Commission and approving its Statute. Since then, the Statute has been amended by six further resolutions of the General Assembly, adopted partly on the initiative of the Commission and partly on that of Governments.[[17]](#footnote-17) The text of the Statute, as it now stands, is reproduced in annex I.

In accordance with the relevant provisions of the Statute (articles 3 to 10), the first elections to the International Law Commission took place on 3 November 1948, and the Commission opened the first of its annual sessions on 12 April 1949.

PART II

ORGANIZATION, PROGRAMME AND METHODS OF WORK OF THE INTERNATIONAL LAW COMMISSION

1. Object of the Commission

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 15 of the Statute 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.” In practice, the Commission’s work on a topic usually involves some aspects of the progressive development as well as the codification of international law, with the balance between the two varying depending on the particular topic.[[18]](#footnote-18)

Although the drafters of the Statute envisaged that somewhat different methods would be used in regard to progressive development, on the one hand, and codification, on the other, they thought it desirable to entrust both tasks to a single commission. Furthermore, they did not favour proposals for the setting up of separate commissions for public, for private and for penal international law. Thus article 1, paragraph 2, of the Statute states that the Commission “shall concern itself primarily with public international law, but is not precluded from entering the field of private international law.”

For more than fifty years, however, the Commission has worked almost exclusively in the field of public international law.[[19]](#footnote-19) In 1996, the Commission noted that in recent years it had not entered the field of private international law, except incidentally and in the course of work on subjects of public international law; moreover, it seemed unlikely that the Commission would be called upon to do so having regard to the work of bodies such as UNCITRAL and the Hague Conference on Private International Law.[[20]](#footnote-20)

The Commission has also worked extensively in the field of international criminal law, beginning with the formulation of the Nürnberg principles and the consideration of the question of international criminal jurisdiction at its first session, in 1949, which culminated in the completion of the draft Statute for an International Criminal Court at its forty-sixth session, in 1994, and the draft Code of Crimes against the Peace and Security of Mankind at its forty-eighth session, in 1996. The Commission took up a further criminal law topic with the inclusion in its programme of work of the topic “the obligation to extradite or prosecute (*aut dedere aut judicare*),” at its fifty-seventh session, in 2005.[[21]](#footnote-21) It also included the topic “Immunity of State officials from foreign criminal jurisdiction” in its long-term programme of work, at its fifty-eighth session, in 2006.[[22]](#footnote-22)

2. Members of the Commission

(a) Qualifications and nationality

Article 2, paragraph 1, of the Statute provides that the members of the Commission “shall be persons of recognized competence in international law.” The members of the Commission are persons who possess recognized competence and qualifications in both doctrinal and practical aspects of international law.[[23]](#footnote-23) The membership of the Commission often reflects a broad spectrum of expertise and practical experience within the field of international law, including international dispute settlement procedures.[[24]](#footnote-24) Members are drawn from the various segments of the international legal community, such as academia, the diplomatic corps, government ministries and international organizations.[[25]](#footnote-25) Since the members are often persons working in the academic and diplomatic fields with outside professional responsibilities, the Commission is able to proceed with its work not in an ivory tower but in close touch with the realities of international life.[[26]](#footnote-26) As in the case of the judges of the International Court of Justice, the members of the Commission sit in their individual capacity and not as representatives of their Governments.[[27]](#footnote-27) In addition, the members of the Commission cannot be replaced by alternates or advisers.[[28]](#footnote-28)

No two members of the Commission may be nationals of the same State (article 2, paragraph 2).[[29]](#footnote-29) In case of dual nationality, a person is deemed to be a national of the State in which he or she ordinarily exercises civil and political rights (article 2, paragraph 3). Eligibility for election is not restricted to nationals of Member States of the United Nations, but no national of any non-member State has ever been elected to the Commission. This possibility would seem to be diminishing as the membership of the United Nations increases and becomes almost universal.[[30]](#footnote-30)

(b) Election

The Committee of Seventeen, which recommended the creation of the Commission (as described in Part I), had suggested similarity between the International Court of Justice and the Commission with regard to the method of election.[[31]](#footnote-31) The General Assembly, however, rejected the suggestion for a system of election jointly by the General Assembly and by the Security Council since the Court was a special case which should not serve as a precedent for the appointment of the Commission and the work of codifying international law was entrusted to the General Assembly under Article 13 of the Charter of the United Nations.[[32]](#footnote-32) Instead, it decided that candidates should be nominated exclusively by the Governments of States Members of the United Nations and that the election should be by the General Assembly alone (article 3). Each Member State may nominate a maximum of four candidates, of whom two may be nationals of the nominating State (article 4).[[33]](#footnote-33)

The Secretary-General sends a letter to the Governments of Member States informing them of the upcoming election, indicating the geographical distribution of seats at the upcoming election, noting the relevant provisions of the Statute, and drawing attention to the deadline for the nomination of candidates. The names of candidates must be submitted in writing to the Secretary-General by the first of June of the election year (article 5).[[34]](#footnote-34)

In exceptional circumstances a Government may substitute one candidate for another whom it has nominated not later than thirty days before the opening of the General Assembly (article 5).[[35]](#footnote-35) The Secretary-General communicates the names and the curricula vitae of the candidates to Governments of States Members (article 6). The Secretary-General also submits a list of all of the candidates duly nominated to the General Assembly for the purposes of the election (article 7).

Article 8 of the Statute (echoing Article 9 of the Statute of the International Court of Justice) provides that at the election the electors shall bear in mind that the persons to be elected to the Commission should individually possess the qualifications required (that is, recognized competence in international law as stated in article 2) and that in the Commission as a whole representation of the main forms of civilization and of the principal legal systems of the world should be assured (article 8).

In 1956, the Sixth Committee of the General Assembly reached an agreement regarding the allocation of seats among the regional groups to ensure distribution between different forms of civilization and legal systems in connection with increasing the membership of the Commission from fifteen to twenty-one.[[36]](#footnote-36) In 1961, different views were expressed concerning the continuation of this arrangement when the membership of the Commission was increased from twenty-one to twenty-five.[[37]](#footnote-37) In 1981, the General Assembly decided to amend the Commission’s Statute in order to increase the membership of the Commission from twenty-five to thirty-four and to provide for the election of a maximum number of members for each regional group.[[38]](#footnote-38) Thus, article 9 of the Statute, as amended, provides that the “candidates, up to the maximum number prescribed for each regional group, who obtain the greatest number of votes and not less than a majority of the votes of the Members present and voting shall be elected.”

The election is held by secret ballot.[[39]](#footnote-39) Those candidates receiving the greatest number of votes and not less than a majority of the votes of the Member States present and voting[[40]](#footnote-40) shall be declared elected (article 9, paragraph 1).[[41]](#footnote-41) In practice, the entire Commission is elected on the first round of balloting. However, more than one ballot may be held if necessary until all members have been elected by the required majority.[[42]](#footnote-42) In the case of a tie for a remaining seat, the General Assembly holds a special restricted ballot limited to those candidates (from the regional group to which the seat is allocated) who have obtained the required majority and an equal number of votes.[[43]](#footnote-43)

The Statute provides for a different election procedure to fill a vacancy that occurs during the interval between the regular elections by the General Assembly (the so-called “casual vacancies”). In such a situation, the Commission itself elects the new member to fill the vacancy for the remainder of the term having due regard to the provisions contained in articles 2 and 8 of the Statute (article 11).[[44]](#footnote-44) Vacancies in the membership of the Commission may occur for various reasons, such as death, serious illness, appointment to a new position or election to the International Court of Justice.[[45]](#footnote-45) The Secretariat includes an item concerning the filling of one or more casual vacancies as the first item on the provisional agenda of the Commission.[[46]](#footnote-46) The Secretariat also issues a note announcing the existence of one or more casual vacancies and reproducing the relevant provisions of the Statute in the form of a document of the Commission for general distribution.

The Statute does not provide a nomination procedure for casual vacancies. In practice, the Secretariat may receive the submission of candidates from Governments of Member States or members of the Commission.[[47]](#footnote-47) The Secretariat gives advance notice to Commission members of the candidatures received in the form of an information circular which is sent to members before the opening of the session. The Secretariat also issues a note containing the list of candidates as well as the curricula vitae of candidates in the form of a document of the Commission for general distribution, which is issued as an addendum to its previous note announcing the vacancy.[[48]](#footnote-48) The Secretariat list of candidates includes the names of candidates[[49]](#footnote-49) (with an indication of their nationality) submitted by a Government of a Member State or by a member of the Commission.[[50]](#footnote-50)

The date of election is fixed by the Commission following consultations conducted by its Chairman.[[51]](#footnote-51) The Commission elects the new member to fill the vacancy by secret ballot[[52]](#footnote-52) in a private meeting.[[53]](#footnote-53) Since 1981, the Commission has elected members to fill vacancies following the geographical distribution provided for in resolution 36/39 of 18 November 1981.[[54]](#footnote-54) The Commission holds separate elections to fill vacancies in different regional groups.[[55]](#footnote-55) Votes for candidates not belonging to the regional group for which an election is held or for more candidates than there are vacancies in the regional group are considered invalid. The candidate who receives a majority of the votes of the members who are present and voting is elected.[[56]](#footnote-56) Members who abstain from voting[[57]](#footnote-57) are considered as not voting.[[58]](#footnote-58) When no candidate obtains the majority required as a result of the first ballot, subsequent ballots are held.[[59]](#footnote-59)

The Chairman announces the result of the election in a public meeting, which is duly recorded in the summary records.[[60]](#footnote-60) The Chairman notifies the newly-elected members of the election results and invites them to participate in the Commission’s proceedings. Members elected to fill a casual vacancy serve for the remainder of their term, and are eligible for re-election at the following election of the Commission.

In 1955, the General Assembly invited the Commission to give its opinion concerning a proposal to provide that a vacancy should be filled by the Assembly rather than the Commission in the light of the extension of the term of office of members from three to five years.[[61]](#footnote-61) The Commission decided not to recommend such a proposal since the General Assembly meets after the Commission’s session and the vacancy would therefore remain unfilled for at least one session.[[62]](#footnote-62)

The names (and nationalities) of the present and former members of the Commission are listed in annex II.

(c) Size of the Commission

The size of the membership of the Commission has been enlarged three times: from fifteen to twenty-one in 1956, under General Assembly resolution 1103 (XI) of 18 December 1956; to twenty-five in 1961, under Assembly resolution 1647 (XVI) of 6 November 1961; and to the present thirty-four in 1981, under Assembly resolution 36/39 of 18 November 1981.[[63]](#footnote-63) Proposals for the enlargement were prompted by the progressive increase in the membership of the United Nations from the original fifty-one to eighty Member States in 1956, 104 Member States in 1961 and 157 Member States in 1981. A large majority of the General Assembly believed that the provision in article 8 of the Statute, requiring “in the Commission as a whole representation of the main forms of civilization and of the principal legal systems,” could be better assured by increasing the size of the Commission.[[64]](#footnote-64)

(d) Terms of office and service on a part-time basis

Article 10 of the Statute originally provided that the term of office of the members of the Commission should be three years, with the possibility of re-election. However, in practice a longer term has proved beneficial to the progress of the Commission’s work, and the term of office was extended to five years, first on an ad hoc and then on a permanent basis.[[65]](#footnote-65)

At its twentieth session, in 1968, the Commission proposed to the General Assembly the extension of the term of office of the Commission’s members from five to six or seven years. In the view of the Commission, the experience had shown that, given the time-consuming nature of the codification process, a period of six or seven years was the minimum required for the completion of a programme of work.[[66]](#footnote-66) The Sixth Committee of the General Assembly has taken note of the proposal and deferred taking a decision on it to a later session.[[67]](#footnote-67)

By decision of the General Assembly, the Commission meets only in annual sessions, and its members, unlike judges of the International Court of Justice, do not serve on a full-time, year-round basis, although the Committee of Seventeen recommended that service be full-time.[[68]](#footnote-68) Thus, the Commission is a permanent and part-time subsidiary organ of the General Assembly.[[69]](#footnote-69) Members of the Commission are paid travel expenses and receive a special allowance in accordance with article 13[[70]](#footnote-70) of the Commission’s Statute. The Chairman, the Special Rapporteurs and the other members of the Commission have historically also been paid honorariums. [[71]](#footnote-71)

In compliance with a request by the General Assembly to review the Statute and make recommendations for its revision, the International Law Commission, in 1951, recommended that the Commission should be placed on a full-time basis with a view to expediting its work.[[72]](#footnote-72) When the matter was discussed in the Sixth Committee, however, most delegations believed that it was premature to make so fundamental a change in the structure of the Commission. They felt, inter alia, that a large increase in the Commission’s output would impose an excessive burden on the General Assembly and Governments asked to comment on draft texts; that it would be difficult to find suitable candidates who would accept full-time appointment; and that expense was a serious consideration.[[73]](#footnote-73) Accordingly, the Assembly, in resolution 600 (VI) of 31 January 1952, decided not to take any action on the matter for the time being. Suggestions for placing the Commission on a full-time basis have also been made in the debates of the Sixth Committee at various later dates, but have never been acted on by the Assembly.

(e) Privileges and immunities

At its thirtieth session, in 1978, the Commission considered it necessary to define better the juridical status of the Commission at the place of its permanent seat in Switzerland, including the immunities, privileges and facilities to which it and its members were entitled.[[74]](#footnote-74) The Commission requested the Secretary-General to study this matter and to take appropriate measures in consultation with the Swiss authorities.[[75]](#footnote-75) In 1979, the Government of Switzerland decided to accord to members of the Commission for the duration of its session the same privileges and immunities to which judges of the International Court of Justice are entitled while present in Switzerland, namely, the privileges and immunities enjoyed by the heads of mission accredited to the international organizations at Geneva. (See annex III.) The Commission as well as the General Assembly expressed appreciation for this decision which would facilitate the performance by Commission members of their functions during its sessions in Geneva.[[76]](#footnote-76)

3. Structure of the Commission

(a) Officers

At the beginning of each session, the Commission elects from among its members the Chairman, the First and Second Vice-Chairmen, the Chairman of the Drafting Committee[[77]](#footnote-77) and the General Rapporteur for that session.[[78]](#footnote-78) The Chairman presides over the meetings of the plenary, the Bureau and the Enlarged Bureau.[[79]](#footnote-79) A vice-chairman has the same powers and duties as the Chairman when designated to take the place of the Chairman.[[80]](#footnote-80) The Chairman of the Drafting Committee presides over the meetings of the Drafting Committee; recommends the membership of the Drafting Committee for each topic; and introduces the report of the Drafting Committee when it is considered in plenary. The General Rapporteur is responsible for the drafting of the Commission’s annual report to the General Assembly. The Commission has emphasized that the General Rapporteur should play an active part in the preparation of the report (which is undertaken by the Secretariat)[[81]](#footnote-81) (*see page 54*).

(b) Bureau, Enlarged Bureau and Planning Group

At each session, the Bureau, consisting of the five officers elected at that session, considers the schedule of work and other organizational matters with respect to the current session. The Enlarged Bureau, consisting of the officers elected at the current session, the former Chairmen of the Commission who are still members and the Special Rapporteurs, may also be called upon to consider issues relating to the organization, programme and methods of the Commission’s work.

Since the 1970s, the Commission has established a Planning Group[[82]](#footnote-82) for each session and entrusted it with the task of considering the programme and methods of work of the Commission. Since 1992, the Planning Group has established a Working Group on the Long-Term Programme which is entrusted with the task of recommending topics for inclusion in the Commission’s programme of work. The Working Group has been reconstituted with the same Chairman and membership during the remaining sessions of the quinquennium (*see pages 34 and 35*). The Planning Group may also establish a Working Group to review and consider ways of improving the methods of work of the Commission on the basis of a request by the General Assembly or on the Commission’s own initiative (*see pages 53 and 55*).

(c) Plenary

The Commission meets in plenary primarily to consider the reports of Special Rapporteurs, working groups, the Drafting Committee, the Planning Group as well as any other matters that may require consideration by the Commission as a whole. The Commission also decides in plenary to refer proposed draft articles to the Drafting Committee and to adopt provisional or final draft articles and commentaries.[[83]](#footnote-83) At the end of each session, the Commission considers and adopts in plenary its annual report to the General Assembly.

The primary role of the general debate in plenary is to establish the broad approach of the Commission to a topic for the primary purpose of providing guidance to the Commission, its subsidiary organs and Special Rapporteurs on the directions to be taken.[[84]](#footnote-84) This is essential to ensure that subsidiary organs, such as the Drafting Committee or a working group, are working along lines broadly acceptable to the Commission as a whole. The Commission has indicated that the Chairman of the Commission should, whenever possible, indicate the main trends of opinion revealed by the debate in plenary to facilitate the task of the Drafting Committee.[[85]](#footnote-85) The Commission has also recommended that the plenary debates should be reformed to provide more structure and to allow the Chairman to make an indicative summary of conclusions at the end of the debate,[[86]](#footnote-86) based if necessary on an indicative vote.[[87]](#footnote-87) (*See page 55.*)

At its forty-ninth session, in 1997, the Commission introduced the mechanism of short, thematic debates or exchanges of views in plenary on particular issues or questions raised during the consideration of a topic, the so-called “mini-debates,” in order to facilitate a more focused debate on particular issues.[[88]](#footnote-88) At its fifty-fourth session, in 2002, the Commission expressed the view that the “mini-debates” were useful and constituted an important innovation in its working methods. The Commission emphasized, however, that a mini-debate should be brief, focused and not include long statements falling outside its scope.[[89]](#footnote-89)

The Commission holds its plenary meetings in public[[90]](#footnote-90) unless it decides otherwise, in particular when dealing with certain organizational or administrative matters.[[91]](#footnote-91) The Commission’s decisions on substantive and procedural matters are taken in plenary or, if such decisions are reached in a private meeting or informal consultations, announced by the Chairman in plenary.[[92]](#footnote-92)

(d) Special Rapporteurs

The role of the Special Rapporteur is central to the work of the Commission.[[93]](#footnote-93) Although the Statute only envisages the appointment of a Special Rapporteur in the case of progressive development (article 16 (*a*)), the practice of the Commission has been to appoint a Special Rapporteur at the early stage of the consideration of a topic, where appropriate, without regard to whether it might be classified as one of codification or progressive development.[[94]](#footnote-94) The functions of the Special Rapporteur continue until the Commission has completed its work on the topic, provided that he or she remains a member of the Commission.[[95]](#footnote-95) In the event that it becomes necessary to appoint a new Special Rapporteur, the Commission usually suspends its work on the topic for an appropriate period of time to enable the newly appointed Special Rapporteur to perform the tasks required depending on the stage of work on the topic.

Special Rapporteurs are one of the institutional features of the Commission which contribute to the efficient performance of its functions and which have served it well.[[96]](#footnote-96) The Special Rapporteur performs a number of key tasks, including preparing reports on the topic, participating in the consideration of the topic in plenary, contributing to the work of the Drafting Committee on the topic, and elaborating commentaries to draft articles.

The Special Rapporteur marks out and develops the topic, explains the state of the law and makes proposals for draft articles in the reports on the topic.[[97]](#footnote-97) The reports of Special Rapporteurs form the very basis of work for the Commission and constitute a critical component of the methods and techniques of work of the Commission established in its Statute.[[98]](#footnote-98) The Commission has recommended that Special Rapporteurs specify the nature and scope of work planned for the next session to ensure that future reports meet the needs of the Commission as a whole and that reports be available to members sufficiently in advance of the session to enable study and reflection.[[99]](#footnote-99) The Commission has also recommended that a consultative group be appointed by the Commission to provide input on the general direction of the report and on any particular issues the Special Rapporteur wishes to raise.[[100]](#footnote-100) The Special Rapporteur usually introduces the report at the beginning of the Commission’s consideration of the topic in plenary, responds to questions raised during the debate, makes concluding remarks summarizing the main issues and trends at the end of the debate, and, where appropriate, gives a recommendation as to the referral of any draft articles to the Drafting Committee or a Working Group.

The role of the Special Rapporteur with respect to the Drafting Committee comprises the following elements: (a) to produce clear and complete draft articles; (b) to explain the rationale behind the draft articles currently before the Drafting Committee; and (c) to reflect the view of the Drafting Committee in revised draft articles and/or commentary.[[101]](#footnote-101) The Special Rapporteurs should prepare commentaries to draft articles on their respective topics which are as uniform as possible in presentation and length.[[102]](#footnote-102) The Special Rapporteurs should also, as far as possible, produce draft commentaries or notes to accompany their draft articles and revise them in the light of changes made by the Drafting Committee to ensure their availability at the time of the debate of the draft articles in plenary.[[103]](#footnote-103) (*See also pages 55 and 56.*) The Special Rapporteur may also draft other working documents of the Commission and the Drafting Committee, as required by the Commission’s progress of work on the topic.

(e) Working groups

The Commission has made use of working groups, sometimes called subcommittees, study groups[[104]](#footnote-104) or consultative groups, on particular topics.[[105]](#footnote-105) These ad hoc subsidiary bodies have been established by the Commission or by the Planning Group for different purposes and with different mandates.[[106]](#footnote-106) They may be of limited membership or open-ended.[[107]](#footnote-107)

The Commission has established working groups on new topics before appointing a Special Rapporteur to undertake preliminary work or to help define the scope and direction of work, including: formulation of the Nürnberg principles (1949); succession of States and Governments (1962–1963); question of treaties concluded between States and international organizations or between two or more international organizations (1970–1971); the law of the non-navigational uses of international watercourses (1974); status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (1977–1979); international liability for injurious consequences arising out of acts not prohibited by international law (1978 and 2002 (second part of the topic)); jurisdictional immunities of States and their property (1978); diplomatic protection (1997); and unilateral acts of States (1997).[[108]](#footnote-108)

The Commission has also established working groups after appointing a Special Rapporteur[[109]](#footnote-109) to consider specific issues or to determine the direction of the future work on a particular topic or sub-topic, including: arbitral procedure (1957); State responsibility (1962–1963, 1997, 1998 and 2001[[110]](#footnote-110)); relations between States and international organizations (1971 (first part of the topic) and 1992 (second part of the topic)[[111]](#footnote-111)); draft code of crimes against the peace and security of mankind (1982 and 1995–1996); international liability for injurious consequences arising out of acts not prohibited by international law (1992, 1995, 1996 and 1997 (the topic as a whole), 1998 and 2000 (prevention aspect of the topic) and 2003 and 2004 (liability aspect of the topic)); unilateral acts of States (1998–2001 and 2003–2006); nationality in relation to the succession of States (1995–1996 and 1999 (first part of the topic) and 1998 (second part of the topic)); diplomatic protection (1998 and 2003); responsibility of international organizations (2002, 2003[[112]](#footnote-112) and 2005); and shared natural resources (2002, 2004–2006).[[113]](#footnote-113)

The Commission has further established working groups to handle a topic as a whole, for example, in case of urgency, including: question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law (1972); review of the multilateral treaty-making process (1978–1979); draft code of crimes against the peace and security of mankind (draft Statute for an International Criminal Court) (1990 and 1992–1994); jurisdictional immunities of States and their property (1999); and fragmentation of international law (2002–2006).[[114]](#footnote-114)

Whereas the Drafting Committee works on texts of articles prepared by a Special Rapporteur, a working group begins its work at an earlier stage when ideas are still developing and thus is more closely involved in the formulation of an approach and drafts.[[115]](#footnote-115) Such a working group may continue its work over several sessions, with substantial continuity of membership, while the composition of the Drafting Committee changes from year to year.[[116]](#footnote-116) In some cases, a working group may be entrusted with the task of undertaking a thorough substantive consideration of a topic.[[117]](#footnote-117) If the working group has undertaken careful drafting, the final product may be submitted directly to the Commission in plenary, not to the Drafting Committee, to avoid duplication or even mistakes which may be made if members of the Drafting Committee have not been party to the detailed discussion which underlies a particular text. In some cases, however, the Drafting Committee may have a role in engaging in a final review of a text from the perspective of adequacy and consistency of language.[[118]](#footnote-118) Alternatively, working groups have also been established, as an interim step, to prepare a revised version of a draft article (or guidance regarding the formulation of a draft article), which is subsequently referred to the Drafting Committee. In those instances,[[119]](#footnote-119) it is the text of the Working Group and not the proposal of the Special Rapporteur which is referred to the Drafting Committee.

Such flexibility in the mandates of the working groups (ranging from focusing on specific, sometimes procedural, issues to a more thoroughly substantive consideration of a topic) allows the Commission to tailor its working methods to the needs of the topic at hand, thereby enhancing its overall efficiency.

Whatever its mandate, a working group is always subordinate to the Commission, the Planning Group or other Commission organ which established it. It is for the relevant organ to issue the necessary mandate, to lay down the parameters of any study, to review and, if necessary, modify proposals, and to make a decision on the product of the work.[[120]](#footnote-120)

In 1996, the Commission recommended that working groups be more extensively used to resolve particular disagreements and, in appropriate cases, to expeditiously deal with whole topics; in the latter case normally acting in place of the Drafting Committee[[121]](#footnote-121) (*see page 55*).

(f) Drafting Committee

Since its first session, the Commission has made use of a Drafting Committee,[[122]](#footnote-122) the composition of which has been progressively enlarged to take account of the increase in the size of the Commission. The membership of the Drafting Committee varies from session to session and, since 1992, from topic to topic at any given session, although it continues to be a single body exercising its functions under one Chairman.[[123]](#footnote-123) The Special Rapporteur serves as a member of the Drafting Committee on his or her topic. As a member of the Commission, a Special Rapporteur is not precluded from serving as a member of the Drafting Committee on another topic. The General Rapporteur participates *ex officio* in the work of the Drafting Committee on all topics. The Drafting Committee is also constituted so as to provide equitable representation of the principal legal systems and the various languages[[124]](#footnote-124) of the Commission within limits compatible with its drafting responsibilities.[[125]](#footnote-125)

The Drafting Committee plays an important role in harmonizing the various viewpoints and working out generally acceptable solutions.[[126]](#footnote-126) The Drafting Committee may be entrusted not only with purely drafting points but also with points of substance which the full Commission has been unable to resolve or which seemed likely to give rise to unduly protracted discussion.[[127]](#footnote-127) In practice, the Commission usually does not take a vote at the end of its first discussion of a particular article, and leaves it to the Drafting Committee to try to draft a generally satisfactory text on the question. The Drafting Committee’s proposals have very often been adopted unanimously by the Commission, sometimes without discussion. However, the Drafting Committee’s texts are subject to amendments or alternative formulations submitted by members of the Commission in plenary and may be referred back to the Committee for further consideration.[[128]](#footnote-128) The Commission has noted that premature referral of draft articles to the Drafting Committee, and excessive time-lags between such referral and actual consideration of draft articles in the Committee, have counter-productive effects.[[129]](#footnote-129)

The report of the Chairman of the Drafting Committee to the Commission in plenary provides a detailed summary of its work on each topic, including an explanation of the draft articles that have been adopted by the Drafting Committee and are submitted for consideration and adoption by the Commission in plenary.[[130]](#footnote-130) (*See also pages 53 to 56.*)

4. Programme of work

(a) Methods for the selection of topics

Under the Statute, the Commission shall consider proposals for the progressive development of international law referred by the General Assembly (article 16) or 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 intergovernmental agreements to encourage the progressive development and codification of international law (article 17). With respect to codification, the Commission is required to survey the whole field of international law with a view to selecting appropriate topics (article 18). In addition, the Commission may recommend to the General Assembly the codification of a particular topic which is considered necessary and desirable (article 18). At its first session, in 1949, the Commission decided that it had competence to proceed with its work of codification of a topic that it had recommended to the General Assembly without awaiting action by the General Assembly on such recommendation.[[131]](#footnote-131) However, in practice, the Commission has generally sought endorsement by the General Assembly before engaging in the substantive consideration of a topic. The General Assembly may also request the Commission to deal with any question of codification which receives priority (article 18).

In the early years, the Commission received a number of proposals and special assignments from the General Assembly as well as proposals from the Economic and Social Council. In 1996, the Commission expressed concern that the relevant provisions of the Statute have been used infrequently in recent years and recommended that the General Assembly—and through it other bodies within the United Nations system—should be encouraged to submit to the Commission possible topics involving codification and progressive development of international law.[[132]](#footnote-132)

The Commission has conducted two surveys of international law as provided for in its Statute, the first, at its first session, in 1949, on the basis of a Secretariat memorandum entitled “Survey of international law in relation to the work of codification of the International Law Commission,”[[133]](#footnote-133) and the second, on the occasion of the Commission’s twentieth session on the basis of a series of documents prepared by the Secretariat,[[134]](#footnote-134) in particular a working paper entitled “Survey of International Law,” prepared by the Secretary-General in response to the Commission’s request.[[135]](#footnote-135)

At its forty-eighth session, in 1996, the Commission analysed the scope for progressive development and codification after nearly fifty years of work by the Commission and, in order to provide a global review of the main fields of general public international law, established a general scheme of topics of international law classified under thirteen main fields of public international law, not meant to be exhaustive, that included topics already taken up by the Commission, topics under consideration by the Commission and possible future topics.[[136]](#footnote-136)

Apart from the surveys, the Commission has held a periodic review of its programme of work 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.[[137]](#footnote-137) Such a review has sometimes taken place at the request of the General Assembly. [[138]](#footnote-138)

(b) Procedure and criteria for the selection of topics

Since 1992, the selection of topics by the Commission for its future work has been carried out in accordance with the procedure under which designated members of the Commission, or its Secretariat,[[139]](#footnote-139) write a short outline or explanatory summary on one of the topics included in a pre-selected list,[[140]](#footnote-140) indicating: (i) the major issues raised by the topic; (ii) any applicable treaties, general principles or relevant national legislation or judicial decisions; (iii) existing doctrine; and (iv) the advantages and disadvantages of preparing a report, a study or a draft convention, if a decision is taken to proceed with the topic.[[141]](#footnote-141)

The Working Group on the Long-term Programme of Work considers the outlines or summaries on the various topics with a view to identifying topics for possible future consideration by the Commission. The Chairman of the Working Group provides an annual oral progress report to the Planning Group at each session and submits a final written report, in the last year of the quinquennium, containing a list of recommended topics for inclusion in the Commission’s long-term programme of work, accompanied by syllabuses annexed to the Commission’s annual report to the General Assembly.[[142]](#footnote-142) The Planning Group considers and adopts the report which is then submitted to the Commission. The Commission considers and adopts this report in plenary and includes it in its annual report to the General Assembly. The list of topics is intended to facilitate the selection of topics for inclusion in the Commission’s programme of work, taking into account views expressed by Governments in the Sixth Committee. The list of topics is intended to perform a function similar to the 1949 list which guided the Commission in the selection of topics for more than fifty years.

The Commission has recommended that the work on the identification of possible future topics continue to follow this procedure which it considers to be an improvement.[[143]](#footnote-143)

In the selection of topics, the Commission has been guided by the following criteria: (i) the topic should reflect the needs of States in respect of the progressive development and codification of international law; (ii) the topic should be at a sufficiently advanced stage in terms of State practice to permit progressive development and codification; (iii) the topic should be concrete and feasible for progressive development and codification; and (iv) the Commission should not restrict itself to traditional topics, but should also consider those that reflect new developments in international law and pressing concerns of the international community as a whole.[[144]](#footnote-144)

As of the beginning of the fifty-ninth session of the Commission, in 2007, the following topics were on the long-term programme of work of the Commission:

• Ownership and protection of wrecks beyond the limits of national maritime jurisdiction;

• Immunity of State officials from foreign criminal jurisdiction;

• Jurisdictional immunity of State officials from foreign criminal jurisdiction;

• Protection of persons in the event of disasters;

• Protection of personal data in transborder flow of information; and

• Extraterritorial jurisdiction.

(c) Topics on the Commission’s programme of work

At its first session, in 1949, the Commission reviewed, on the basis of a Secretariat memorandum entitled “Survey of international law in relation to the work of codification of the International Law Commission,”[[145]](#footnote-145) 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, as follows:

(1) Recognition of States and Governments;

(2) Succession of States and Governments;

(3) Jurisdictional immunities of States and their property;

(4) Jurisdiction with regard to crimes committed outside national territory;

(5) Regime of the high seas;

(6) Regime of territorial waters;[[146]](#footnote-146)

(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;[[147]](#footnote-147) and

(14) Arbitral procedure.

The Commission agreed to the 1949 list of fourteen topics on the understanding that it was 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. Amendments were made in the course of the Commission’s consideration of certain topics. The topic of “Succession of States and Governments” was subsequently divided into three, namely succession in respect of treaties, succession in matters other than treaties,[[148]](#footnote-148) and succession in respect of membership of international organizations.[[149]](#footnote-149) The topics “Regime of the high seas” and “Regime of territorial waters,” for the most part, were considered separately, but, at its eighth session, in 1956, the Commission grouped together systematically all the rules it had adopted under these topics in the final report on the subject “Law of the Sea.”

The Commission has submitted a final report on all of the topics included in the 1949 list, except for the following:

• Recognition of States and Governments;

• Jurisdiction with regard to crimes committed outside national territory;

• Treatment of aliens; and

• Right of asylum.

The first two topics have never been the subject of substantive consideration by the Commission, *per se.* However, the second topic may be viewed as being encompassed within the scope of the topics of “The obligation to extradite or prosecute (*aut dedere aut judicare*)” and “Extraterritorial jurisdiction”[[150]](#footnote-150).

The remaining two topics were the subject of partial consideration by the Commission. The topic “Treatment of aliens” was considered by the Commission in the course of its work on the topic “State responsibility,” but this work was discontinued. It was also considered, to some extent, by the Commission in connection with its work on the topic “Diplomatic protection,” and is being considered as an aspect of the topic “Expulsion of aliens.” With respect to the topic “Right of asylum,” at the Commission’s first session, in 1949, during the discussion of the draft Declaration on Rights and Duties of States, a proposal was submitted to include in the draft Declaration an article relating to the right of asylum. It was finally decided not to include such an article.[[151]](#footnote-151) At a later stage, the topic was specifically referred to the Commission by the General Assembly.[[152]](#footnote-152) At its twelfth session, in 1960, the Commission took note of the General Assembly resolution and decided to defer further consideration of the question to a future session.[[153]](#footnote-153) At its twenty-ninth session, in 1977, the Commission concluded that the topic did not appear at that time to require active consideration by the Commission in the near future.[[154]](#footnote-154)

The 1949 list of topics constituted the Commission’s basic long-term programme of work for more than fifty years. The list was supplemented by the following topics:

(15) Draft declaration on rights and duties of States;

(16) Formulation of the Nürnberg principles;

(17) Question of international criminal jurisdiction;

(18) Ways and means for making the evidence of customary international law more readily available;[[155]](#footnote-155)

(19) Draft code of crimes against the peace and security of mankind;[[156]](#footnote-156)

(20) Reservations to multilateral conventions;

(21) Question of defining aggression;

(22) Relations between States and international organizations[[157]](#footnote-157) (first and second parts of the topic, the first dealing with the status, privileges and immunities of representatives of States to international organizations, and the second dealing with the status, privileges and immunities of international organizations and their personnel);

(23) Juridical regime of historic waters, including historic bays;

(24) Special missions;[[158]](#footnote-158)

(25) Question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations;

(26) Most-favoured-nation clause;

(27) Question of treaties concluded between States and international organizations or between two or more international organizations;

(28) Question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law;

(29) The law of the non-navigational uses of international watercourses;

(30) Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier;[[159]](#footnote-159)

(31) Review of the multilateral treaty-making process;[[160]](#footnote-160)

(32) International liability for injurious consequences arising out of acts not prohibited by international law (first and second parts of the topic, the first dealing with prevention of transboundary damage from hazardous activities, and the second dealing with international liability in case of loss from transboundary harm arising out of such activities);

(33) Reservations to treaties;[[161]](#footnote-161)

(34) Nationality in relation to the succession of States (first and second parts of the topic, the first dealing with the question of nationality of natural persons, and the second dealing with the question of nationality of legal persons);[[162]](#footnote-162)

(35) Diplomatic protection;

(36) Unilateral acts of States;

(37) Responsibility of international organizations;

(38) Shared natural resources;

(39) Fragmentation of international law: difficulties arising from the diversification and expansion of international law;[[163]](#footnote-163)

(40) Effects of armed conflicts on treaties;

(41) Expulsion of aliens; and

(42) The obligation to extradite or prosecute (aut dedere aut judicare).

The topics listed above that were placed on the Commission’s programme of work in addition to those included in the 1949 list may be divided into four categories: (i) topics that were a specific follow-up to the Commission’s previous work on one of the topics included in the 1949 list; (ii) topics that were not a specific follow-up to the Commission’s previous work, but nonetheless relate to some extent to one of the 1949 topics; (iii) topics that do not relate to any of the topics in the 1949 list; and (iv) special assignments referred to the Commission by the General Assembly.

The first category comprising the topics that were referred to the Commission by the General Assembly as a specific follow-up to the consideration by the Commission of a topic included in the 1949 list includes: (*22*) relations between States and international organizations (General Assembly resolution 1289 (XIII) of 5 December 1958);[[164]](#footnote-164) (*23*) juridical regime of historic waters, including historic bays (General Assembly resolution 1453 (XIV) of 7 December 1959);[[165]](#footnote-165) (*24*) special missions (General Assembly resolution 1687 (XVI) of 18 December 1961);[[166]](#footnote-166) (*26*) the most-favoured-nation clause (General Assembly resolution 2272 (XXII) of 1 December 1967);[[167]](#footnote-167) (*27*) 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);[[168]](#footnote-168) and (*32*) international liability for injurious consequences arising out of acts not prohibited by international law (General Assembly resolution 3071 (XXVIII) of 30 November 1973).[[169]](#footnote-169) The topics listed in subparagraphs (*23*), (*24*) and (*27*) were referred to the Commission as a follow-up to the consideration by the General Assembly of a resolution previously adopted to that effect by a conference of plenipotentiaries.

The second category comprising the topics that were not a specific follow-up to the Commission’s previous work, but nonetheless relate to one of the 1949 topics, includes: (*30*) the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier,[[170]](#footnote-170) which relates to the topic of diplomatic intercourse and immunities; (*33*) reservations to treaties and (*40*) effects of armed conflicts on treaties, which both relate to the topic of the law of treaties;[[171]](#footnote-171) (*34*) nationality in relation to the succession of States, which relates to both the topic of succession of States and Governments as well as the topic of nationality, including statelessness; (*35*) diplomatic protection and (*37*) responsibility of international organizations, both of which relate to the topic of State responsibility[[172]](#footnote-172), and (*41*) expulsion of aliens which is related, in part, to the topic “Treatment of aliens.”

The third category comprising new topics that do not relate to any of the topics in the 1949 list includes: (*29*) the law of the non-navigational uses of international watercourses; (*36*) unilateral acts of States; (*38*) shared natural resources;[[173]](#footnote-173) (*39*) fragmentation of international law; and (*42*) the obligation to extradite or prosecute (*aut dedere aut judicare*)[[174]](#footnote-174).

The fourth category comprising special assignments in terms of requests by the General Assembly to the Commission to report on particular legal problems, to examine particular texts or to prepare a particular set of draft articles[[175]](#footnote-175) includes: (*15*) draft declaration on rights and duties of States (General Assembly resolution 178 (II) of 21 November 1947); (*16*) formulation of the Nürnberg principles (General Assembly resolution 177 (II) of 21 November 1947); (*17*) question of international criminal jurisdiction (General Assembly resolution 260 B (III) of 9 December 1948); (*19*) draft code of offences against the peace and security of mankind (General Assembly resolution 177 (II) of 21 November 1947); (*20*) reservations to multilateral conventions (General Assembly resolution 478 (V) of 16 November 1950); (*21*) question of defining aggression (General Assembly resolution 378 (V) of 17 November 1950); (*25*) question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations (General Assembly resolution 1766 (XVII) of 20 November 1962); (*28*) question of the protection and inviolability of diplomatic agents (General Assembly resolution 2780 (XXVI) of 3 December 1971); and (*31*) review of the multilateral treaty-making process (General Assembly resolution 32/48 of 8 December 1977).

Most of the topics were referred to the Commission by the General Assembly, often as a result of an earlier initiative of the Commission itself. The topics listed above in subparagraphs (*33*)-(*42*) were selected by the Commission in accordance with the new procedure for the selection of topics, involving initial inclusion in the Commission’s long-term programme of work. With respect to these topics, the General Assembly endorsed the Commission’s decisions to undertake studies on the topics of (*33*) reservations to treaties, (*34*) nationality in relation to the succession of States, (*35*) diplomatic protection, (*36*) unilateral acts of States, (*40*) effects of armed conflicts on treaties, (*41*) expulsion of aliens, (*42*) the obligation to extradite or prosecute (*aut dedere aut judicare*)*;* took note of the Commission’s decision to include in its programme of work the topics of (*38*) shared natural resources; (*39*) fragmentation of international law; and requested the Commission to begin its work on the topic of (*37*) responsibility of international organizations.

The Commission has submitted a final report on all of the topics and sub-topics added to the 1949 list which are not under current consideration, except for the following: (*22*) the second part of the topic of relations between States and international organizations (status, privileges and immunities of international organizations and their personnel), (*23*) juridical regime of historic waters, including historic bays; and (*34*) the second part of the topic of nationality in relation to the succession of States (question of nationality of legal persons).[[176]](#footnote-176)

At the beginning of the Commission’s fifty-ninth session, in 2007, the following six topics were on the Commission’s programme of work: (*33*) reservations to treaties; (*37*) responsibility of international organizations; (*38*) shared natural resources; (*40*) effects of armed conflicts on treaties; (*41*) expulsion of aliens and (*42*) the obligation to extradite or prosecute (*aut dedere aut judicare*).

5. Methods of work

(a) Progressive development and codification

The drafters of article 13(1)(a) of the Charter of the United Nations, at the San Francisco Conference, in 1945, considered a proposal to make an explicit reference to “revision” of existing international rules, but opted for the words “progressive development” since “juxtaposed as they were with codification, they implied modifications of as well as additions to existing rules” so as to “establish a nice balance between stability and change, whereas ‘revision’ would lay too much emphasis on change.”[[177]](#footnote-177)

During the process of drafting the Statute, the Committee of Seventeen recognized that the tasks that were to be entrusted to the Commission would vary in nature: some might involve the drafting of a convention on a subject which had not yet been regulated by international law or in regard to which the law had not yet been highly developed or formulated in the practice of States; while other tasks might involve the more precise formulation and systematization of the law in areas where there had been extensive State practice, precedent and doctrine. The former type of task was labeled, “for convenience of reference,” as “progressive development” and the latter “codification.”[[178]](#footnote-178)

The Statute contemplates the progressive development of international law through the preparation of draft conventions (article 15), but envisages two further possible conclusions to its work when the Commission’s task is one of codification: (*a*) simple publication of its report; and (*b*) a resolution of the General Assembly, taking note of or adopting the report (article 23, paragraph 1).[[179]](#footnote-179) The Statute also lays down the specific steps to be taken by the Commission in the course of its work on progressive development (articles 16 and 17) and on codification (articles 18 to 23).

Notwithstanding the distinction drawn between the two concepts, the Committee of Seventeen recognized that they were not mutually exclusive, as, for example, in cases where the formulation and systematization of the existing law may lead to the conclusion that some new rule should be suggested for adoption by States.[[180]](#footnote-180) This insight has been borne out by practice. The Commission has indicated that the distinctions drawn in its Statute between the two processes have proved unworkable and could be eliminated in any review of the Statute.[[181]](#footnote-181) Instead the Commission has proceeded on the basis of a composite idea of codification and progressive development.[[182]](#footnote-182) It has developed a consolidated procedure to its methods of work and applied that method in a flexible manner making adjustments that the specific features of the topic concerned or other circumstances demand.[[183]](#footnote-183)

(b) Process of consideration

The Commission does not necessarily begin consideration of a topic immediately after it has been included in the programme of work (since 1992, from the list of topics in the long-term programme of work). The Commission’s actual consideration of a topic on its programme results, rather, from a further decision of the Commission to place it on the agenda of its next session. The Commission’s decision to commence its work on a topic is mainly influenced by the status of the consideration of other topics and requests by the General Assembly (e.g., special assignments or requests to give priority to certain topics or to begin work on a certain topic).[[184]](#footnote-184) In some instances, the placing of a topic on the agenda has also been preceded by preliminary work undertaken by a subcommittee or working group established for this purpose (*see pages 27 and 28*).

The Commission has identified three different stages generally present in the consideration of a topic on its agenda: a first preliminary stage, devoted mainly to the organization of work and the gathering of relevant materials and precedents; a second stage, during which the Commission proceeds to a first reading of the draft articles submitted by the Special Rapporteur; and a third and final stage, devoted to a second reading of the draft articles provisionally adopted.[[185]](#footnote-185)

The first stage usually comprises the following: appointment of a Special Rapporteur; formulation of a plan of work; and, where necessary or desirable, requests for data and information from Governments[[186]](#footnote-186) as well as international organizations and for research projects, studies, surveys and compilations from the Secretariat.[[187]](#footnote-187)

The second stage usually comprises the following: the consideration of the reports of the Special Rapporteur[[188]](#footnote-188) by the Commission in plenary, and of the proposed draft articles in the plenary and in the Drafting Committee; the elaboration of draft articles with commentaries setting forth precedents, any divergences of views expressed in the Commission, and alternative solutions considered;[[189]](#footnote-189) the approval of the provisional draft articles in the Drafting Committee and the draft articles with commentaries afterwards in the plenary; and the issuance of the provisional draft with commentary as a Commission document and its submission to the General Assembly, and also to Governments for their written observations.[[190]](#footnote-190) As experience has shown that a shorter period failed to elicit a sufficient number of replies, Governments are normally given one year or more in which to study these provisional drafts and present their written observations before the Commission begins the second reading of the draft articles.[[191]](#footnote-191)

The third stage usually involves the study by the Special Rapporteur of the replies received from Governments, together with any comments made in the debates of the Sixth Committee; submission of a further report to the Commission, recommending the changes in the provisional draft that seem appropriate; the consideration and approval of the revised draft in the Drafting Committee in the light of the written and oral observations from Governments; and adoption by the Commission in plenary of the final draft with commentaries[[192]](#footnote-192) and a recommendation regarding further action.[[193]](#footnote-193)

The task of the Commission in relation to a given topic is completed when it presents to the General Assembly a final product on that topic, which is usually accompanied by the Commission’s recommendation on further action with respect to it. In some instances, the General Assembly has requested the Commission to undertake further work on a topic on which it has already submitted a final report.[[194]](#footnote-194)

The Commission has generally considered that its drafts constitute both codification and progressive development of international law in the sense in which those concepts are defined in the Statute, and has found it impracticable to determine into which category each provision falls.[[195]](#footnote-195) The Commission has usually recommended that the General Assembly take action envisaged with respect to the codification of international law under its Statute, namely: (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; or (d) to convoke a conference to conclude a convention (article 23, paragraph 1).

As noted in Part III, the Commission recommended that the General Assembly take the following action with respect to the various draft articles in the years indicated in parentheses: *(a) take no action* with respect to the draft article on the contiguous zone since the report covering it had already been published (1953); *(b) adopt the reports* containing drafts relating to the continental shelf and fisheries (1953),[[196]](#footnote-196) and the Model Rules on Arbitral Procedure (1958); *(c) adopt the draft articles* on nationality of natural persons in relation to the succession of States *in the form of a declaration* (1999); *(d) recommend the conclusion of a convention* on arbitral procedure (1953), elimination and reduction of future statelessness (1954),[[197]](#footnote-197) diplomatic intercourse and immunities (1958), special missions (1967),[[198]](#footnote-198) most-favoured-nation clauses (1978), law of the non-navigational uses of international watercourses (1994),[[199]](#footnote-199) prevention of transboundary harm from hazardous activities (2001), and diplomatic protection (2006);[[200]](#footnote-200) *(e) convoke a conference to conclude a convention* on the law of the sea (1956), consular intercourse and immunities (1961), law of treaties (1966), representation of States in their relations with international organizations (1971), succession of States in respect of treaties (1974), succession of States in respect of State property, archives and debts (1981), treaties concluded between States and international organizations or between two or more international organizations (1982), status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier and two optional protocols thereto (1989), and jurisdictional immunities of States and their property (1991); *(f) take note of* the draft articles on responsibility of States for internationally wrongful acts *and subsequently consider convening a conference to conclude a convention* (2001); and *(g) endorse* the draft principles on the second part of the topic of international liability for injurious consequences arising out of acts not prohibited by international law (2006). The Commission has also *commended* the Guiding principles applicable to unilateral declarations of States capable of creating legal obligations (2006) and the conclusions of the Study Group on the fragmentation of international law (2006) *to the attention of the General Assembly.*[[201]](#footnote-201)

(c) Special assignments

In performing special assignments, the question has arisen whether the Commission, 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 decide on the methods to be used in such cases. The Commission has always decided that it was free to adopt special methods for special tasks.[[202]](#footnote-202) The Commission often dispenses with the normal stages of its work and considers special assignments as a whole or in a working group without appointing a Special Rapporteur or holding first and second readings.[[203]](#footnote-203) In such cases, the Commission reports its conclusions simply for the consideration of the General Assembly, without recommending any of the courses of action listed in article 23, paragraph 1, of the Statute. In other cases, the Commission has used virtually the same working methods for special assignments as for progressive development and codification with the result being the submission of draft articles accompanied by commentaries, and in some instances, a recommendation for action by the General Assembly.[[204]](#footnote-204)

The Commission submitted its reports with respect to the following special assignments in the years indicated in parentheses: draft declaration on rights and duties of States (1949); formulation of the Nürnberg principles (1950); question of international criminal jurisdiction (1950); question of defining aggression (1951); reservations to multilateral conventions (1951); draft code of crimes against the peace and security of mankind (1951, 1954, 1994[[205]](#footnote-205) and 1996); extended participation in general multilateral treaties concluded under the auspices of the League of Nations (1963); question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law (1972); and review of the multilateral treaty-making process (1979).

The Commission’s reports on the following special assignments contained draft articles with commentaries: draft declaration on rights and duties of States; formulation of the Nürnberg principles; draft code of crimes against the peace and security of mankind; and question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law. The conclusions reached by the Commission on the other special assignments did not lend themselves to the preparation of draft articles.

(d) Review of methods of work

The Commission has periodically reviewed its methods of work, at the request of the General Assembly or on its own initiative, in the light of comments and suggestions made in the Sixth Committee or in the Commission itself.[[206]](#footnote-206) It has consequently introduced a number of changes aimed at expediting or streamlining its procedures to respond more readily to its tasks.[[207]](#footnote-207)

At its tenth session, in 1958, the Commission considered various methods by which its work might be accelerated based on a working paper prepared by the Chairman of its previous session in response to observations in the Sixth Committee.[[208]](#footnote-208) As a result of this review, the Commission made changes in its methods of work with respect to plenary meetings, the Drafting Committee and Government comments. The Commission concluded that it might be useful in the initial stages of preparing a draft on a difficult or complex subject to make greater use of committees or sub-committees so that less would be done in plenary. The Commission decided that in the future the Drafting Committee should be formally constituted as what it had long been in fact, namely, a committee to which could be referred not merely pure drafting points, but also points of substance which the full Commission had been unable to resolve, or which seemed likely to give rise to unduly protracted discussion. The Commission also decided to prepare its final draft at the second session following that in which the first draft had been prepared which would give more time for Governments to comment on the first drafts produced by the Commission, also for the members to consider those comments and for the Special Rapporteur to make recommendations concerning them.[[209]](#footnote-209)

At its twentieth session, in 1968, the Commission reviewed its methods of work based on working papers prepared by the Secretariat.[[210]](#footnote-210) As a result of this review, the Commission recommended that: the term of office of its members be extended from five to six or seven years; an additional special allowance be made available to Special Rapporteurs to help defray expenses in connection with their work; and the staff of the Codification Division be increased so that it could provide additional assistance to the Commission and its Special Rapporteurs.[[211]](#footnote-211)

At its twenty-seventh session, in 1975, the Commission established a Planning Group in the Enlarged Bureau to study the functioning of the Commission and formulate suggestions regarding its work. As an initial project, the Planning Group undertook a review of the existing workload of the Commission with a view to proposing general goals toward which the Commission might direct its efforts during its five-year term of office ending in 1981.[[212]](#footnote-212) The adoption by the Commission of general goals for completion of work on the topics under consideration was received with approval in the General Assembly.[[213]](#footnote-213) From 1977 on, the Commission has established a Planning Group[[214]](#footnote-214) for each of its annual sessions and entrusted it with the task of considering the programme, organization and methods of work of the Commission.

At its thirtieth and thirty-first sessions, in 1978 and 1979, respectively, the Commission examined its methods of work in the context of its consideration of the topic “Review of the multilateral treaty-making process” pursuant to General Assembly resolution 32/48 of 8 December 1977.[[215]](#footnote-215) The Commission established a working group to consider preliminary questions raised by the topic and to recommend to the Commission the action to be taken in response to the General Assembly’s request. The Commission subsequently adopted the report of the working group[[216]](#footnote-216) which contained detailed observations on the following: (1) the International Law Commission as a United Nations body; (2) the object and functions of the Commission; (3) the role of the Commission and its contribution to the treaty-making process through the preparation of draft articles; (4) the consolidated methods and techniques of work of the Commission as applied in general to the preparation of draft articles (without distinguishing between the progressive development of international law and its codification), including the functions performed by the Special Rapporteur, the Drafting Committee and the Commission during the three stages of consideration of a topic; (5) other methods and techniques employed by the Commission (for example, with respect to special assignments); (6) the relationship between the Commission and the General Assembly; and (7) the elaboration and conclusion of conventions based on draft articles prepared by the Commission following a General Assembly decision to that effect. The Commission concluded, inter alia, that the techniques and procedures provided in the Statute, as they had evolved over three decades, were well adapted for the object of the Commission set forth in article 1 of the Statute, namely, the progressive development of international law and its codification. The Commission noted that it might be necessary to provide more assistance and facilities to Special Rapporteurs to enable them to perform their duties in the future and to make more use of questionnaires addressed to Governments than in the past. The Commission did not, however, recommend any major changes in its methods of work.

At its thirty-ninth session, in 1987, the Commission considered thoroughly its methods of work in all their aspects in response to General Assembly resolution 41/81 of 3 December 1986. The Planning Group established a Working Group on Methods of Work for this purpose. As a result, the Commission, while maintaining the view that tested methods should not be radically or hastily altered, agreed that some specific aspects of its procedures could usefully be reviewed. The Commission believed that the Drafting Committee, which played a key role in harmonizing the various viewpoints and working out generally acceptable solutions, should work in optimum conditions. As regards the composition of the Drafting Committee, the Commission was aware that a proper balance must be kept, notwithstanding practical constraints, between two legitimate concerns, namely that the principal legal systems and the various languages should be equitably represented in the Committee and that the size of the Committee should be kept within limits compatible with its drafting responsibilities. To facilitate the work of the Drafting Committee, the Chairman of the Commission should, whenever possible, indicate the main trends of opinion revealed by the debate in plenary. The Commission was aware that premature referral of draft articles to the Drafting Committee, and excessive time-lags between such referral and actual consideration of draft articles in the Committee, have counter-productive effects.[[217]](#footnote-217)

At its forty-fourth session, in 1992, the Commission considered thoroughly its methods of work in all their aspects as requested by the General Assembly in resolution 46/54 of 9 December 1991. On the recommendation of the Planning Group, the Commission adopted guidelines with respect to the Drafting Committee and the Commission’s report. The guidelines concerning the composition and working methods of the Drafting Committee provide as follows: (a) the Drafting Committee shall continue to be a single body, under one Chairman, but may have a different membership for each topic; (b) the Drafting Committee should, as a general rule, concentrate its work on two to three topics at each session to attain greater efficiency; (c) the Chairman of the Drafting Committee, in consultation with the other officers of the Commission, shall recommend the membership for each topic; (d) membership for each topic shall be limited to no more than fourteen members and shall ensure as far as possible representation of the different working languages; (e) members who are not serving on the Drafting Committee for a given topic may attend the meetings and occasionally be authorized to speak, but should exercise restraint; (f) the Drafting Committee shall be given the necessary time for the timely completion of the tasks entrusted to it; (g) when necessary, the Drafting Committee may be given additional time for concentrated work, preferably at the beginning of a session; and (h) the Drafting Committee shall present a report to the Commission as early as possible after the conclusion of its consideration of each topic. The guidelines concerning the preparation and content of the Commission’s annual report provide, inter alia, as follows: (a) the General Rapporteur should play an active part in the preparation of the report to provide the necessary coordination and consistency, bearing in mind continuing efforts to avoid an excessively long report; and (b) the report should include a summary of the work of the session as well as a list of questions on which the views of the Sixth Committee would be particularly helpful.[[218]](#footnote-218)

At its forty-sixth and forty-seventh sessions, in 1994 and 1995, respectively, the Commission considered its working methods with respect to the commentaries to draft articles. The Commission reviewed the conditions under which the commentaries to draft articles are discussed and adopted. The Commission agreed that the commentaries should be taken up as soon as possible at each session in order to receive the requisite degree of attention and should be discussed separately rather than in the framework of the adoption of the annual report. The Commission noted that the content and length of the commentaries accompanying draft articles depend partly on the nature of the topic and the extent of the precedents and other relevant data. Nonetheless, the Commission encouraged its Special Rapporteurs to draft the briefest possible commentaries and pay due attention to the desirability of having the commentaries to the draft articles on the various topics as uniform as possible in presentation and length.[[219]](#footnote-219)

At its forty-eighth session, in 1996, the Commission examined the procedures of its work for the purpose of further enhancing its contribution to the progressive development and codification of international law in response to General Assembly resolution 50/45 of 11 December 1995. The Planning Group established an informal working group which discussed all of the issues involved. The Commission adopted the report of the Planning Group[[220]](#footnote-220) which contained the following recommendations with respect to plenary meetings, the Drafting Committee, working groups, Special Rapporteurs and the Commission’s annual report: (a) the plenary debates should be reformed to provide more structure and to allow for an indicative summary of conclusions by the Chairman at the end of the debate, based if necessary on an indicative vote; (b) the Drafting Committee should continue to have a different membership for different topics; (c) working groups should be used more extensively to resolve particular disagreements and, in appropriate cases, as an expeditious way of dealing with whole topics, in the latter case normally acting in place of the Drafting Committee; (d) Special Rapporteurs should specify the nature and scope of work planned for the next session, work with a consultative group of members, produce draft commentaries or notes to accompany their draft articles, which should be revised in the light of changes made in the Drafting Committee and made available at the time of the debate in plenary, and the Special Rapporteur’s reports should be available sufficiently in advance of the session; (e) the Commission should identify specific issues for comment by the Sixth Committee before the adoption of draft articles, where possible, and the Commission’s report should be shorter, more thematic and should highlight and explain key issues to assist in structuring the debate on the report in the Sixth Committee.[[221]](#footnote-221) The Commission also recommended that goals should be set at the beginning and reviewed at the end of each quinquennium, together with any preparations that should be made to facilitate adopting the plan for the next quinquennium at the beginning of its first year.[[222]](#footnote-222) The General Assembly welcomed with appreciation the steps taken by the Commission in relation to its internal matters to enhance its efficiency and productivity and invited the Commission to continue taking such measures.[[223]](#footnote-223)

6. Meetings of the Commission

(a) Rules of procedure

As a subsidiary organ of the General Assembly, the procedure of the Commission is governed by the Rules of Procedure of the General Assembly relating to the procedure of committees (rules 96 to 133) as well as rule 45 (duties of the Secretary-General) and rule 60 (public and private meetings) unless the Assembly or the Commission decides otherwise.[[224]](#footnote-224) The Commission, at its first session, in 1949, decided that these Rules of Procedure should apply to the procedure of the Commission, and that the Commission should, when the need arose, adopt its own rules of procedure.[[225]](#footnote-225)

(b) Agenda

At the beginning of each session, the Commission adopts the agenda for the session. The provisional agenda is prepared by the Secretariat on the basis of the decisions of 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. Not every topic on the programme of work is necessarily included in the agenda of a particular session.[[226]](#footnote-226) The Commission gives serious consideration to recommendations by the General Assembly to include a topic in the agenda of its next session. However, the Commission decides whether it is appropriate to follow such a recommendation, which is not reflected in the provisional agenda prepared by the Secretariat, in the light of its previous decisions concerning the plan of work for the session.[[227]](#footnote-227)

(c) Languages

The official languages of the Commission are those of the United Nations, namely Arabic, Chinese, English, French, Russian and Spanish.[[228]](#footnote-228) In the subsidiary bodies, discussion is predominantly in English and French, coinciding with the working language of the text under discussion, if applicable, but members are free to use other official languages.[[229]](#footnote-229)

(d) Decision making

The Chairman of the Commission may declare a meeting open and permit the debate to proceed when at least one quarter of the members are present. The presence, however, of a majority of the Commission’s members is required for a decision to be taken by the Commission. In addition, the Chairman of the Commission (or of a subsidiary body, as the case may be) may, from time to time, be called upon to make a ruling (usually on procedural matters).[[230]](#footnote-230) Decisions are made by a majority of the members present and voting. Members who abstain from voting are considered as not voting.[[231]](#footnote-231)

In the early years of the Commission, decisions were often taken by vote. At a later stage, it became more common for the Commission to take decisions on procedural and substantive matters without a vote, by common understanding or consensus.[[232]](#footnote-232) In 1996, the Commission discussed the method of voting in the plenary and subsidiary bodies and made some suggestions.[[233]](#footnote-233) It was noted, that although the Commission and its subsidiary bodies[[234]](#footnote-234) attempted to reach consensus, it would be less burdensome and time-consuming to call for an indicative vote in certain cases, for instance, on provisional and tentative points or points of detail, with the reflection of minority views in the summary records and in the report of the Commission. “When decisions ultimately come to be taken, again every effort should be made to reach a consensus, but if this is not possible in the time available, a vote may have to be taken.”[[235]](#footnote-235)

(e) Report of the Commission

At the end of each session, the Commission adopts a report to the General Assembly, covering the work of the session, on the basis of a draft prepared by the General Rapporteur with the assistance of the Special Rapporteurs concerned and the Secretariat.[[236]](#footnote-236)

The report includes information concerning the organization of the session, the progress of work[[237]](#footnote-237) and the future work of the Commission on the topics given substantive consideration during the session, the texts of draft articles and commentaries adopted by the Commission during the session, any procedural recommendations of the Commission calling for a decision on the part of the General Assembly as well as other decisions and conclusions of the Commission. [[238]](#footnote-238)

The structure of the report has changed from time to time.[[239]](#footnote-239) At present, it is divided into the following main chapters: the first chapter deals with organizational issues; the second chapter summarizes the work of the session; the third chapter identifies specific issues on which comments of Governments would be of particular interest to the Commission; subsequent chapters are devoted to each of the different topics considered at the session; and the last chapter contains other decisions and conclusions of the Commission. The Commission has, on occasion, also decided to include other relevant documents, such as reports of working groups or syllabuses prepared for individual topics to be included on its long-term programme of work, in an annex to its report.[[240]](#footnote-240)

The Commission’s annual report is the means by which it keeps the General Assembly informed on a regular basis 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 is also the means by which the Commission’s drafts are given the necessary publicity provided for in articles 16 and 21 of its Statute.[[241]](#footnote-241)

(f) Summary records

Since its establishment, the Commission has been provided with summary records of its meetings in both provisional and final form,[[242]](#footnote-242) in accordance with the consistent policy of the General Assembly.[[243]](#footnote-243) At its thirty-second session, in 1980, the Commission concluded that the provision of summary records of its meetings constitutes an inescapable requirement for the procedures and methods of work of the Commission and for the process of codification of international law in general. The Commission has observed that the need for summary records in the context of its procedures and methods of work was determined by, inter alia, its functions and composition. As its task is mainly to draw up drafts providing a basis for the elaboration by States of legal codification instruments, the debates and discussions held in the Commission on proposed formulations are of paramount importance, in terms of both substance and wording, for the understanding of the rules proposed to States by the Commission. Pursuant to the Commission’s Statute, members of the Commission serve in a personal capacity and do not represent Governments. Therefore, States have a legitimate interest in knowing not only the conclusions of the Commission as a whole as recorded in its reports but also those of its individual members contained in the summary records of the Commission, particularly if it is borne in mind that members of the Commission are elected by the General Assembly so as to ensure representation in the Commission of the main forms of civilization and the principal legal systems of the world. The summary records of the Commission are also a means of making its deliberations accessible to international institutions, learned societies, universities and the public in general. They play an important role, in that respect, in promoting knowledge of and interest in the process of promoting the progressive development of international law and its codification. The Commission has emphasized the importance of providing summary records of its meetings in both provisional and final form and expressed its appreciation to the General Assembly for doing so.[[244]](#footnote-244)

(g) Yearbook of the Commission

Following a request by the Commission, the General Assembly, in resolution 987 (X) of 3 December 1955, requested the Secretary-General to arrange for the printing of: (*a*) the principal documents (namely, studies, reports, principal draft resolutions and amendments presented to the Commission) relating to the first seven sessions, in their original languages, and the summary records of these sessions, initially in English; and (*b*) the principal documents and summary records relating to the subsequent sessions, in English, French and Spanish. As a result, an annual publication entitled *Yearbook of the International Law Commission* has been printed in two volumes in respect of each session (except the first session for which there was only one volume). The *Yearbook* has also been published in Russian since 1969, in Arabic since 1982 and in Chinese since 1989. Volume I of the *Yearbook* contains the summary records of the meetings of the Commission and volume II reproduces the principal documents, including the Commission’s report to the General Assembly. Volume II is published in two parts, part two reproducing, since 1976, the annual report of the Commission to the General Assembly.[[245]](#footnote-245)

(h) Limitation of documentation

From time to time, the Commission has addressed the question of the applicability of United Nations regulations for the control and limitation of documentation to its own documentation.[[246]](#footnote-246) The Commission noted that the length of its documentation depended upon a series of variable factors, for example: (i) as regards its annual report, the duration of the session, the topics considered, the draft articles and commentaries included and the Commission’s perception of the need for explaining the work accomplished at that session and justifying the draft articles contained therein to the General Assembly and Member States;[[247]](#footnote-247) (ii) as regards information provided by Governments and international organizations, the volume of relevant information submitted by them since it is an absolute need for the Commission to have at its disposal, *in extenso* and in its working languages, the replies of Governments and international organizations to its requests for information;[[248]](#footnote-248) (iii) as regards the reports and working papers of the Special Rapporteurs, the scope and complexity of the topic in question, the stage of the Commission’s work on the topic, the nature and number of proposals made by the Special Rapporteur, in particular draft articles with supporting data derived from, inter alia, State practice and doctrine, including analysis of relevant debates held in the General Assembly as well as comments and observations submitted by Governments;[[249]](#footnote-249) and (iv) as regards research studies by the Secretariat, the nature of studies which usually reflect “treaties, judicial decisions and doctrine” as well as “the practice of States,” indispensable for the Commission’s study of the various topics on its programme and formulation of commentaries on the drafts it proposes to the General Assembly, according to article 20 of its Statute.[[250]](#footnote-250) The Commission has repeatedly concluded that the application of regulations for the control and limitation of documentation to its own documentation would render the documents in question unfit for the purpose for which they are intended. “In the matter of legal research—and codification of international law demands legal research—limitations on the length of documents cannot be imposed.”[[251]](#footnote-251) This conclusion has been endorsed by the General Assembly on a number of occasions.[[252]](#footnote-252)

At its fifty-fifth session, in 2003, the Commission recalled the particular characteristics of its work that make it inappropriate for page limits to be applied to its documentation.[[253]](#footnote-253) In particular, the Commission noted that it was established to assist the General Assembly in the discharge of its obligation under Article 13, paragraph 1 (a), of the Charter of the United Nations. That obligation stemmed from the recognition by those involved in drafting the Charter that, if international legal rules were to be arrived at by agreement, then in many areas of international law a necessary part of the process of arriving at agreement would involve an analysis and precise statement of State practice. Accordingly, the Commission is required by its Statute to justify its proposals to the General Assembly, and ultimately to States, on the basis of evidence of existing law and the requirements of progressive development in the light of the current needs of the international community. Thus, the draft articles or other recommendations contained in the reports of the Special Rapporteurs or the Commission’s report must be supported by extensive references to State practice, doctrine and precedents and be accompanied by extensive commentaries in accordance with article 20 of the Statute. The Commission noted that its documentation is also indispensable for the following reasons: (1) it constitutes a critical component in the process of consulting States and obtaining their views; (2) it assists individual States in understanding and interpreting the rules embodied in codification conventions; (3) it is part of the *travaux préparatoires* of such conventions and is frequently referred to or quoted in the diplomatic correspondence of States, in argument before the International Court of Justice and by the Court itself in its judgments; (4) it contributes to the dissemination of information about international law in accordance with the relevant United Nations programme; and (5) it forms as important a product of the Commission’s work as the draft articles themselves and enables the Commission to fulfil, in accordance with its Statute, the tasks entrusted to the Commission by the General Assembly.[[254]](#footnote-254)

The Commission therefore confirmed its previous conclusion that it would be entirely inappropriate to attempt in advance and *in abstracto* to fix the maximum length of its documentation.[[255]](#footnote-255) At the same time, the Commission again stressed that it and its Special Rapporteurs are fully conscious of the need to achieve economies whenever possible in the overall volume of United Nations documentation and will continue to bear such considerations in mind.[[256]](#footnote-256)

(i) Duration of the session

The Statute of the Commission does not specify the duration of its sessions. Until 1973, the Commission’s sessions normally lasted ten weeks. In 1973, the General Assembly approved a twelve-week period for the Commission’s twenty-sixth session, in 1974.[[257]](#footnote-257) The General Assembly subsequently approved, “in the light of the importance of its existing work programme, a twelve-week period for the annual sessions of the International Law Commission, subject to review by the General Assembly whenever necessary.”[[258]](#footnote-258)

Since 1974, the Commission’s sessions have normally lasted twelve weeks.[[259]](#footnote-259) By subsequent resolutions, most recently resolution 50/45 of 11 December 1995, the Assembly expressed the view that the requirements of the work for the progressive development of international law and its codification and the magnitude and complexity of the subjects on the agenda of the Commission made it desirable that the usual duration of its sessions be maintained.

At its forty-eighth session, in 1996, the Commission considered the duration of its sessions in connection with the examination of its work procedures requested by the General Assembly in resolution 50/45. The Commission expressed the view that, in principle, it should be able to determine on a year-to-year basis the necessary length of the following session (i.e., twelve weeks or less), having regard to the state of work and any priorities laid down by the General Assembly for the completion of particular topics. The Commission favoured reverting to the previous practice of holding ten-week sessions, with the possibility of extending this to twelve weeks in particular years, as required, and especially in the last year in a quinquennium.[[260]](#footnote-260) Since 1996, the Commission’s forty-ninth, fifty-fourth, fifty-fifth, fifty-sixth and fifty-seventh[[261]](#footnote-261) sessions, held in 1997, 2002, 2003, 2004 and 2005, respectively, consisted of ten weeks; its fiftieth session, held in 1998, consisted of eleven weeks, and its fifty-first to fifty-third and fifty-eighth sessions, held in 1999, 2000, 2001 and 2006 respectively, consisted of twelve weeks.

(j) Split sessions

There is no statutory provision concerning dividing the Commission’s annual session into two parts. The Commission has normally held a single annual session, with the exception of the seventeenth session which was held in Geneva and Monaco in 1965 and 1966.

At its forty-fourth session, in 1992, the Commission considered the possibility of dividing its annual session into two parts in the context of the review of its programme, procedures and methods of work. The Commission considered the advantages in terms of the effectiveness of its work as well as the disadvantages in terms of administrative and financial problems. The Commission concluded that the suggestion to divide its annual session into two parts had not received enough support at that time and therefore improvements in the effectiveness of its work should continue to be sought under the current arrangements, for the time being.[[262]](#footnote-262)

At its forty-eighth session, in 1996, the Commission returned to the question of holding a split session in connection with the organization and length of its sessions. Those in favour of a single session argued that a continuous session was necessary to assure the best results on priority topics, including careful consideration of proposed draft articles, while maintaining progress and direction on other topics. Those in favour of a split session argued that it would facilitate reflection and study by members, improve productivity as a result of inter-sessional preparation for the second part, encourage informal inter-sessional work, give Special Rapporteurs time to reconsider proposals, allow concentrated work by the Drafting Committee or a working group at the end of the first part or the beginning of the second part of the session, and facilitate better and more continuous attendance of members. Noting that a split session might not be significantly more expensive than a continuous session, the Commission decided to recommend that a split session be held as an experiment in 1998 in order to assess the advantages and disadvantages in practice.[[263]](#footnote-263)

The fiftieth session of the Commission, in 1998, was divided into two parts, with the first part of the session being held in Geneva and the second in New York. The Commission agreed to continue the practice of split sessions as of 2000, scheduling the sessions to take place in two evenly split parts, with a reasonable period in between. [[264]](#footnote-264)

At its fifty-first session, in 1999, the Commission examined the advantages and disadvantages of holding split sessions in response to General Assembly resolution 53/102 of 8 December 1998. The Commission concluded that a split session was more efficient and effective and facilitated the uninterrupted attendance of its members based on its experience in 1998. The Commission further concluded that there were no disadvantages to a split session and that any resulting cost increase should be more than offset by increased productivity and cost-saving measures. In particular, the Commission suggested adjusting the organization of work during sessions so that one or two weeks at the end of the first part of the session and/or the beginning of the second part of the session could be devoted exclusively to the meetings which require the attendance of a limited number of the Commission’s members.[[265]](#footnote-265) This measure was put into effect at the fifty-third session of the Commission, in 2001, pursuant to General Assembly resolutions 54/111 of 9 December 1999 and 55/152 of 12 December 2000.[[266]](#footnote-266)

The Commission reached these conclusions on the understanding that it would maintain a flexible need-based approach to the nature and duration of its sessions.[[267]](#footnote-267) The Commission’s fifty-second to fifty-eighth sessions, from 2000 to 2006, were each held in two parts.

(k) Location

The Commission has held all of its sessions in Geneva, except for its first session, which was held in New York (at Lake Success) in 1949; its sixth session, which was held at the headquarters of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in Paris in 1954; the second part of its seventeenth session, which was held in Monaco in January 1966; and the second part of its fiftieth session, which was held at United Nations Headquarters, in New York, in 1998.

Article 12 of the Statute initially provided that the Commission would meet at the Headquarters of the United Nations, in New York, while recognizing the right of the Commission to hold meetings at other places after consultation with the Secretary-General. However, the Commission decided, after consulting with the Secretary-General, to hold its second to seventh sessions, from 1950 to 1955, in Geneva.[[268]](#footnote-268) The Commission preferred Geneva to New York because its atmosphere and law library were more favourable for the studies of a body of legal experts and because its location simplified arrangements for its sessions by the Secretariat.[[269]](#footnote-269) In 1955, the General Assembly, acting on the recommendation of the Commission,[[270]](#footnote-270) amended article 12 of the Statute to provide for the Commission to meet at the European Office of the United Nations at Geneva.[[271]](#footnote-271)

In introducing the practice of split sessions, the Commission has considered holding the second part of its split sessions in New York, towards the middle of a quinquennium, in order to enhance the relationship between the Commission and the General Assembly and its Sixth Committee.[[272]](#footnote-272)

(1) The International Law Seminar

Since 1965, the International Law Seminar has been held in conjunction with the Commission’s sessions, and many hundreds of young professionals have been introduced to the United Nations and to the work of the Commission through the seminar. During the seminar, the participants observe plenary meetings of the Commission, attend specially arranged lectures, and participate in small-group discussions on specific topics.

7. Relationship with Governments

Governments play an important role in every stage of the Commission’s work on the progressive development of international law and its codification. Individually, they may refer a proposal or draft convention to the Commission for consideration, furnish information at the outset of the Commission’s work and comment upon its drafts as the work proceeds. Collectively, they decide sometimes upon the initiation or priority of the work and always upon its outcome.

(a) Direct relationship with Governments

The Statute provides for the consideration by the Commission of proposals and draft multilateral conventions submitted directly by Members of the United Nations (article 17, paragraph 1).[[273]](#footnote-273) In practice, the Commission has never received such a proposal or draft directly from a Member State but rather indirectly from the General Assembly, usually following its consideration in the Sixth Committee.

The Statute of the Commission also contains provisions designed to give Governments an opportunity to make their views known at every stage of the Commission’s work. At the outset of its work, the Commission is required: (a) to circulate a questionnaire to Governments, inviting them to supply data and information relevant to items included in its plan of work for progressive development (article 16 (*c*)); or (b) to 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 for codification (article 19, paragraph 2). The Commission is also required to invite or request Governments to submit comments on the Commission’s document containing the initial draft as well as appropriate explanations, supporting material and information supplied by Governments (article 16 (*g*) to (*h*) and article 21). Finally, the Commission is required to take into consideration such comments in preparing the final draft and explanatory report (articles 16 (*i*) and 22).

The Commission has noted the fundamental and basic role that materials, comments and observations submitted by Governments play in the codification methods of the Commission. The interaction between the Commission, a permanent body of legal experts serving in their personal capacity, and Governments, through a variety of means including the submission of materials and written comments and observations, is at the core of the system created by the General Assembly for the promotion, with the assistance of the Commission, of the progressive development of international law and its codification.[[274]](#footnote-274)

The Commission has indicated its concern that, in practice, the data and comments submitted by Governments in relation to particular topics have in some cases tended to be limited in quantity.[[275]](#footnote-275) The Commission has attempted to make the questionnaires sent to Governments more “user-friendly” by indicating clearly what is requested and why.[[276]](#footnote-276) In 1958, the Commission stated in its report that it “felt little doubt that its work tended to suffer because of defects in the process of obtaining and dealing with the comments of Governments,” and accordingly it decided to give Governments more time to prepare their comments.[[277]](#footnote-277) The General Assembly has repeatedly noted that consulting with national organizations and individual experts concerned with international law may assist Governments in considering whether to make comments and observations on drafts submitted by the Commission and formulating their comments and observations.[[278]](#footnote-278) The written comments have been supplemented by the comments made during the annual debates in the Sixth Committee on the Commission’s reports to the General Assembly.[[279]](#footnote-279)

After the Commission has submitted its final draft to the General Assembly on a topic, the Assembly normally requests comments of Governments on that draft. Such comments are considered by the General Assembly’s Sixth Committee in connection with further consideration of the topic before the convening of the diplomatic conference or in connection with the elaboration of the convention by the General Assembly itself (e.g., special missions, prevention and punishment of crimes against diplomatic agents and other internationally protected persons, and the law of the non-navigational uses of international watercourses), or by the diplomatic conference called upon to draw up the convention on the topic concerned. Occasionally, Governments have also been invited to submit amendments to the Commission’s draft articles before the opening of the diplomatic conference (e.g., consular intercourse and immunities, and law of treaties). Those amendments are subsequently referred to the conference.

(b) Relationship with the General Assembly

The General Assembly, usually on the recommendation of its Sixth Committee, has requested the Commission to study or to continue to study a number of topics, or to give priority to certain topics from among those already selected by the Commission itself; has rejected, or deferred action in respect of, certain drafts and recommendations of the Commission; has referred a draft back to the Commission for reconsideration and redrafting; has invited the Commission to present comments regarding outstanding substantive issues related to the draft articles; has decided to convoke diplomatic conferences to study and adopt draft conventions prepared by the Commission; and has decided to consider and adopt draft conventions prepared by the Commission (*see page 47*).[[280]](#footnote-280) These collective decisions have sometimes been preceded by, or have given rise to, discussions on the appropriate role of the Assembly and its Sixth Committee in relation to the work of the Commission. These debates and a number of resolutions resulting from them have gradually formed a general pattern of working relationships between the two bodies.

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 Chairman of the Commission introduces its report in the Sixth Committee and attends the meetings during which the report is considered. The Commission also designates a Special Rapporteur to attend the Sixth Committee under the terms of paragraph 5 of General Assembly resolution 44/35 of 4 December 1989. The Chairman and the Special Rapporteur may make observations during the meetings in response to the comments of delegations and may also meet informally with delegations. Every year several members of the Commission are also designated by their States to serve on the Sixth Committee as representatives. A number of individuals who have been elected to membership in the Commission have at some time represented their States in the Sixth Committee.[[281]](#footnote-281)

The Commission has made changes with respect to the preparation and content of its report to facilitate a more structured and focused debate in the Sixth Committee. In 1992, the Commission adopted guidelines on the preparation and content of its report which provide, inter alia, as follows: (a) efforts should continue to avoid excessively long reports; (b) the report should include a chapter providing, in a summary form, a general view of the work of the session to which the report refers, including a list of questions on which the Commission would find the views of the Sixth Committee particularly helpful; (c) parts of the report indicating previous work on each topic should continue to be as brief as possible; (d) the summary of debates should be more compact, giving emphasis to trends of opinions rather than to individual views unless such an individual view was a reservation to a decision taken by the Commission; and (e) the presentation of fragmentary results that cannot be properly assessed by the Sixth Committee without additional elements should be a summary, with the indication that the matter will be more fully presented in a future report.[[282]](#footnote-282) The Commission has requested the Secretariat to circulate the chapters of the report containing a summary of the Commission’s work and the specific issues on which views from Governments would be particularly useful (Chapters II and III) as well as the text of draft articles adopted at each session shortly after the end of the session before the report is issued.[[283]](#footnote-283)

The Sixth Committee has also attempted to improve its own method of consideration of the Commission’s report in order to provide effective guidance for the Commission regarding its work, for example, by: (a) indicating the dates when the Commission’s annual report will be considered in the Sixth Committee at the next session of the General Assembly;[[284]](#footnote-284) (b) providing for the consideration of the report in late October to give delegates time to examine carefully and prepare statements on the report which is issued in September;[[285]](#footnote-285) (c) inviting the Commission, when circumstances so warrant, to request a Special Rapporteur to attend the session of the General Assembly during the discussion of the respective topic;[[286]](#footnote-286) (d) encouraging the holding of informal discussions between the members of the Sixth Committee and those members of the Commission attending the session of the General Assembly;[[287]](#footnote-287) and (e) structuring the debates on the report in such a manner that conditions are provided for concentrated attention to each of the main topics dealt with in the report.[[288]](#footnote-288) The Sixth Committee has also made suggestions regarding the length and content of the Commission’s reports to the General Assembly, including shortening the report and focusing on points requiring comments by Governments.[[289]](#footnote-289) The General Assembly recommended the continuation of efforts to improve the ways in which the report of the Commission is considered in the Sixth Committee, with a view to providing effective guidance for the Commission in its work.[[290]](#footnote-290)

The Sixth Committee, following its consideration of the Commission’s report,[[291]](#footnote-291) submits a report to the General Assembly which contains a summary of its consideration of the agenda item, including the relevant documentation, as well as one or more draft resolutions recommended for adoption by the General Assembly. The General Assembly considers and adopts a resolution on the report of the Commission, usually as recommended by the Sixth Committee without change, indicating any recommendations or instructions that it may have with respect to the Commission’s work, both substantive and procedural. The General Assembly may also adopt a separate resolution or decision, again based on the recommendation of the Sixth Committee, with respect to a particular topic relating to the Commission’s work when appropriate.[[292]](#footnote-292)

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. This policy supervision by 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 and that it should not be subject to detailed directives from the Assembly.[[293]](#footnote-293) At the same time, 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.

The Sixth Committee, while carefully examining the Commission’s reports, has never given precise instructions regarding changes in the form or contents of the Commission’s provisional drafts and has usually refrained from modifying the final drafts submitted by the Commission before reaching the final stage of the codification process, normally the adoption of the corresponding codification convention. The eventual modification of a Commission’s final draft has been left to the body entrusted with the elaboration of the convention. On four occasions, with regard to the topics “Special missions,” “Question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law”, “The law of the non-navigational uses of international watercourses” and “Jurisdictional immunities of States and their property”, the Sixth Committee itself undertookthe task of elaborating the conventions with a view to their adoption by the General Assembly. In the process of elaborating the conventions, the Sixth Committee acted mutatis mutandis as a codification conference, studying in detail each of the provisions of the draft articles prepared by the International Law Commission and amending some of them.[[294]](#footnote-294) The General Assembly subsequently adopted the Convention on Special Missions and the Optional Protocol concerning the Compulsory Settlement of Disputes relating thereto, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, the Convention on the Law of Non-navigational Uses of International Watercourses, as well as the United Nations Convention on Jurisdictional Immunities of States and Their Property, as elaborated by the Sixth Committee (*see annex V, sections E, G, L, and M, respectively*).

The General Assembly frequently invites the Commission’s Special Rapporteur on a topic to attend as an expert consultant the proceedings of the body entrusted with the task of elaborating the corresponding codification convention.[[295]](#footnote-295) The international conferences which have finalized the Commission’s draft articles and adopted them as conventions have always paid tribute to the Commission for its efforts in codification and progressive development of international law.

Through its resolutions, the General Assembly has also contributed to establishing and improving the dialogue between the Commission and Governments. The Secretary-General forwards to the Commission and makes available to its members, as appropriate, the relevant resolutions of the General Assembly, as well as the reports and the summary records of the meetings of the Sixth Committee relating to the Commission’s work. In addition, the Secretariat produces the topical summary of the Sixth Committee’s consideration of the report of the Commission as part of the Commission’s documentation for each session.

8. Relationship with other bodies

Several articles of the Statute envisage the relationship which may be established between the Commission and various other bodies, both official and unofficial. The Commission may consider proposals or draft conventions submitted by principal organs of the United Nations other than the General Assembly, specialized agencies, or official bodies established by intergovernmental agreement to encourage the progressive development of international law and its codification (article 17, paragraph 1).[[296]](#footnote-296) In addition, the Commission may consult with: (a) any organ of the United Nations on any subject which is within the competence of that organ (article 25, paragraph 1); (b) any international or national organizations, official or non-official (article 26, paragraph 1);[[297]](#footnote-297) as well as (c) scientific institutions and individual experts (article 16 *(e)*).[[298]](#footnote-298) Furthermore, Commission documents on subjects within the competence of organs of the United Nations are circulated to those organs which may furnish information or make suggestions (article 25, paragraph 2). The Statute also provides for the distribution of the Commission’s documents to national and international organizations concerned with international law (article 26, paragraph 2).

The Commission has received proposals from official bodies other than the General Assembly on only two occasions during the early years of its work. 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 Commission has recommended that the General Assembly—and through it other bodies within the United Nations system—be encouraged to submit to the Commission possible topics involving codification and progressive development of international law. The Commission has further recommended that it should seek to develop links with other United Nations specialized bodies with law-making responsibilities in their field and, in particular, explore the possibility of exchange of information or even joint work on selected topics.[[299]](#footnote-299)

The Commission has consulted with various bodies, both official and unofficial, on particular topics, including: the Food and Agriculture Organization on the law of the sea[[300]](#footnote-300) and shared natural resources;[[301]](#footnote-301) the United Nations High Commissioner for Refugees on nationality including statelessness[[302]](#footnote-302) and nationality in relation to the succession of States;[[303]](#footnote-303) the International Committee of the Red Cross, in particular, on the draft code of crimes against the peace   
and security of mankind;[[304]](#footnote-304) the International Association of Hydrogeologists, the Economic Commission for Europe, the United Nations Educational, Scientific and Cultural Organization and the Food and Agriculture Organization on shared natural resources;[[305]](#footnote-305) a group of experts on the law of the sea;[[306]](#footnote-306) professors at Harvard Law School[[307]](#footnote-307) and various study groups[[308]](#footnote-308) on State responsibility; the members of the Committee against Torture, the Committee on Economic, Social and Cultural Rights, the Human Rights Committee, the Sub-Commission on the Promotion and Protection of Human Rights, the Committee on the Rights of the Child, the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women on reservations to treaties;[[309]](#footnote-309) the Société française de droit international on fragmentation of international law;[[310]](#footnote-310) the International Law Association on diplomatic protection, responsibility of international organizations, water resources and the long-term programme of work;[[311]](#footnote-311) as well as the European Society of International Law on responsibility of international organizations.[[312]](#footnote-312)

In some instances, the Commission has invited organizations concerned to submit relevant data and materials that could assist the Commission in determining its future work on a topic as well as comments and observations on the work in progress,[[313]](#footnote-313) including: relations between States and international organizations, the question of treaties concluded between two or more international organizations and reservations to treaties.[[314]](#footnote-314) In 2003, the Commission requested the Secretariat to circulate, on an annual basis, the chapter of the Commission’s report on the topic of responsibility of international organizations to the United Nations, its specialized agencies as well as other international organizations for their comment.[[315]](#footnote-315)

The Commission is also involved in an ongoing process of consultations, exchange of views and mutual information with scientific institutions and professors of international law, which keeps the Commission abreast of new developments and trends in scholarly research on international law. For example, members of the Commission participated in the United Nations Colloquium on the Progressive Development and Codification of International Law[[316]](#footnote-316) as well as the seminar on the work of the International Law Commission during its first fifty years, both of which were held to commemorate the fiftieth anniversary of the establishment of the Commission.[[317]](#footnote-317)

Throughout the years, the Commission has maintained a close relationship with the International Court of Justice.[[318]](#footnote-318) The Commission usually invites the President of the Court to give a presentation on the recent activities of and cases currently before the Court. The members of the Commission are given the opportunity to have an exchange views with the President.

The Commission has also established and maintained cooperative relationships with the Asian-African Legal Consultative Organization, the European Committee on Legal Cooperation and the Committee of Legal Advisers on Public International Law, the Inter-American Juridical Committee, and other regional and inter-regional organizations. The Commission is informed by representatives of these Committees and Organization of their recent activities and the members of the Commission have the opportunity to exchange views with them. For its part, the Commission is often represented by one of its members at the sessions and meetings of those bodies. The Commission has recommended that relations with other bodies, such as the regional legal bodies, should be further encouraged and developed.[[319]](#footnote-319)

For a number of years, the Commission has also held consultations with the International Committee of the Red Cross on topics under consideration by the Commission as well as issues of international humanitarian law.[[320]](#footnote-320)

The General Assembly has requested the Commission to continue the implementation of the relevant provisions of its Statute to further strengthen cooperation between the Commission and other bodies concerned with international law. [[321]](#footnote-321)

9. The Secretariat

In accordance with article 14 of the Statute of the Commission, the Secretary-General of the United Nations provides the staff and facilities required by the Commission to fulfil its task. The Codification Division of the Office of Legal Affairs of the United Nations serves as the Secretariat for the Commission. The Commission has recognized the essential contribution of the Codification Division.[[322]](#footnote-322) Members of the Codification Division assist the officers of the Commission by, inter alia, providing the agenda, keeping records and preparing drafts of reports to the Commission. They assist in the preparation of the commentary to draft articles, although the Commission remains of the view that this is the primary responsibility of the Special Rapporteur. In working groups, where there may be no Special Rapporteur, this assistance is invaluable. The Commission has recommended that members of the Codification Division should be encouraged to make an even greater contribution to the Commission’s work.[[323]](#footnote-323)

In addition to providing this substantive servicing to the Commission and its subsidiary bodies, the Codification Division undertakes considerable research to facilitate the work of the Commission.[[324]](#footnote-324) At the preliminary stage of the consideration of a topic, the Codification Division may, at the Commission’s request or on its own initiative, prepare substantive studies and carry out research projects to facilitate the commencement of work on the topic by the Commission and the Special Rapporteur concerned. Secretariat studies and research projects may also be requested by the Commission or the Special Rapporteur concerned at other stages in the consideration of a topic. At its thirty-second session, in 1980, the Commission noted that the studies and research projects prepared by the Codification Division are part and parcel of the consolidated method and techniques of work of the Commission and, as such, constitute an indispensable contribution to its work.[[325]](#footnote-325)

The Codification Division has prepared a number of studies and surveys on general questions relating to progressive development and codification[[326]](#footnote-326) as well as on particular topics on the programme of the Commission or aspect thereof.[[327]](#footnote-327) Except for those prepared in 1948 and 1949, these studies and surveys are usually published in the *Yearbook of the International Law Commission,* or are issued as sales publications.

The Codification Division has also published, primarily for the assistance of the Commission, in the *United Nations Legislative Series,* collections of laws, decrees and treaty provisions on such subjects as: the regime of the high seas; the nationality of ships; the regime of the territorial sea; diplomatic and consular privileges and immunities; the legal status, privileges and immunities of international organizations; nationality; the conclusion of treaties; the utilization of international rivers for purposes other than navigation; succession of States; the law of the sea; jurisdictional immunities of States and their property; and review of the multilateral treaty-making process. Texts of arbitral awards are also published by the Codification Division in the *Reports of International Arbitral Awards.*[[328]](#footnote-328) The Codification Division also established, and maintains, a comprehensive website for the International Law Commission.[[329]](#footnote-329)

The Commission has recognized the increased role of the Codification Division in providing assistance to the Commission and its Special Rapporteurs, especially in the area of research and studies. The Commission has recommended that the contribution of the Codification Division to the Commission’s work be maintained and reinforced.[[330]](#footnote-330) The General Assembly has endorsed the Commission’s recommendation for the strengthening and increased role of the Codification Division since 1977 in resolutions concerning the report of the Commission.

PART III

TOPICS AND SUB-TOPICS CONSIDERED BY THE INTERNATIONAL LAW COMMISSION

A. TOPICS AND SUB-TOPICS ON WHICH THE COMMISSION HAS SUBMITTED FINAL REPORTS

A brief account of the work on the topics and sub-topics on which the International Law Commission has submitted final reports to the General Assembly[[331]](#footnote-331) is presented below.[[332]](#footnote-332)

1. Draft Declaration on Rights and Duties of States

By resolution 178 (II) of 21 November 1947, the General Assembly instructed the International Law Commission to prepare a draft declaration on the rights and duties of States, taking as a basis of discussion the draft declaration on this subject presented by Panama[[333]](#footnote-333) and certain other related documents.

At its first session, in 1949, the Commission examined article by article the Panamanian draft. It also had before it a memorandum by the Secretary-General, which reproduced inter alia comments and observations of Member States on the Panamanian draft and a detailed analysis of the United Nations discussions on the subject.[[334]](#footnote-334)

At the same session, the Commission, after three readings, adopted a final draft Declaration on Rights and Duties of States in the form of fourteen articles with commentaries,[[335]](#footnote-335) the text of which is reproduced in annex IV, section 1. It decided to transmit the draft to the General Assembly with 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.[[336]](#footnote-336) The Commission also observed that:

“the rights and duties set forth in the draft Declaration are formulated in general terms, without restriction or exception, as befits a declaration of basic rights and duties. The articles of the draft Declaration enunciate general principles of international law, the extent and the modalities of the application of which are to be determined by more precise rules. Article 14 of the draft Declaration is a recognition of this fact. It is, indeed, a global provision which dominates the whole draft and, in the view of the Commission, it appropriately serves as a key to other provisions of the draft Declaration in proclaiming ‘the supremacy of international law’”.[[337]](#footnote-337)

By resolution 375 (IV) of 6 December 1949, the General Assembly commended the draft Declaration to the continuing attention of Member States and of jurists of all nations and requested Member States to furnish their comments on the draft. It also invited the suggestions of Member States on: (1) “whether any further action should be taken by the General Assembly on the draft Declaration”; and (2) “if so, the exact nature of the document to be aimed at and the future procedure to be adopted in relation to it”.

As the number of States which had given their comments and suggestions was considered too small to form the basis of any definite decision regarding the draft Declaration on Rights and Duties of States, the General Assembly, in resolution 596 (VI) of 7 December 1951, decided to postpone consideration of the matter “until a sufficient number of States have transmitted their comments and suggestions, and in any case to undertake consideration as soon as a majority of the Member States have transmitted such replies”.

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

In accordance with article 24 of its Statute, the Commission, at its first session, in 1949, began consideration of ways and means for making the evidence of customary international law more readily available. At its second session, in 1950, the Commission completed consideration of this topic and submitted a report to the General Assembly, containing specific ways and means suggested by the Commission.[[338]](#footnote-338)

The Commission recommended that the widest possible distribution should be made of publications relating to international law issued by organs of the United Nations, particularly the *Reports* and other publications of the International Court of Justice, the United Nations *Treaty Series,* and the *Reports of International Arbitral Awards.* The Commission also recommended that the General Assembly should authorize the Secretariat to prepare the following publications:

(a) a Juridical Yearbook, setting forth, inter alia, significant legislative developments in various countries, current arbitral awards by ad hoc international tribunals, and significant decisions of national courts relating to problems of international law;

(b) a Legislative Series containing the texts of current national legislation on matters of international interest, and particularly legislation implementing multilateral international agreements;

(c) a collection of the constitutions of all States, with supplementary volumes to be issued from time to time for keeping it up to date;

(d) a list of the publications issued by Governments of all States containing the texts of treaties concluded by them, supplemented by a list of the principal collections of treaty texts published under private auspices;

(e) a consolidated index of the League of Nations Treaty Series;

(f) occasional index volumes of the United Nations Treaty Series;

(g) a repertoire of the practice of the United Nations with regard to questions of international law;

(h) additional series of the Reports of International Arbitral Awards, of which a first series had already been published in three volumes.

In addition, the Commission recommended that the Registry of the International Court of Justice should publish occasional digests of the Court *Reports;* that the General Assembly should call to the attention of Governments the desirability of their publishing digests of their diplomatic correspondence and other materials relating to international law; and that the General Assembly give consideration to the desirability of an international convention concerning the general exchange of official publications relating to international law and relations.

Since these recommendations were made, the General Assembly has authorized the Secretary-General to issue most of the publications suggested by the Commission and certain other publications relevant to the Commission’s recommendations.[[339]](#footnote-339) The Governments of several Members are publishing or preparing digests of their materials relating to international law. Two conventions—the Convention concerning the Exchange of Official Publications and Government Documents between States and the Convention concerning the International Exchange of Publications—were adopted by the General Conference of UNESCO in 1958.[[340]](#footnote-340)

3. Formulation of the Nürnberg principles

By General Assembly resolution 177 (II) of 21 November 1947, the Commission was directed to formulate the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal.

At its first session, in 1949, the Commission undertook a preliminary consideration of the subject. It had before it a memorandum submitted by the Secretary-General entitled “The Charter and the Judgement of the Nürnberg Tribunal: History and Analysis.”[[341]](#footnote-341) In the course of this consideration, the question arose as to whether or not the Commission should ascertain to what extent the principles contained in the Charter and in the judgment constituted principles of international law. The conclusion was that since the Nürnberg principles had been unanimously affirmed by the General Assembly in resolution 95 (I) of 11 December 1946, the task entrusted to the Commission was not to express any appreciation of those principles as principles of international law but merely to formulate them.

At the same session, the Commission appointed a sub-committee, which submitted a working paper containing a formulation of the Nürnberg principles. The Commission considered the working paper and retained tentatively a number of draft articles, which were referred to the sub-committee for redrafting. In considering what action should be taken with respect to the further draft submitted by the sub-committee, the Commission noted that the task of formulating the Nürnberg principles appeared to be closely connected with that of preparing a draft code of offences against the peace and security of mankind (*see Part III.A, section 7(a)*)*.* The Commission decided to defer a final formulation of the principles until the work of preparing the draft code was further advanced. It appointed Jean Spiropoulos as Special Rapporteur for both topics and referred to him the draft prepared by the sub-committee. The Special Rapporteur was requested to submit his report on the draft to the Commission at its second session.

At its second session, in 1950, on the basis of the report presented by the Special Rapporteur,[[342]](#footnote-342) the Commission adopted a final formulation of the Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal, and submitted it, with commentaries, to the General Assembly, without making any recommendation on further action thereon.[[343]](#footnote-343) The text of the formulation, which consists of seven principles, is reproduced in annex IV, section 2.

By resolution 488 (V) of 12 December 1950, the General Assembly decided to send the formulation to the Governments of Member States for comments, and requested the Commission, in preparing the draft code of offences against the peace and security of mankind, to take account of the observations made on this formulation by delegations during the fifth session of the General Assembly and of any observations which might later be received from Governments.[[344]](#footnote-344)

4. Question of international criminal jurisdiction

The General Assembly, in resolution 260 B (III) of 9 December 1948, invited the Commission “to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide or other crimes over which jurisdiction will be conferred upon that organ by international conventions,” and requested the Commission, in carrying out that task, “to pay attention to the possibility of establishing a Criminal Chamber of the International Court of Justice”.

The Commission considered the question of international criminal jurisdiction at its first and second sessions, in 1949 and 1950, respectively. At its first session, the Commission appointed as Special Rapporteurs to deal with this question Ricardo J. Alfaro and A. E. F. Sandström, who were requested to submit to the Commission one or more working papers on the subject. In connection with the consideration of the question, the Commission had before it the reports of the Special Rapporteurs[[345]](#footnote-345) and documents prepared by the Secretariat.[[346]](#footnote-346)

At its second session, in 1950, the Commission discussed the report presented by each of the Special Rapporteurs and concluded that the establishment of an international judicial organ for the trial of persons charged with genocide or other crimes was both desirable and possible. It recommended, however, against such an organ being set up as a chamber of the International Court of Justice, though it was possible to do so by amendment of the Court’s Statute which, in Article 34, provides that only States may be parties in cases before the Court.[[347]](#footnote-347)

After giving preliminary consideration to the Commission’s report on the question of international criminal jurisdiction, the General Assembly adopted resolution 489 (V) of 12 December 1950, establishing a committee composed of the representatives of seventeen Member States for the purpose of preparing preliminary draft conventions and proposals relating to the establishment and the statute of an international criminal court. The committee met at Geneva in August 1951 and formulated proposals together with a draft statute for an international criminal court. Under the draft statute it was proposed that the court should have a permanent structure but should function only on the basis of cases submitted to it.

The report of the Committee,[[348]](#footnote-348) containing the draft statute, was communicated to Governments for their observations. Only a few Governments commented on the draft, however, and in 1952 the Assembly, in resolution 687 (VII) of 5 December 1952, decided to set up a new committee, consisting again of representatives of seventeen Member States, which met at United Nations Headquarters in the summer of 1953. The terms of reference of the Committee were: (1) to explore the implications and consequences of establishing an international criminal court and of the various methods by which this might be done; (2) to study the relationship between such a court and the United Nations and its organs; and (3) to reexamine the draft statute. The Committee made a number of changes in the 1951 draft statute and, in respect of several articles, prepared alternative texts, one appropriate if the court were to operate separately from the United Nations and the other in case it were decided that the court should be closely linked with the United Nations. The report of the Committee[[349]](#footnote-349) was placed before the Assembly at its 1954 session.

The Assembly, however, in resolution 898 (IX) of 14 December 1954, decided to postpone consideration of the question of an international criminal jurisdiction until it had taken up the report of the special committee on the question of defining aggression and had taken up again the draft code of offences against the peace and security of mankind (*see pages 93 and 94*). The report of the special committee was before the General Assembly at its twelfth session, in 1957. While taking note of the report, the Assembly postponed consideration of the question of defining aggression and the draft code of offences to a later stage (*see pages 93, 94 and 98*). A similar decision was taken by the General Assembly with respect to the question of an international criminal jurisdiction in resolution 1187 (XII) of 11 December 1957. It was felt that, since the subject was related both to the question of defining aggression and to the draft code of offences against the peace and security of mankind, consideration should be deferred until such time as the Assembly again took up the two related items.

The matter was subsequently brought to the attention of Member States in 1968 by the Secretary-General[[350]](#footnote-350) in connection with placing the item on the report of the Special Committee on the Question of Defining Aggression on the agenda of the General Assembly. The Assembly’s General Committee decided, however, that it would not be desirable at that stage, prior to the completion of the Assembly’s consideration of the question of defining aggression, for the items “International criminal jurisdiction” and “Draft Code of Offences against the Peace and Security of Mankind” to be included in the agenda and that those items should be taken up only at a later session when further progress had been made in arriving at a generally agreed definition of aggression.[[351]](#footnote-351) The General Assembly adopted its agenda as proposed by the General Committee.

The same question was again brought to the attention of Member States by the Secretary-General in a memorandum addressed to the General Committee in 1974,[[352]](#footnote-352) when a draft definition of aggression was submitted to the General Assembly (*see pages 94 and 95*). In allocating the item on the question of defining aggression to the Sixth Committee, the Assembly commented that it had decided to take note of the Secretary-General’s observations and to consider whether it should take up again the question of a draft code of offences against the peace and security of mankind and the question of an international criminal jurisdiction.[[353]](#footnote-353)

The question of international criminal jurisdiction was raised again in the context of the Commission’s work on a draft code of crimes against the peace and security of mankind (*see Part III. A, section 7*).

5. Reservations to multilateral conventions

The question of reservations to multilateral conventions arose out of difficulties encountered by the Secretary-General in his capacity as depositary of the Convention on the Prevention and Punishment of the Crime of Genocide, which had been adopted by the General Assembly on 9 December 1948.[[354]](#footnote-354) The Secretary-General, as depositary of multilateral conventions, had substantially followed the practice of the League of Nations. Under this practice, in the absence of stipulations in a convention regarding the procedure to be followed in the making and accepting of reservations, the Secretary-General accepted in definitive deposit an instrument of ratification or accession offered with a reservation only after it had been ascertained that there was no objection on the part of any of the other States directly concerned. This practice, however, was contested by some Member States and, in 1950, the Secretary-General asked the General Assembly for directions on the procedure he should follow.[[355]](#footnote-355) The General Assembly, by resolution 478 (V) of 16 November 1950, requested an advisory opinion from the International Court of Justice on reservations to the Genocide Convention. The Assembly also invited the Commission, in the course of its work on the codification of the law of treaties, to study the question of reservations to multilateral conventions in general, both from the point of view of codification and from that of the progressive development of international law, and to report to the Assembly at its sixth session, in 1951.

In pursuance of this resolution, the Commission, in the course of its third session, in 1951, gave priority to a study of the question of reservations to multilateral conventions.[[356]](#footnote-356) It had before it a “Report on Reservations to Multilateral Conventions,”[[357]](#footnote-357) submitted by the Special Rapporteur on the topic of the law of treaties, as well as two memoranda, submitted by two other members of the Commission.[[358]](#footnote-358) In its report to the Assembly, the Commission stated that the criterion of compatibility of a reservation with the object and purpose of a convention—applied by the International Court of Justice in its advisory opinion on reservations to the Genocide Convention[[359]](#footnote-359)—would not be suitable for application to multilateral conventions in general; while no single rule uniformly applied could be wholly satisfactory, a rule suitable for application in the majority of cases could be found in the practice theretofore followed by the Secretary-General, with some modifications.[[360]](#footnote-360)

The General Assembly, in resolution 598 (VI) of 12 January 1952, endorsed the Commission’s recommendation that clauses on reservations should be inserted in future conventions; stated that the Court’s advisory opinion should be followed in regard to the Genocide Convention; and asked the Secretary-General, in respect of future United Nations conventions, to act as depositary for documents containing reservations or objections thereto without passing on the legal effect of such documents. The documents were to be communicated to all States concerned, to which it would be left to draw the legal consequences. In 1959, the General Assembly, in resolution 1452 (XIV) of 7 December 1959, asked the Secretary-General to follow the same practice with respect to United Nations conventions concluded before, as well as after, the Assembly’s resolution of 1952.

The Commission returned again to the subject in the course of its preparation of draft articles on the law of treaties (*see Part III.A, section 14*) and the question of treaties concluded between States and international organizations or between two or more international organizations (*see Part III.A, section 20*). Articles 19 to 23 of the 1969 Vienna Convention on the Law of Treaties[[361]](#footnote-361) and of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations[[362]](#footnote-362) deal with reservations to treaties. The Commission also took up the subject in the context of its work on the topic of reservations to treaties (*see Part III.B, section 1*).

6. Question of defining aggression

The General Assembly, in resolution 378 (V) of 17 November 1950, decided to refer to the Commission a proposal made by the Union of Soviet Socialist Republics in connection with the agenda item “Duties of States in the event of the outbreak of hostilities” and all the records of the First (Political and Security) Committee of the Assembly dealing with the question, so that the Commission might take them into consideration and formulate its conclusions as soon as possible. The Soviet proposal provided that the General Assembly, “considering it necessary . . . to define the concept of aggression as accurately as possible,” declares, inter alia, that “in an international conflict that State shall be declared the attacker which first commits” one of the acts enumerated in the proposal.[[363]](#footnote-363)

At its third session, in 1951, the Commission considered the question whether it should enumerate aggressive acts or try to draft a definition of aggression in general terms.[[364]](#footnote-364) The sense of the Commission was that it was undesirable to define aggression by a detailed enumeration of aggressive acts, since no enumeration could be exhaustive. It also considered it inadvisable unduly to limit the freedom of judgement of the competent organs of the United Nations by a rigid and necessarily incomplete list of acts constituting aggression. It was therefore decided that the only practical course was to aim at a general and abstract definition. But the Commission’s efforts to draw up a general definition were not successful.

During the same session, however, the matter was reconsidered in connection with the preparation of the draft Code of Offences against the Peace and Security of Mankind (*see Part III.A, section 7 (a)*). The Commission then decided to include among the offences defined in the draft Code any act of aggression and any threat of aggression.[[365]](#footnote-365)

At its sixth session, the General Assembly examined the question of defining aggression and concluded, in resolution 599 (VI) of 31 January 1952, that it was both “possible and desirable, with a view to ensuring international peace and security and to developing international criminal law, to define aggression by reference to the elements which constitute it”. At the Assembly’s request, the Secretary-General submitted a detailed report to the Assembly at its seventh session covering all aspects of the question.[[366]](#footnote-366)

On 20 December 1952, the Assembly, in resolution 688 (VII), established a fifteen-member special committee which was requested to submit to the Assembly’s ninth session, in 1954, “draft definitions of aggression or draft statements of the notion of aggression”. The special committee met at United Nations Headquarters from 24 August to 21 September 1953. Several different texts aimed at defining aggression were presented. The committee, however, decided unanimously not to put the texts to a vote but to transmit them to the General Assembly and to Member States for comments.[[367]](#footnote-367) Comments were received from eleven Member States.

By resolution 895 (IX) of 4 December 1954, the General Assembly established another special committee, consisting of nineteen members, and requested it to report to the eleventh session of the General Assembly, in 1956. The nineteen-member committee met at United Nations Headquarters from 8 October to 9 November 1956. It did not adopt a definition but decided to transmit its report to the Assembly, summarizing the views expressed on the various aspects of the matter, together with the draft definitions previously submitted to it.[[368]](#footnote-368)

At its twelfth session, in 1957, the General Assembly, in resolution 1181 (XII) of 29 November 1957, took note of the special committee’s report. By the same resolution, the Assembly decided to invite the views of twenty-two States admitted to the United Nations since 14 December 1955, and to renew the request for comments of other Member States. It also decided to refer the replies of Governments to a new committee, composed of the Member States which had served on the General Committee of the Assembly at its most recent regular session, and entrusted the committee with the procedural task of studying the replies “for the purpose of determining when it shall be appropriate for the General Assembly to consider again the question of defining aggression”.

The committee, which met at the United Nations Headquarters from 14 to 24 April 1959, decided that the fourteen replies received did not indicate any change of attitude and agreed to postpone further consideration of the question until April 1962, unless an absolute majority of its members favoured an earlier meeting in the light of new developments. The committee met again at United Nations Headquarters in 1962, 1965 and 1967, but on each occasion found itself unable to determine any particular time as appropriate for the Assembly to resume consideration of the question of defining aggression. The activities of this committee came to an end in 1967, when the General Assembly decided to undertake again substantive consideration of the question of the definition of aggression.[[369]](#footnote-369)

Recognizing “that there is a widespread conviction of the need to expedite the definition of aggression”, the General Assembly, by resolution 2330 (XXII) of 18 December 1967, established a Special Committee on the Question of Defining Aggression, composed of thirty-five Member States, “to consider all aspects of the question so that an adequate definition of aggression may be prepared”. The Special Committee held seven sessions, one every year from 1968 to 1974. At its 1974 session, the Special Committee adopted by consensus a draft definition of aggression and recommended it to the General Assembly for adoption.[[370]](#footnote-370) On 14 December 1974, the Assembly adopted by consensus the Definition of Aggression as recommended by the Special Committee. The Assembly also called the attention of the Security Council to the Definition and recommended that the Security Council should, as appropriate, take account of that Definition as guidance in determining, in accordance with the Charter, the existence of an act of aggression.[[371]](#footnote-371)

(For the Commission’s consideration of the question of individual responsibility for the crime of aggression, see Part III.A, section 7(d)).

7. Draft Code of Crimes against the Peace and Security of Mankind[[372]](#footnote-372)

(a) Draft Code of Offences (1954)

The task of preparing a draft code of offences against the peace and security of mankind was entrusted to the Commission in 1947, by General Assembly resolution 177 (II) of 21 November 1947, the same resolution that requested it to formulate the Nürnberg principles (*see Part III.A, section 3*).

The Commission began its consideration of the draft code of offences at its first session, in 1949, when the Commission appointed Jean Spiropoulos as Special Rapporteur for the subject. It proceeded with its work at its third, fifth and sixth sessions, in 1951, 1953 and 1954, respectively. In connection with its work on the draft code of offences, the Commission had before it the reports of the Special Rapporteur,[[373]](#footnote-373) information received from Governments[[374]](#footnote-374) as well as documents prepared by the Secretariat.[[375]](#footnote-375)

At its third session, in 1951, the Commission completed a draft Code of Offences against the Peace and Security of Mankind and submitted it to the General Assembly, together with commentaries thereto.[[376]](#footnote-376)

In the course of the preparation of the text, the Commission considered that it was not necessary to indicate the exact extent to which the various Nürnberg principles had been incorporated in the draft Code. As to the scope of the draft Code, the Commission decided to limit the Code to offences containing a political element and endangering or disturbing the maintenance of international peace and security. It therefore omitted such matters as piracy, traffic in dangerous drugs, traffic in women and children, slavery, counterfeiting of currency, and damage to submarine cables. The Commission also decided that it would deal only with the criminal responsibility of individuals and that no provisions should be included with respect to crimes by abstract entities.[[377]](#footnote-377) (The Nürnberg Tribunal had stated in its judgment that: “Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.”[[378]](#footnote-378)) Thus, offences enumerated in the draft Code were characterized as “crimes under international law, for which the responsible individuals shall be punishable”.[[379]](#footnote-379)

The Commission refrained from providing for institutional arrangements for implementing the Code; it thought that, pending the establishment of an international criminal court, the Code might be applied by national courts.[[380]](#footnote-380) As the Commission deemed it impracticable to prescribe a definite penalty for each offence, it was left to the competent tribunal to determine the penalty for any offence under the Code, taking into account the gravity of the particular offence.[[381]](#footnote-381)

At its sixth session, in 1951, the General Assembly postponed consideration of the draft Code until its next session, in view of the fact that the draft had only recently been communicated to Governments for comments. At the Assembly’s seventh session, in 1952, the item was omitted from the final agenda on the understanding that the matter would continue to be considered by the International Law Commission.

The Commission accordingly took up the matter again at its fifth session, in 1953, and requested the Special Rapporteur, Jean Spiropoulos, to prepare a new report for submission at the sixth session.

At its sixth session, in 1954, the Commission considered the report of the Special Rapporteur[[382]](#footnote-382) which discussed the observations received from Governments and proposed certain changes in the text previously adopted by the Commission. The Commission decided to modify its previous text in certain respects and added a new offence to the list of crimes, namely, the intervention by the authorities of a State in the internal or external affairs of another State by means of coercive measures. It also decided to omit the condition that inhuman acts against a civil population were crimes only when committed in connection with other offences defined in the draft Code. The rule regarding crimes committed under order by a superior was reworded to say that the perpetrator of such a crime would be responsible if, under the circumstances at the time, it was possible for him not to comply with the order. In addition, the Commission decided to omit the provision dealing with the punishment of the offences defined in the draft Code, as the Commission considered that the question of penalties could more conveniently be dealt with at a later stage, after it had been decided how the Code was to become operative.[[383]](#footnote-383)

At the same session, the Commission adopted the revised draft Code of Offences against the Peace and Security of Mankind, with commentaries.[[384]](#footnote-384) The text of the draft Code as revised in 1954 is reproduced in annex IV, section 3 (A).

The General Assembly, in resolution 897 (IX) of 4 December 1954, considering that the draft Code raised problems closely related to that of the definition of aggression, decided to postpone further consideration of the draft Code until the new special committee on the question of defining aggression had submitted its report *(see page 89*). The report of the special committee was before the General Assembly at its twelfth session, in 1957. At that session, the General Assembly took note of the report and decided to postpone consideration of the question of aggression to a later stage (*see page 89*). In view of that decision and the consideration that the draft Code raised problems related to the question of defining aggression, the General Assembly, in resolution 1186 (XII) of 11 December 1957, deferred consideration of the draft Code until such time as it took up again the question of defining aggression. In the same resolution, the General Assembly requested the Secretary-General to transmit the text of the draft Code to Member States for comment, and to submit their replies to the General Assembly at such time as the item might be placed on its provisional agenda.

As mentioned earlier (*see pages 89 and 90*), the item was brought to the attention of the General Assembly in 1968 and again in 1974. The Assembly decided at its twenty-third session, in 1968, not to take up the item. At its twenty-ninth session, in 1974, it decided to consider whether it should take up again the question of a draft code of offences against the peace and security of mankind.

The Commission, in its report on the work of its twenty-ninth session, in 1977, referred to the advisability of the General Assembly giving consideration to the draft Code, including the possibility of its review by the Commission if the Assembly so wished.[[385]](#footnote-385)

The Assembly, at its thirty-second session, in 1977, acting on the request of seven Member States, decided to include in its agenda the item entitled “Draft Code of Offences against the Peace and Security of Mankind,” and to allocate it to the Sixth Committee. However, because of lack of time, the Assembly agreed to defer consideration of the item until its thirty-third session.[[386]](#footnote-386) At that session, the General Assembly adopted resolution 33/97 of 16 December 1978, by which, inter alia, it requested the Secretary-General to invite Member States and relevant international intergovernmental organizations to submit their comments and observations on the draft Code, including comments on the procedure to be adopted, and to prepare a report to be submitted to the Assembly at its thirty-fifth session, in 1980.

The comments received further to General Assembly resolution 33/97 were circulated at the thirty-fifth session of the General Assembly, in 1980.[[387]](#footnote-387) At the same session, the General Assembly, in resolution 35/49 of 4 December 1980, requested the Secretary-General to reiterate his invitation to Member States and relevant international intergovernmental organizations to submit or update their comments and observations and in particular to inform him of their views on the procedure to be followed in the future consideration of the item, including the suggestion to have the item referred to the International Law Commission.

(b) Draft Code of Crimes (1996)

The General Assembly, by resolution 36/106 of 10 December 1981, invited the International Law Commission to resume its work with a view to elaborating the draft Code of Offences against the Peace and Security of Mankind and to examine it with the required priority in order to review it, taking duly into account the results achieved by the process of the progressive development of international law.

Accordingly, at its thirty-fourth session, in 1982, the Commission included the item “Draft Code of Offences against the Peace and Security of Mankind” in its agenda and appointed Doudou Thiam as Special Rapporteur for the subject.

The Commission proceeded with its work on the draft code from its thirty-fifth session, in 1983, to its forty-third session, in 1991, and at its forty-sixth and forty-seventh sessions, in 1994 and 1995, respectively. In connection with its further consideration of the draft code, the Commission had before it the reports of the Special Rapporteur,[[388]](#footnote-388) comments and observations received from Governments and international organizations[[389]](#footnote-389) as well as documents prepared by the Secretariat.[[390]](#footnote-390)

At its thirty-fourth session, in 1982, the Commission established a Working Group chaired by the Special Rapporteur that held a preliminary exchange of views on the requests addressed to the Commission by the General Assembly in resolution 36/106. On the recommendation of the Working Group, the Commission indicated its intention to proceed during its thirty-fifth session to a general debate in plenary on the basis of a first report to be submitted by the Special Rapporteur. The Commission further indicated that it would submit to the General Assembly, at its thirty-eighth session, the conclusions of that debate.

The General Assembly, in resolution 37/102 of 16 December 1982, requested the Commission, in conformity with resolution 36/106 of 10 December 1981, to submit to the General Assembly at its thirty-eighth session a preliminary report, inter alia, on the scope and the structure of the draft code.

At its thirty-fifth session, in 1983, the Commission proceeded to a general debate on the basis of the first report of the Special Rapporteur,[[391]](#footnote-391) which focused on three questions: (1) the scope of the draft; (2) the methodology to be followed; and (3) the implementation of the code. On the question of methodology, the Commission considered it advisable to include an introduction recalling the general principles of criminal law, such as the non-retroactivity of criminal law and the theories of aggravating or mitigating circumstances, complicity, preparation and justified acts.[[392]](#footnote-392) On the other two questions, the views of the Commission were as follows:

“(*a*) The International Law Commission is of the opinion that the draft code should cover only the most serious international offences. These offences will be determined by reference to a general criterion and also to the relevant conventions and declarations pertaining to the subject;

“(*b*) With regard to the subjects of law to which international criminal responsibility can be attributed, the Commission would like to have the views of the General Assembly on this point, because of the political nature of the problem;

“(*c*) With regard to the implementation of the code:

(i) Since some members consider that a code unaccompanied by penalties and by a competent criminal jurisdiction would be ineffective, the Commission requests the General Assembly to indicate whether the Commission’s mandate extends to the preparation of the statute of a competent international criminal jurisdiction for individuals;

(ii) Moreover, in view of the prevailing opinion within the Commission, which endorses the principle of criminal responsibility in the case of States, the General Assembly should indicate whether such jurisdiction should also be competent with respect to States.”[[393]](#footnote-393)

The General Assembly, in resolution 38/132 of 19 December 1983, invited the Commission to continue its work on the elaboration of the draft code of offences against the peace and security of mankind by elaborating, as a first step, an introduction and a list of the offences in conformity with its report on the work of its thirty-fifth session.

At its thirty-sixth session, in 1984, the Commission proceeded to a general debate on the draft code on the basis of the second report[[394]](#footnote-394) of the Special Rapporteur, which dealt with two questions, namely the offences covered by the 1954 draft and the offences classified since 1954. In its own report to the General Assembly on the work of that session, the Commission expressed its intention to limit the scope *ratione personae* of the draft code to the criminal responsibility of individuals, without prejudice to subsequent consideration of the possible application to States of the notion of international criminal responsibility, and to begin by drawing up a provisional list of offences while bearing in mind the drafting of an introduction summarizing the general principles of international criminal law relating to offences against the peace and security of mankind. The offences which were mentioned for possible inclusion in the code included, in addition to the offences covered in the 1954 draft, colonialism, apartheid, serious damage to the human environment, economic aggression, the use of atomic weapons and mercenarism.[[395]](#footnote-395)

At its thirty-ninth session, the General Assembly, in resolution 39/80 of 13 December 1984, requested the Commission to continue its work on the elaboration of the draft code of offences against the peace and security of mankind by elaborating an introduction as well as a list of the offences, taking into account the progress made at the thirty-sixth session of the Commission, as well as the views expressed during the thirty-ninth session of the General Assembly.

The Commission began the first reading of the draft code at its thirty-seventh session, in 1985. At its thirty-eighth session, in 1986, the Commission discussed again the problem of the implementation of the code and announced its intention to examine carefully any guidance that might be furnished on various possible options (system of territoriality, system of personality, universal system and system of international criminal jurisdiction).

At its thirty-ninth session, in 1987, the Commission recommended to the General Assembly that it amend the title of the topic in English so that it would read “Draft Code of Crimes against the Peace and Security of Mankind,”[[396]](#footnote-396) a recommendation which the General Assembly endorsed in resolution 42/151 of 7 December 1987.

At its forty-third session, in 1991, the Commission adopted on first reading the draft Code of Crimes against the Peace and Security of Mankind, which included the following crimes: aggression; threat of aggression; intervention; colonial domination and other forms of alien domination; genocide; apartheid; systematic or mass violations of human rights; exceptionally serious war crimes; recruitment, use, financing and training of mercenaries; international terrorism; illicit traffic in narcotic drugs; and wilful and severe damage to the environment. The Commission decided to defer the questions of applicable penalties and the crimes which could involve an attempt until the second reading of the draft. The Commission noted that the draft Code constituted the first part of the Commission’s work on the topic and that the Commission would continue its work on the question of an international criminal jurisdiction (*see sub-section (c) below*). In accordance with articles 16 and 21 of its Statute, the Commission decided to transmit the draft Code, through the Secretary-General, to Governments for their comments and observations.[[397]](#footnote-397)

The General Assembly, in resolution 46/54 of 9 December 1991, expressed its appreciation to the Commission for the completion of the provisional draft articles on the draft Code of Crimes against the Peace and Security of Mankind and urged Governments to present in writing their comments and observations on the draft, as requested by the Commission. The request to Governments for their comments and observations on the draft was reiterated by the General Assembly in resolution 47/33 of 25 November 1992. The General Assembly, in resolution 48/31 of 9 December 1993, requested the Commission to resume at its forty-sixth session the consideration of the draft Code.

At its forty-sixth session, in 1994, the Commission began the second reading of the draft code, which was completed at its next session, in 1995. The second reading was held on the basis of the twelfth and thirteenth reports of the Special Rapporteur[[398]](#footnote-398) and in the light of the comments and observations received from Governments.[[399]](#footnote-399) The twelfth report, considered by the Commission at its forty-sixth session, in 1994, focused only on the general part of the draft dealing with the definition of crimes against the peace and security of mankind, characterization and general principles. The Special Rapporteur also indicated his intention to limit the list of crimes to be considered during the second reading to offences whose characterization as crimes against the peace and security of mankind was hard to challenge. At that session, after considering the report, the Commission decided to refer the draft articles dealt with therein to the Drafting Committee, it being understood that the work on the draft code and on the draft statute for an international criminal court should be coordinated by the Special Rapporteur on the draft code and by the Chairman and members of the Drafting Committee and of the Working Group on a draft statute for an international criminal court (*see sub-section (c) below*).

At its forty-seventh session, in 1995, the Commission considered the thirteenth report of the Special Rapporteur. The Special Rapporteur had omitted from his report 6 of the 12 crimes included on first reading, namely: the threat of aggression; intervention; colonial domination and other forms of alien domination; apartheid; the recruitment, use, financing and training of mercenaries; and wilful and severe damage to the environment, in response to the strong opposition, criticisms or reservations of certain Governments with respect to those crimes. Accordingly, the report focused on the remaining crimes contained in the draft code adopted on first reading, namely: aggression, genocide, systematic or mass violations of human rights, exceptionally serious war crimes, international terrorism and illicit traffic in narcotic drugs.[[400]](#footnote-400) The Commission decided to refer to the Drafting Committee articles dealing with aggression, genocide, systematic or mass violations of human rights and exceptionally serious war crimes, on the understanding that the Drafting Committee, in formulating those articles, would bear in mind and at its discretion deal with all or part of the draft articles adopted on first reading concerning intervention; colonial domination and other forms of alien domination; apartheid; recruitment, use, financing and training of mercenaries; and international terrorism. The Commission also decided to continue consultations as regards articles dealing with illicit traffic in narcotic drugs, and wilful and severe damage to the environment.

The Commission decided to establish a Working Group that would meet at the beginning of the forty-eighth session, in 1996, to examine the possibility of covering in the draft code the issue of wilful and severe damage to the environment.[[401]](#footnote-401) The Working Group examined the issue at the forty-eighth session and proposed to the Commission that such crime be considered a war crime, a crime against humanity or a separate crime against the peace and security of mankind. The Commission decided by a vote to refer to the Drafting Committee only the text prepared by the Working Group for inclusion of wilful and severe damage to the environment as a war crime.[[402]](#footnote-402)

At the forty-eighth session, in 1996, the Commission adopted the final text of the draft Code of Crimes against the Peace and Security of Mankind, with commentaries,[[403]](#footnote-403) consisting of 20 articles divided into two parts: Part One, General Provisions (articles 1–15) and Part Two, Crimes against the Peace and Security of Mankind (articles 16–20). Part One contains provisions relating to the scope and application of the Code (article 1), individual responsibility (article 2), punishment (article 3), responsibility of States (article 4), order of a Government or a superior (article 5), responsibility of the superior (article 6), official position and responsibility (article 7), establishment of jurisdiction (article 8), obligation to extradite or prosecute (article 9), extradition of alleged offenders (article 10), judicial guarantees (article 11), *non bis in idem* (article 12), non-retroactivity (article 13), defences (article 14), and extenuating circumstances (article 15). Part Two includes the following crimes: aggression (article 16), genocide (article 17), crimes against humanity (article 18), crimes against United Nations and associated personnel (article 19), and war crimes (article 20). The text of the draft Code as adopted in 1996 is reproduced in annex IV, section 3 (B).

The Commission adopted the draft Code with the following understanding:

“with a view to reaching consensus, the Commission has considerably reduced the scope of the Code. On first reading in 1991, the draft Code comprised a list of 12 categories of crimes. Some members have expressed their regrets at the reduced scope of coverage of the Code. The Commission acted in response to the interest of adoption of the Code and of obtaining support by Governments. It is understood that the inclusion of certain crimes in the Code does not affect the status of other crimes under international law, and that the adoption of the Code does not in any way preclude the further development of this important area of law.”[[404]](#footnote-404)

As agreed to upon the adoption of the draft code on first reading, in 1991, the Commission returned to the questions of penalties and attempt during the second reading. With regard to penalties, the Commission decided to include a general provision indicating that the punishment of an individual for a crime against the peace and security of mankind must be commensurate with the character and gravity of the crime (article 3) rather than to provide specific penalties for each crime. With regard to attempt, the Commission decided to address individual criminal responsibility for attempt with respect to all of the crimes except aggression (article 2, paragraph 3(g)).

The Commission considered various forms which the draft Code of Crimes against the Peace and Security of Mankind could take, including an international convention adopted by a plenipotentiary conference or the General Assembly, incorporation of the Code in the statute of an international criminal court, or adoption of the Code as a declaration by the General Assembly. The Commission recommended that the General Assembly select the most appropriate form which would ensure the widest possible acceptance of the draft Code.[[405]](#footnote-405)

The General Assembly, in resolution 51/160 of 16 December 1996, expressed its appreciation to the Commission for the completion of the draft Code; drew the attention of the States participating in the Preparatory Committee on the Establishment of an International Criminal Court to the relevance of the draft Code to their work (*see page 112*); and requested the Secretary-General to invite Governments to submit, before the end of the fifty-third session of the General Assembly, their written comments and observations on action which might be taken in relation to the draft Code.

(c) Draft Statute for an International Criminal Court

At its thirty-fifth session, in 1983, the Commission had before it the first report of the Special Rapporteur for the draft code which focused, inter alia, on the implementation of the code.[[406]](#footnote-406) Following a general debate on the basis of this report, the Commission requested the General Assembly to indicate whether the Commission’s mandate with respect to the draft code extended to the preparation of the statute of a competent international criminal jurisdiction for individuals since some members considered that a code unaccompanied by penalties and by a competent criminal jurisdiction would be ineffective.[[407]](#footnote-407)

At its thirty-eighth session, in 1986, the Commission had before it the fourth report of the Special Rapporteur which addressed, inter alia, the implementation of the code.[[408]](#footnote-408) After considering this report, the Commission indicated that it would examine carefully any guidance that might be furnished on the various options for the implementation of the code set out in its report and reminded the General Assembly of the conclusion concerning the ineffectiveness of a code unaccompanied by penalties and a competent jurisdiction contained in the report on the work of its thirty-fifth session, in 1983.[[409]](#footnote-409)

From 1986 to 1989, the General Assembly requested the Secretary-General to seek the views of Members States regarding the Commission’s conclusions concerning the implementation of the draft code.[[410]](#footnote-410)

At its thirty-ninth session, in 1987, the Commission had before it the fifth report of the Special Rapporteur[[411]](#footnote-411) which included draft article 4 on the *aut dedere aut punire* principle which was intended to fill the existing gap with regard to jurisdiction.[[412]](#footnote-412) The Commission considered issues relating to an international criminal court in the context of its discussion of draft article 4. The Commission referred the draft article to the Drafting Committee which was unable to formulate a text for article 4 due to lack of time.

At its fortieth session, in 1988, the Commission provisionally adopted draft article 4 (Obligation to try or extradite) which relied on national courts to enforce the code without ruling out the consideration of an international criminal court at a later stage.[[413]](#footnote-413)

In 1989, the General Assembly considered a new agenda item entitled “International criminal responsibility of individuals and entities engaged in illicit trafficking in narcotic drugs across national frontiers and other transnational criminal activities: establishment of an international criminal court with jurisdiction over such crimes”.[[414]](#footnote-414) In resolution 44/39 of 4 December 1989, the Assembly requested the Commission, when considering at its forty-second session the draft code of crimes against the peace and security of mankind, to address the question of establishing an international criminal court or other international criminal trial mechanism with jurisdiction over persons alleged to have committed crimes which may be covered under such a code, including persons engaged in illicit trafficking in narcotic drugs across national frontiers, and to devote particular attention to that question in its report on that session.

At its forty-second session, in 1990, the Commission had before it the eighth report of the Special Rapporteur on the draft code, part three of which dealt with the statute of an international criminal court.[[415]](#footnote-415) The Commission considered extensively the question of the possible establishment of an international criminal jurisdiction for two main reasons: first, the question concerning the draft code’s implementation and, in particular, the possible creation of an international criminal jurisdiction to enforce its provisions had always been foremost in the Commission’s concerns regarding the topic, and, second, the specific request addressed to the Commission by the General Assembly in resolution 44/39 of 4 December 1989. After considering the report, the Commission decided to establish a Working Group to prepare a response by the Commission to the request by the Assembly.[[416]](#footnote-416)

By resolutions 45/41 of 28 November 1990 and 46/54 of 9 December 1991, the General Assembly invited the Commission, within the framework of the draft code, to consider further and analyse the issues raised in the report concerning the question of an international criminal jurisdiction.

From 1991 to 1993, the Special Rapporteur for the draft code submitted three reports which addressed issues relating to the question of an international criminal jurisdiction.[[417]](#footnote-417)

At its forty-fourth session, in 1992, the Commission decided to set up a Working Group to consider further and analyse the main issues relating to the question of an international criminal jurisdiction. The Working Group, at the same session, drew up a report to the Commission, which contained, inter alia, a set of specific recommendations on a number of issues related to the possible establishment of an international criminal jurisdiction.[[418]](#footnote-418) The structure suggested in the Working Group’s report consisted, in essence, of an international criminal court established by a statute in the form of a multilateral treaty agreed to by States parties. The proposed court would, in the first phase of its operations, at least, exercise jurisdiction only over private persons, as distinct from States. Its jurisdiction should be limited to crimes of an international character defined in specified international treaties in force, including the crimes defined in the draft code of crimes against the peace and security of mankind upon its adoption and entry into force, but not limited thereto. A State should be able to become a party to the statute of the court without thereby becoming a party to the code. The court would be a facility for States parties to its statute (and also, on defined terms, other States) which could be called into operation when and as soon as required and which, in the first phase of its operation, at least, should not have compulsory jurisdiction and would not be a standing full-time body. Furthermore, whatever the precise structure of the court or other mechanisms, it must guarantee due process, independence and impartiality in its procedures.[[419]](#footnote-419)

The Commission noted, at the same session, that a structure along the lines suggested in the Working Group’s report could be a workable system but that further work on the issue required a renewed mandate from the General Assembly to draft a statute, and that it was now for the General Assembly to decide whether the Commission should undertake the project for an international criminal jurisdiction, and on what basis.[[420]](#footnote-420)

The General Assembly, in resolution 47/33 of 25 November 1992, took note with appreciation of the chapter of the report of the Commission on the work of its forty-fourth session, entitled “Draft Code of Crimes against the Peace and Security of Mankind,” which was devoted to the question of the possible establishment of an international criminal jurisdiction; invited States to submit to the Secretary-General, if possible before the forty-fifth session of the Commission, written comments on the report of the Working Group on the question of an international criminal jurisdiction; and requested the Commission to continue its work on the question by undertaking the project for the elaboration of a draft statute for an international criminal court as a matter of priority as from its next session, beginning with an examination of the issues identified in the report of the Working Group and in the debate in the Sixth Committee with a view to drafting a statute on the basis of the report of the Working Group, taking into account the views expressed during the debate in the Sixth Committee as well as any written comments received from States, and to submit a progress report to the Assembly at its forty-eighth session.

At its forty-fifth session, in 1993, the Commission decided to reconvene the Working Group it had established at the previous session to continue its work, as requested by the General Assembly in resolution 47/33 as referred to above.[[421]](#footnote-421) The Working Group prepared a preliminary draft statute for an international criminal court and commentaries thereto.[[422]](#footnote-422) Though the Commission was not able to examine the draft articles in detail at the forty-fifth session and to proceed with their adoption, it felt that, in principle, the proposed draft articles provided a basis for examination by the General Assembly at its forty-eighth session. The Commission therefore decided to annex the report of the Working Group containing the draft statute to its report to the General Assembly. The Commission stated that it would welcome comments by the General Assembly and Member States on the specific questions referred to in the commentaries to the various articles, as well as on the draft articles as a whole. It furthermore decided that the draft articles should be transmitted, through the Secretary-General, to Governments for their comments.[[423]](#footnote-423)

The General Assembly, in resolution 48/31 of 9 December 1993, took note with appreciation of chapter II of the report of the Commission on the work of its forty-fifth session, entitled “Draft Code of Crimes against the Peace and Security of Mankind,” which was devoted to the question of a draft statute for an international criminal court; invited States to submit to the Secretary-General, as requested by the Commission, written comments on the draft articles proposed by the Working Group on a draft statute for an international criminal court; and requested the Commission to continue its work as a matter of priority on the question with a view to elaborating a draft statute, if possible at its forty-sixth session, in 1994, taking into account the views expressed during the debate in the Sixth Committee as well as any written comments received from States.

At its forty-sixth session, in 1994, the Commission decided to reestablish the Working Group on a draft statute for an international criminal court. The Working Group re-examined the preliminary draft statute for an international criminal court annexed to the Commission’s report at the preceding session,[[424]](#footnote-424) and prepared the draft statute,[[425]](#footnote-425) taking into account, inter alia, the comments by Governments on the report of the Working Group submitted to the Commission at its previous session,[[426]](#footnote-426) and the views expressed during the debate in the Sixth Committee of the General Assembly at its forty-eighth session on the report of the International Law Commission on the work of its forty-fifth session.[[427]](#footnote-427)

The draft statute consisted of 60 articles which were divided into eight main parts: Part One on Establishment of the Court; Part Two on Composition and Administration of the Court; Part Three on Jurisdiction of the Court; Part Four on Investigation and Prosecution; Part Five on the Trial; Part Six on Appeal and Review; Part Seven on International Cooperation and Judicial Assistance; and Part Eight on Enforcement. In drafting the statute, the Working Group did not purport to adjust itself to any specific criminal legal system but, rather, to amalgamate into a coherent whole the most appropriate elements for the goals envisaged, having regard to existing treaties, earlier proposals for an international court or tribunals and relevant provisions in national criminal justice systems within the different legal traditions. Careful note was also taken of the various provisions regulating the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991. It was also noted that the Working Group conceived the statute for an international criminal court as an attachment to a future international convention on the matter and drafted the statute’s provisions accordingly.[[428]](#footnote-428)

The Commission adopted the draft Statute for an International Criminal Court, together with its commentaries,[[429]](#footnote-429) prepared by the Working Group, and decided, in accordance with article 23 of its Statute, to recommend to the General Assembly that it convene an international conference of plenipotentiaries to study the draft statute and to conclude a convention on the establishment of an international criminal court.[[430]](#footnote-430) The text of the draft statute is reproduced in annex IV, section 8.[[431]](#footnote-431)

The General Assembly, in resolution 49/53 of 9 December 1994, welcomed the report of the Commission on the work of its forty-sixth session, including the recommendations contained therein, and decided to establish an ad hoc committee open to all States Members of the United Nations or members of specialized agencies to review the major substantive and administrative issues arising out of the draft statute prepared by the Commission and, in the light of that review, to consider arrangements for the convening of an international conference of plenipotentiaries. It also decided that the Ad Hoc Committee should submit its report to the General Assembly at the beginning of its fiftieth session in 1995. By the same resolution, the General Assembly invited States to submit to the Secretary-General written comments on the draft statute and requested the Secretary-General to invite such comments from relevant international organs. It further requested the Secretary-General to submit to the Ad Hoc Committee a preliminary report with provisional estimates of the staffing, structure and costs of the establishment and operation of an international criminal court. The General Assembly decided to include in the provisional agenda of its fiftieth session an item entitled “Establishment of an international criminal court,” in order to study the report of the Ad Hoc Committee and the written comments submitted by States and to decide on the convening of the proposed international conference of plenipotentiaries, including its timing and duration.

The Ad Hoc Committee on the Establishment of an International Criminal Court met from 3 to 13 April and from 14 to 25 August 1995, during which time the Committee reviewed the issues arising out of the draft statute prepared by the Commission and considered arrangements for the convening of an international conference.[[432]](#footnote-432)

The General Assembly, in resolution 50/46 of 11 December 1995, decided to establish a preparatory committee to discuss further the major substantive and administrative issues arising out of the draft statute prepared by the Commission and, taking into account the different views expressed during the meetings, to draft texts with a view to preparing a widely acceptable consolidated text of a convention for an international criminal court as a next step towards consideration by a conference of plenipotentiaries.

The Preparatory Committee on the Establishment of an International Criminal Court met from 25 March to 12 April and from 12 to 30 August 1996, during which time the Committee discussed further the issues arising out of the draft statute and began preparing a widely acceptable consolidated text of a convention for an international criminal court.[[433]](#footnote-433)

The General Assembly, in resolution 51/207 of 17 December 1996, decided to hold a diplomatic conference of plenipotentiaries in 1998 with a view to finalizing and adopting a convention on the establishment of an international criminal court. The Assembly also decided that the Preparatory Committee would meet in 1997 and 1998 in order to complete the drafting of the text for submission to the Conference.

The Preparatory Committee met from 11 to 21 February, from 4 to 15 August and from 1 to 12 December 1997, during which time the Committee continued to prepare a widely acceptable consolidated text of a convention for an international criminal court.[[434]](#footnote-434)

The General Assembly, in resolution 52/160 of 15 December 1997, decided to hold the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, at Rome from 15 June to 17 July 1998. In the same resolution, the General Assembly requested the Secretary-General to invite to the Conference the following organizations to participate as observers: organizations and other entities that had received a standing invitation from the Assembly pursuant to its relevant resolutions to participate as observers in its sessions and work, as well as interested regional intergovernmental organizations and other interested international bodies, including the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994. In addition, the Secretary-General was requested to invite to the Conference to participate in accordance with the resolution and the rules of procedure to be adopted by the Conference non-governmental organizations accredited by the Preparatory Committee with due regard to the provisions of part VII of Economic and Social Council resolution 1996/31 of 25 July 1996, and in particular to the relevance of their activities to the work of the Conference. The Assembly further requested the Preparatory Committee to continue its work in accordance with General Assembly resolution 51/207 and, at the end of its sessions, to transmit to the Conference the text of a draft convention on the establishment of an international criminal court prepared in accordance with its mandate.

The Preparatory Committee met from 16 March to 3 April 1998, during which time the Committee completed the preparation of the draft Statute of an International Criminal Court, which was transmitted to the Conference.[[435]](#footnote-435)

The Conference met in Rome from 15 June to 17 July 1998.[[436]](#footnote-436) It was attended by 160 States as well as by the observers of the Palestine Liberation Organization, sixteen intergovernmental organizations and other entities, five specialized agencies and related organizations, and nine United Nations programmes and bodies. Furthermore, representatives of 135 non-governmental organizations participated in the work of the Conference in accordance with General Assembly resolution 52/160 of 15 December 1997.

The Conference had before it the draft Statute which was assigned to the Committee of the Whole for its consideration. The Conference entrusted the Drafting Committee, without reopening substantive discussion on any matter, with coordinating and refining the drafting of all texts referred to it without altering their substance, formulating drafts and giving advice on drafting as requested by the Conference or by the Committee of the Whole and reporting to the Conference or to the Committee of the Whole as appropriate.

On 17 July 1998, the Conference adopted the Rome Statute of the International Criminal Court[[437]](#footnote-437) which consists of a preamble and 128 articles contained in thirteen parts: Part 1. Establishment of the Court; Part 2. Jurisdiction, Admissibility and Applicable Law; Part 3. General Principles of Criminal Law; Part 4. Composition and Administration of the Court; Part 5. Investigation and Prosecution; Part. 6. The Trial; Part 7. Penalties; Part 8. Appeal and Revision; Part 9. International Cooperation and Judicial Assistance; Part 10. Enforcement; Part 11. Assembly of States Parties; Part 12. Financing; and Part 13. Final Clauses.

The Statute, which is subject to ratification, acceptance or approval, was opened for signature on 17 July 1998, in accordance with its provisions, until 17 October 1998 at the Ministry of Foreign Affairs of Italy and, subsequently, until 31 December 2000, at United Nations Headquarters in New York. It remains open for accession by all States. The Rome Statute entered into force on 1 July 2002. As of 31 January 2007, 104 States were parties to the Rome Statute.[[438]](#footnote-438)

The Final Act of the Conference,[[439]](#footnote-439) of which six resolutions adopted by the Conference form an integral part, was signed on 17 July 1998. In one of the resolutions, resolution E, the Conference recommended that a review conference pursuant to article 123 of the Rome Statute consider the crimes of terrorism and drug crimes with a view to arriving at an acceptable definition and their inclusion in the list of crimes within the jurisdiction of the Court. By another resolution, resolution F, the Conference established the Preparatory Commission for the International Criminal Court consisting of representatives of States-signatories of the Final Act and other States which had been invited to participate in the Conference. The Preparatory Commission was entrusted with the preparation of a number of proposals for the practical arrangements for the establishment and coming into operation of the Court, including the draft texts of the rules of procedure and evidence and of the elements of crimes, as well as proposals for a provision on aggression *(see sub-section (d) below*).

In successive resolutions adopted from 1998 to 2001, the General Assembly requested the Secretary-General to convene and reconvene the Preparatory Commission to carry out its mandate set forth in Resolution F and, in that connection, to discuss ways to enhance the effectiveness and acceptance of the Court. From 1999 to 2002, the Preparatory Commission held ten sessions during which it prepared a number of proposals relating to the establishment and operation of the Court, including the draft Rules of Procedure and Evidence and the draft Elements of Crimes, which were transmitted to the Assembly of States Parties to the Rome Statute of the International Criminal Court.[[440]](#footnote-440)

The General Assembly, in resolution 56/85 of 12 December 2001, requested the Secretary-General to make the preparations necessary to convene, in accordance with article 112, paragraph 1, of the Rome Statute, the Assembly of States Parties upon the entry into force of the Rome Statute. [[441]](#footnote-441)

The Assembly of States Parties has met periodically since its first session, in 2002, when it considered the report of the Preparatory Commission and adopted a number of instruments based on the drafts prepared by the Preparatory Commission, including the Rules of Procedure and Evidence and the Elements of Crimes.[[442]](#footnote-442)

With the establishment of the Permanent Secretariat of the Assembly of States Parties to the Rome Statute, by resolution ICC-ASP/2/Res.3, adopted at the second session of the Assembly, on 12 September 2003, the United Nations Secretariat ceased to serve as the Secretariat of the Assembly on 31 December 2003.

(d) Crime of aggression

The International Law Commission considered the question of the crime of aggression in the context of its work on the draft code of offences against the peace and security of mankind (*see subsection (a), above*) and the draft code of crimes against the peace and security of mankind (*see subsection (b), above*), both of which include provisions on the crime of aggression.[[443]](#footnote-443) Likewise, the draft statute of the international criminal court, adopted by the Commission in 1994 (*see subsection (c), above*), included the crime of aggression within the jurisdiction of the Court.

The Rome Statute of the International Criminal Court, in article 5, provides that the Court shall exercise jurisdiction over the crime of aggression once a provision has been adopted defining the crime and setting out the conditions for the exercise of jurisdiction with respect to this crime. Such a provision must be consistent with the Charter of the United Nations.[[444]](#footnote-444)

The Rome Conference, which adopted the Statute, also adopted resolution F on the establishment of the Preparatory Commission for the International Criminal Court, which was annexed to the Final Act of the Conference (*see page 115*).[[445]](#footnote-445) The Preparatory Commission was entrusted with the preparation of proposals for a provision on aggression, including the definition and the elements of the crime of aggression as well as the conditions under which the International Criminal Court will exercise its jurisdiction with regard to this crime. The proposals are to be submitted to the Assembly of States Parties of the Court at a review conference, with a view to arriving at an acceptable provision on the crime of aggression for inclusion in the Statute. The provisions relating to the crime of aggression will enter into force for the States Parties in accordance with the relevant provisions of the Statute.[[446]](#footnote-446)

The Preparatory Commission considered the crime of aggression at its second to tenth sessions held from 1999 to 2002,[[447]](#footnote-447) in the context of the Working Group on the Crime of Aggression established as its third session, in 1999.[[448]](#footnote-448) At its tenth session, the Preparatory Commission agreed to include in its report to the Assembly of States Parties the discussion paper[[449]](#footnote-449) on the definition and elements of the crime of aggression prepared by the Coordinator of the Working Group, together with a list of all proposals and related documents on the crime of aggression issued by the Preparatory Commission as well as the historical review of developments relating to aggression[[450]](#footnote-450) prepared by the Secretariat for transmission to the Assembly of States Parties.[[451]](#footnote-451)

The General Assembly, in resolutions 55/155 of 12 December 2000 and 56/85 of 12 December 2001, noted the importance of the growing participation in the work of the Working Group on the Crime of Aggression.

At its first session, in September 2002, the Assembly of States Parties adopted a resolution on the continuity of work in respect of the crime of aggression, by which it took the following decisions: (1) a special working group on the crime of aggression shall be established, open on an equal footing to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, for the purpose of elaborating the proposals for a provision on aggression in accordance with the Rome Statute (article 5, paragraph 2) and Resolution F (paragraph 7); (2) the special working group shall submit such proposals to the Assembly for consideration at a Review Conference; and (3) the special working group shall meet during the regular sessions of the Assembly or at any other time that the Assembly deems appropriate and feasible.[[452]](#footnote-452) The Assembly subsequently decided that the Special Working Group on the Crime of Aggression should meet during annual sessions of the Assembly, while leaving open the possibility of informal inter-sessional meetings depending upon the availability of funding for such a meeting by any Government wishing to do so.[[453]](#footnote-453)

8. Nationality, including statelessness

At its first session, in 1949, the Commission selected nationality including statelessness as a topic for codification without, however, including it in the list of topics to which it gave priority.

During its second session, in 1950, the Commission was notified of resolution 304 D (XI) of the Economic and Social Council on the nationality of married women, adopted on 17 July 1950, in which the Council proposed that the Commission undertake the drafting of a convention, embodying the principles recommended by the Commission on the Status of Women. After considering the resolution, the Commission deemed it appropriate to entertain the proposal of the Council in connection with its work on the topic of nationality, including statelessness.

At its third session, in 1951, the Commission was notified of another resolution of the Economic and Social Council, resolution 319 B III (XI) of 11 August 1950, urging the Commission to prepare at the earliest possible date a draft international convention or conventions for the elimination of statelessness. The Commission noted that this matter could be considered within the framework of the topic of nationality, including statelessness. At the same session, the Commission decided to initiate work on this topic.

The Commission considered the topic from its third session, in 1951, to its sixth session, in 1954. It appointed Manley O. Hudson and Roberto Córdova as the successive Special Rapporteurs for the topic at its third and fourth sessions, in 1951 and 1952, respectively. At the latter session, the Commission also invited Dr. Ivan S. Kerno to serve as an individual expert of the Commission on the question of elimination or reduction of statelessness. In connection with its work on this topic, the Commission had before it the reports of the Special Rapporteurs,[[454]](#footnote-454) comments by Governments,[[455]](#footnote-455) documents prepared by the Secretariat[[456]](#footnote-456) as well as memoranda prepared by the expert.[[457]](#footnote-457)

(a) Nationality of married persons

At its fourth session, in 1952, the Special Rapporteur submitted to the Commission, as a part of his report on nationality, including statelessness, a draft of a convention on nationality of married persons.[[458]](#footnote-458) The draft followed very closely the terms proposed by the Commission on the Status of Women and approved by the Economic and Social Council. The Commission, however, decided that the question of the nationality of married women could not suitably be considered by it separately but only in the context, and as an integral part, of the whole subject of nationality. The Commission therefore did not take further action with respect to the draft.[[459]](#footnote-459)

The problem of the nationality of married women continued to be under consideration by other organs of the United Nations. In 1955, the General Assembly took note of the preamble and the first three substantive articles of the draft Convention on the Nationality of Married Women, which had been drafted by the Commission on the Status of Women. After the final clauses of the draft Convention were prepared by the Third (Social) Committee, the Assembly, by resolution 1040 (XI) of 29 January 1957, adopted the Convention, which came into force on 11 August 1958.[[460]](#footnote-460) As of 31 January 2007, 74 States were parties to the Convention on the Nationality of Married Women.

(b) Future statelessness

At its fourth session, in 1952, the Commission also had before it, as a part of the report submitted by the Special Rapporteur, Manley O. Hudson, a working paper dealing with statelessness.[[461]](#footnote-461) The Commission then requested the Special Rapporteur to prepare, for consideration at its fifth session, a draft convention on the elimination of statelessness and one or more draft conventions on the reduction of future statelessness.

At its fifth session, in 1953, on the basis of a report containing draft articles submitted by the new Special Rapporteur, Roberto Córdova,[[462]](#footnote-462) the Commission adopted on first reading two draft conventions, one on the elimination of future statelessness and another on the reduction of future statelessness, which were then transmitted to Governments for comment.

At its sixth session, in 1954, the Commission discussed the observations made by Governments on the two draft conventions and redrafted some of the articles in the light of their comments. At the same session, the Commission adopted the final drafts of both conventions.[[463]](#footnote-463) In submitting these final drafts to the General Assembly, the Commission said:

“The most common observation made by Governments was that some provisions of their legislation conflicted with certain articles of the draft conventions. Since statelessness is, however, attributable precisely to the presence of those provisions in municipal law, the Commission took the view that this was not a decisive objection for, if Governments adopted the principle of the elimination, or at least the reduction, of statelessness in the future, they should be prepared to introduce the necessary amendments in their legislation.”[[464]](#footnote-464)

The draft conventions, each consisting of eighteen articles, aimed, on the one hand, at facilitating the acquisition of the nationality of a country by birth within its borders and, on the other hand, at avoiding the loss of a nationality except when another nationality was acquired. The convention on the elimination of future statelessness (the draft of which is reproduced in annex IV, section 4), would impose stricter obligations on the contracting parties than the one which had the more modest aim of merely reducing statelessness. The Commission stated in its report that it would be for the General Assembly to consider to which of the draft conventions preference should be given.[[465]](#footnote-465)

At the Assembly’s 1954 session, the majority of representatives in the Sixth Committee expressed the opinion that the time was not ripe for immediate consideration of the substance of the draft conventions and that the positions of Member States with respect to the draft conventions had not yet been sufficiently ascertained. The Sixth Committee, however, approved a draft resolution under which the General Assembly would express “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 have communicated to the Secretary-General their willingness to cooperate in such a conference”. This resolution was subsequently adopted by the General Assembly on 4 December 1954 as resolution 896 (IX).

The United Nations Conference on the Elimination or Reduction of Future Statelessness[[466]](#footnote-466) met at Geneva from 24 March to 18 April 1959, with representatives of thirty-five States participating. The Conference decided to use as the basis for its discussion the draft convention on the reduction of future statelessness—one of the two drafts prepared by the International Law Commission—and adopted provisions aimed at reducing statelessness at birth.

It did not, however, reach agreement as to how to limit the freedom of States to deprive citizens of their nationality in cases where such deprivation would render them stateless. Consequently, the Conference recommended to the competent organs of the United Nations that it be reconvened at the earliest possible time in order to complete its work.

The second part of the Conference, in which representatives of thirty States participated, met in New York from 15 to 28 August 1961. The Conference adopted the Convention on the Reduction of Statelessness,[[467]](#footnote-467) which was opened for signature from 30 August 1961 to 31 May 1962. Signatures are subject to ratification. The Convention is open for accession by any non-signatory State entitled to become a party. The Convention, which is reproduced in annex V, section B, entered into force on 13 December 1975. By 31 January 2007, 33 States were parties to the Convention.

(c) Present statelessness

At its fifth session, in 1953, the Special Rapporteur, Roberto Córdova, prepared an interim report and drafts of conventions bearing on the problem of the elimination or reduction of existing statelessness.[[468]](#footnote-468) The Commission requested the Special Rapporteur to devote further study to the matter and prepare a report for the Commission’s sixth session, in 1954.

At its sixth session, in 1954, the Commission had before it the report of the Special Rapporteur,[[469]](#footnote-469) containing four draft instruments dealing with elimination or reduction of present statelessness. In the course of the Commission’s consideration of the report, the Special Rapporteur withdrew three of the proposed drafts. The Commission accepted as the basis of its discussion the fourth draft instrument proposed by the Special Rapporteur, the Alternative Convention on the Reduction of Present Statelessness.

The Commission considered that it was not feasible to suggest measures for the total and immediate elimination of present statelessness and that present statelessness could only be reduced if stateless persons acquired a nationality which would normally be that of the country of residence. Since, however, the acquisition of nationality is in all countries governed by certain statutory conditions, including residence qualifications, the Commission considered that for the purpose of improving the condition of statelessness it would be desirable that stateless persons should be given the special status of “protected person” in their country of residence prior to the acquisition of nationality. Stateless persons possessing this status would have all civil rights, and would also be entitled to the diplomatic protection of the Government of the country of residence;[[470]](#footnote-470) the protecting State might impose on them the same obligations as it imposed on nationals.[[471]](#footnote-471)

At the same session, the Commission formulated its proposals accordingly and adopted them in the form of seven articles with commentaries.[[472]](#footnote-472) They were submitted to the General Assembly as part of its final report on nationality, including statelessness. In submitting the proposals, the Commission said: “In view of the great difficulties of a non-legal nature which beset the problem of present statelessness, the Commission considered that the proposals adopted, though worded in the form of articles, should merely be regarded as suggestions which Governments may wish to take into account when attempting a solution of this urgent problem.”[[473]](#footnote-473)

(d) Multiple nationality

At its sixth session, in 1954, the Commission held a general discussion on the subject of multiple nationality and had before it a report of the Special Rapporteur, Roberto Córdova,[[474]](#footnote-474) and a memorandum by the Secretariat[[475]](#footnote-475). Several members expressed the opinion that the Commission should content itself with the work it had done so far in the field of nationality, and the Commission thereupon decided to “defer any further consideration of multiple nationality and other questions relating to nationality”.[[476]](#footnote-476)

The Commission returned to the question of nationality in the context of its work on the topics of nationality in relation to the succession of States (*see Part III.A, section 24*) and diplomatic protection (*see Part III.A, section 27*).

9. Law of the sea

(a) Regime of the high seas

At its first session, in 1949, the Commission selected the regime of the high seas as a topic for codification to which it gave priority and appointed J. P. A. François as Special Rapporteur for it.

The Commission considered this topic at its second, third, fifth, seventh and eighth sessions, in 1950, 1951, 1953, 1955 and 1956, respectively. In connection with its work on the topic, the Commission had before it the reports of the Special Rapporteur,[[477]](#footnote-477) information provided by Governments and international organizations[[478]](#footnote-478) as well as documents prepared by the Secretariat.[[479]](#footnote-479)

At its second session, in 1950, the Commission surveyed the various questions falling within the scope of the general topic of the regime of the high seas, e.g., nationality of ships, safety of life at sea, slave trade, submarine telegraph cables, resources of the high seas, right of pursuit, right of approach, contiguous zones, sedentary fisheries and the continental shelf.

At its third session, in 1951, the Commission, on the basis of the second report of the Special Rapporteur,[[480]](#footnote-480) provisionally adopted draft articles on the following subjects: the continental shelf; resources of the sea; sedentary fisheries; and contiguous zone.

At its fifth session, in 1953, the Commission, after examining these provisional draft articles once again in the light of comments of Governments, prepared final drafts on the following three questions: continental shelf; fisheries; and contiguous zone. The Commission recommended that the Assembly adopt by resolution the part of the report covering the draft articles on the continental shelf.[[481]](#footnote-481) In respect of the draft articles on fisheries, the Commission recommended that the General Assembly should approve the articles by resolution and enter into consultation with the Food and Agriculture Organization of the United Nations with a view to the preparation of a convention or conventions on the subject in conformity with the general principles embodied in the articles.[[482]](#footnote-482) As the Commission had not yet adopted draft articles on the territorial sea, it recommended that the General Assembly take no action with regard to the draft article on the contiguous zone, since the report covering the article was already published.[[483]](#footnote-483)

The General Assembly, by resolution 798 (VIII) of 7 December 1953, decided to defer action until all the problems relating to the regime of the high seas and the regime of territorial waters had been studied by the Commission and reported upon by it to the Assembly. The question of the continental shelf was again brought before the Assembly at its ninth session, in 1954, by ten Member States, which asked the Assembly to avoid undue delay in giving substantive consideration to the question. By resolution 899 (IX) of 14 December 1954, the Assembly again deferred action and requested the Commission to submit its final report on the regime of the high seas, the regime of territorial waters and all related problems in time for their consideration by the Assembly at its eleventh session, in 1956.

At its seventh session, in 1955, the Commission considered certain subjects concerning the high seas which had not been dealt with in its 1953 report and adopted, on the basis of the Special Rapporteur’s sixth report,[[484]](#footnote-484) a provisional draft on the regime of the high seas, which was submitted to Governments for comments. The Commission also communicated the draft articles relating to the conservation of the living resources of the sea, which comprised a part of the provisionally adopted draft on the regime of the high seas, and the relevant chapter of its report to the organizations represented by observers at the International Technical Conference on the Conservation of the Living Resources of the Sea, which was convened by the Secretary-General in pursuance of General Assembly resolution 900 (IX) of 14 December 1954 and was held at Rome from 18 April to 10 May 1955. In preparing the articles dealing with the conservation of the living resources of the sea, the Commission took account of the report of that Conference.[[485]](#footnote-485) At its eighth session, in 1956, the Commission examined replies from Governments and from the International Commission for the Northwest Atlantic Fisheries and drew up a final report on the subjects relating to the high seas, which was incorporated by the Commission in its consolidated draft on the law of the sea (*see sub-section (c) below*).

(b) Regime of the territorial sea[[486]](#footnote-486)

At its first session, in 1949, the Commission selected the regime of the territorial waters as a topic for codification without, however, including it in the list of topics to which it gave priority. At its third session, in 1951, in pursuance of a recommendation contained in General Assembly resolution 374 (IV) of 6 December 1949, the Commission decided to initiate work on the regime of the territorial waters and appointed J. P. A. François as Special Rapporteur for that topic as well.

The Commission considered this topic at its fourth and from its sixth to eighth sessions, in 1952 and from 1954 to 1956, respectively. In connection with its work on this topic, the Commission had before it the reports of the Special Rapporteur[[487]](#footnote-487) and information provided by Governments.[[488]](#footnote-488)

At its fourth session, in 1952, the Special Rapporteur submitted a report[[489]](#footnote-489) dealing in particular with the question of baselines and bays. With regard to the delimitation of the territorial sea of two adjacent States, the Commission, at that session, decided to ask Governments for information concerning their practice and for any observations they might consider useful. The Commission also decided that the Special Rapporteur should be free to consult with experts with a view to elucidating certain technical aspects of the problem. The group of experts met at The Hague in April 1953 under the chairmanship of the Special Rapporteur.[[490]](#footnote-490) In his third report on the regime of the territorial sea,[[491]](#footnote-491) which was submitted to the Commission in 1954, the Special Rapporteur incorporated changes suggested by the experts and also took into account the comments received from Governments on the delimitation of the territorial sea between two adjacent States.

At its sixth and seventh sessions, in 1954 and 1955, the Commission adopted provisional articles concerning the regime of the territorial sea, with commentaries, and invited Governments to furnish their observations on the articles.

At its eighth session, in 1956, the Commission drew up its final report on the territorial sea, incorporating a number of changes deriving from the replies of Governments, which was incorporated by the Commission in its consolidated draft on the law of the sea.[[492]](#footnote-492)

(c) Consolidated draft on the law of the sea

At the Commission’s eighth session, in 1956, all the draft provisions adopted by the Commission concerning the law of the sea were recast so as to constitute a single coordinated and systematic body of rules. At the same session, the Commission adopted a final draft on the law of the sea, containing seventy-three articles and commentaries thereto.[[493]](#footnote-493) The Commission noted that, in order to give effect to the project as a whole, it would be necessary to have recourse to conventional means. Accordingly, in submitting the final draft to the General Assembly in 1956, it recommended that the General Assembly should summon an international conference of plenipotentiaries.[[494]](#footnote-494)

In accordance with the recommendation of the Commission, the General Assembly, by resolution 1105 (XI) of 21 February 1957, decided to convene 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 the conference may deem appropriate”.

The United Nations Conference on the Law of the Sea met at Geneva from 24 February to 27 April 1958. Of the eighty-six States represented there, seventy-nine were Members of the United Nations and seven were members of specialized agencies though not of the United Nations.

The final report of the Commission on the law of the sea had been referred to the Conference by the General Assembly as the basis for its consideration of the various problems involved in the development and codification of the law of the sea. In addition to this, the Conference had before it more than thirty preparatory documents, prepared by the United Nations Secretariat, by certain specialized agencies and by a number of independent experts invited by the Secretary-General to submit studies on various specialized topics. One question which had not been covered in the report of the Commission, namely, the question of free access to the sea of land-locked countries, was dealt with in a memorandum submitted to the Conference by a preliminary conference of land-locked States which met at Geneva from 10 to 14 February 1958 prior to the convening of the United Nations Conference.[[495]](#footnote-495)

In view of the wide scope of the work before it, the Conference established five main committees: First Committee (territorial sea and contiguous zone); Second Committee (high seas: general regime); Third Committee (high seas: fishing and conservation of living resources); Fourth Committee (continental shelf); and Fifth Committee (question of free access to the sea of land-locked countries). Each committee submitted to the plenary meeting of the Conference a report summarizing the results of its work and appending draft articles as approved. The Conference agreed to embody these draft articles, some in amended form, in the following four separate conventions: the Convention on the Territorial Sea and the Contiguous Zone; the Convention on the High Seas; the Convention on Fishing and Conservation of the Living Resources of the High Seas; and the Convention on the Continental Shelf. The work of the Fifth Committee did not result in a separate convention, but its recommendations were included in article 14 of the Convention on the Territorial Sea and the Contiguous Zone and in articles 2, 3 and 4 of the Convention on the High Seas.[[496]](#footnote-496)

In addition to the four Conventions, the Conference adopted an Optional Protocol of Signature concerning the Compulsory Settlement of Disputes, which provides for the compulsory jurisdiction of the International Court of Justice, or, if the parties so prefer, for submission of the dispute to arbitration or conciliation. The texts of the Conventions and Protocol are reproduced in annex V, section A. The Conference also adopted nine resolutions on various subjects, including the matter of convening a second United Nations Conference on the Law of the Sea.[[497]](#footnote-497)

The Final Act of the Conference was signed on 29 April 1958. All the Conventions remained open for signature until 31 October 1958, by all States Members of the United Nations or of any of the specialized agencies and by any other States invited by the General Assembly to become a party; since that date they have been open to accession by all such States. The Optional Protocol was open to all States becoming parties to any of the Conventions. The Conventions were subject to ratification. The Optional Protocol was subject to ratification, where necessary, according to the constitutional requirements of the signatory States. Each of the Conventions was to come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

The Convention on the High Seas[[498]](#footnote-498) and the Optional Protocol of Signature concerning the Compulsory Settlement of Disputes[[499]](#footnote-499) came into force on 30 September 1962. The Convention on the Continental Shelf[[500]](#footnote-500) came into force on 10 June 1964; the Convention on the Territorial Sea and the Contiguous Zone[[501]](#footnote-501) on 10 September 1964; and the Convention on Fishing and Conservation of the Living Resources of the High Seas[[502]](#footnote-502) on 20 March 1966. By 31 January 2007, 52 States were parties to the Convention on the Territorial Sea and the Contiguous Zone, 63 States were parties to the Convention on the High Seas, 38 States were parties to the Convention on Fishing and Conservation of the Living Resources of the High Seas, 58 States were parties to the Convention on the Continental Shelf and 38 States were parties to the Optional Protocol of Signature concerning the Compulsory Settlement of Disputes.

On 10 December 1958, the General Assembly, by resolution 1307 (XIII), asked the Secretary-General to convene a second United Nations Conference on the Law of the Sea to consider further the questions of the breadth of the territorial sea and fishery limits, questions which had been left unsettled by the first Conference on the Law of the Sea. Eighty-eight States were represented at the second Conference, which was held in Geneva from 17 March to 26 April 1960. The Conference failed to adopt any substantive proposal on the two questions before it. It did, however, approve a resolution expressing the need for technical assistance in making adjustments to their coastal and distant-waters fishing in the light of developments in international law and practice.[[503]](#footnote-503)

At its twenty-fifth session, the General Assembly, by resolution 2750 C (XXV) of 17 December 1970, decided, inter alia, to convene in 1973 a conference on the law of the sea which would deal with the establishment of an equitable international regime—including an international machinery—for the seabed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction. The conference would also deal with issues concerning the regimes of the high seas, the continental shelf, the territorial sea (including the question of its breadth and the question of international straits and contiguous zone), fishing and conservation of the living resources of the high seas (including the question of preferential rights of coastal States), the preservation of the marine environment (including, inter alia, the prevention of pollution) and scientific research. The Assembly, by the same resolution, enlarged the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, established by General Assembly resolution 2467A (XXIII) of 21 December 1968, to eighty-six members, and instructed it to act as a preparatory body for the 1973 conference and to prepare draft treaty articles embodying the international regime—including an international machinery—for the area and resources of the seabed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, and a comprehensive list of subjects and issues relating to the law of the sea and draft articles on such subjects and issues.[[504]](#footnote-504)

The Conference held eleven sessions, from 1973 to 1982. On 10 December 1982, it adopted the United Nations Convention on the Law of the Sea,[[505]](#footnote-505) which includes 320 articles and nine annexes. It also adopted a Final Act to which are annexed, inter alia, resolutions and a statement of understanding. The Convention remained open for signature until 9 December 1984 at the Ministry of Foreign Affairs of Jamaica and also, from 1 July 1983 until 9 December 1984, at United Nations Headquarters in New York. It entered into force on 16 November 1994, twelve months after the date of deposit of the sixtieth instrument. As of 31 January 2007, 152 States were parties to the treaty. It may be noted that a number of articles of the 1982 Convention are based on those of the 1958 Conventions. In accordance with paragraph 1 of article 311 of the 1982 Convention, that Convention shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April  1958.

10. Arbitral procedure

At its first session, in 1949, the Commission selected arbitral procedure as one of the topics for codification to which it gave priority and appointed Georges Scelle as Special Rapporteur. The Commission considered this topic at its second, fourth, fifth, ninth and tenth sessions, in 1950, 1952, 1953, 1957 and 1958, respectively. In connection with its work on this topic, the Commission had before it the reports of the Special Rapporteur,[[506]](#footnote-506) information provided by Governments[[507]](#footnote-507) as well as documents prepared by the Secretariat.[[508]](#footnote-508)

At its fourth session, in 1952, the Commission, adopted on first reading a draft on arbitral procedure and communicated it to Governments for comment. At its fifth session, in 1953, the Commission adopted a revised draft on arbitral procedure, which was at that time intended as a final draft.[[509]](#footnote-509) In its report on the fifth session to the General Assembly, the Commission expressed the view that this final draft, as adopted, called for action on the part of the Assembly of the kind contemplated in article 23, paragraph 1 (*c*), of the Statute of the Commission, namely, that the draft should be recommended to Member States with a view to the conclusion of a convention; the Commission recommended accordingly.[[510]](#footnote-510)

The Commission emphasized that the draft had a dual aspect, representing both a codification of existing law on international arbitration and a formulation of what the Commission considered to be desirable developments in the field. Thus the Commission had taken as a basis the traditional features of arbitral procedure in the settlement of international disputes, such as those relating to the undertaking to arbitrate, the constitution and powers of an arbitral tribunal, the general rules of evidence and procedure, and the award of arbitrators. At the same time, the Commission had also provided certain procedural safeguards for securing the effectiveness, in accordance with the original common intention of the parties, of the undertaking to arbitrate. For example, in order to prevent one of the parties from avoiding arbitration by claiming that the dispute in question was not covered by the undertaking to arbitrate, the draft provided for a binding decision by the International Court of Justice as to the arbitrability of the dispute. Similarly, in order to avoid the frustration that might be caused by one party withdrawing its arbitrator, the draft provided for the immutability of the tribunal once it had been formed, except in specified cases. The draft also included provisions for the drawing up of the compromis—an agreement concerning the undertaking to arbitrate and the arrangements for arbitration proceedings, e.g., nomination of arbitrators, the date and place for the proceedings—by the arbitral tribunal in cases where the parties had failed to reach agreement on the subject.[[511]](#footnote-511)

The draft was considered by the General Assembly at its eighth and tenth sessions, in 1953 and 1955, where it was subjected to considerable criticism, particularly in view of the Commission’s recommendation for the conclusion of a convention on the subject. The Assembly, in resolution 989 (X) of 14 December 1955, noting that a number of suggestions for improvements on the draft had been put forward in the comments submitted by Governments and in the observations made in the Sixth Committee at the eighth and tenth sessions of the General Assembly, 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 General Assembly at its thirteenth session.

At its ninth session, in 1957, the Commission appointed a committee to consider the matter in the light of the General Assembly resolution. In accordance with the conclusion of the committee, the Commission considered the ultimate object to be attained in reviewing the draft on arbitral procedure, in particular, whether this object should be a convention or simply a set of model rules which States might use, either wholly or in part, in the drawing up of provisions for inclusion in international treaties and special arbitration agreements. The Commission decided in favour of the second alternative. In doing so, the Commission recognized that the draft, as it stood, went beyond what the majority of Governments would be prepared to accept in advance as a general multilateral convention on arbitration. The Commission, however, was of the opinion that the recasting of the draft with a view to attracting the signature and ratification of a majority of Governments would mean a complete revision, involving in all probability an alteration in the whole concept on which the draft was based. In these circumstances, the Commission took the view that it would be preferable to leave the substance of the draft intact and present it to the General Assembly as a set of draft articles which States could use as models in concluding bilateral or multilateral arbitral agreements or in submitting particular disputes to ad hoc arbitration.

At its tenth session, in 1958, the Commission adopted, on the basis of a report by the Special Rapporteur,[[512]](#footnote-512) a set of “Model Rules on Arbitral Procedure” followed by a general commentary.[[513]](#footnote-513) In submitting the final set to the General Assembly, the Commission recommended that the Assembly by resolution adopt the report.[[514]](#footnote-514) The text of the Model Rules on Arbitral Procedure is reproduced in annex IV, section 5.

With reference to the scope and purpose of the Model Rules, which were intended to apply to arbitrations between States, the Commission observed:

“ . . . now that the draft is no longer presented in the form of a potential general treaty of arbitration, it may be useful to draw attention to the fact that, if the parties so desired, its provisions would, with the necessary adaptations, also be capable of utilization for the purposes of arbitrations between States and international organizations or between international organizations.

“In the case of arbitrations between States and foreign private corporations or other juridical entities, different legal considerations arise. However, some of the articles of the draft, if adapted, might be capable of use for this purpose also.”[[515]](#footnote-515)

After extensive discussions in the Sixth Committee, the General Assembly, in resolution 1262 (XIII) of 14 November 1958, took note of chapter II on arbitral procedure of the Commission’s report on its tenth session; brought the draft articles on arbitral procedure to the attention of Member States for their consideration and use; and invited Governments to send to the Secretary-General any comments they may wish to make on the draft, and in particular on their experience in the drawing up of arbitral agreements and the conduct of arbitral procedure, with a view to facilitating a review of the matter by the United Nations at an appropriate time.

11. Diplomatic intercourse and immunities

In the course of its first session, in 1949, the Commission selected diplomatic intercourse and immunities as one of the topics for codification without, however, including it in the list of topics to which it gave priority. At its fifth session, in 1953, the Commission was apprised of General Assembly resolution 685 (VII) of 5 December 1952, by which the Assembly requested the Commission to undertake, as soon as it considered possible, the codification of diplomatic intercourse and immunities and to treat it as a priority topic.

At its sixth session, in 1954, the Commission decided to initiate work on the subject and appointed A. E. F. Sandström as Special Rapporteur. The Commission considered this topic at its ninth and tenth sessions, in 1957 and 1958, respectively. In connection with its work on this topic, the Commission had before it the reports of the Special Rapporteur,[[516]](#footnote-516) information provided by Governments[[517]](#footnote-517) as well as a document prepared by the Secretariat.[[518]](#footnote-518)

At its ninth session, in 1957, on the basis of the report by the Special Rapporteur,[[519]](#footnote-519) the Commission, adopted on first reading a set of draft articles with commentaries. The draft was circulated to Governments for comment and was also included in the report submitted by the Commission to the Assembly’s twelfth session, in 1957. At its tenth session, in 1958, the Commission adopted the final draft on diplomatic intercourse and immunities consisting of forty-five draft articles, with commentaries.[[520]](#footnote-520) In submitting this final draft to the General Assembly, the Commission recommended that the General Assembly recommend the draft to Member States with a view to the conclusion of a convention.[[521]](#footnote-521)

The Commission pointed out that the draft dealt only with permanent diplomatic missions. The Commission had, however, asked the Special Rapporteur to study and, at one of its future sessions, make a report on other forms of diplomatic relations, that is, so-called “ad hoc diplomacy,” covering itinerant envoys, diplomatic conferences and special missions sent to a State for limited purposes. The Commission’s report also referred to relations between States and international organizations and the privileges and immunities of such organizations. In this respect, the Commission simply remarked that these matters were, as regards most of these organizations, governed by special conventions.[[522]](#footnote-522)

During the Sixth Committee’s debate, in 1958, on the report of the International Law Commission, some representatives expressed doubts as to whether it was desirable to codify by convention the rules regarding diplomatic privileges and immunities. It was argued that the matter was adequately governed by custom and usage and that regulation by convention would introduce an element of rigidity. An attempt to lay down strict treaty rules on the subject, it was also contended, might even result in the reduction of the privileges and immunities at present enjoyed in practice by members of diplomatic missions. A restatement of current usage would for these reasons be preferable to regulation by convention.[[523]](#footnote-523)

The majority of members, however, favoured codifying the subject by convention, but were divided into two groups regarding the procedure to be followed. One group proposed that the preparation of a convention should be entrusted to the Sixth Committee; the other group preferred the convening of a conference of plenipotentiaries for that purpose. The General Assembly, by resolution 1288 (XIII) of 5 December 1958, deferred action until its fourteenth session, in 1959, at which it finally endorsed the recommendation of the Commission and decided, in resolution 1450 (XIV) of 7 December 1959, to convene a conference of plenipotentiaries not later than the spring of 1961. The Commission’s final report on diplomatic intercourse and immunities, containing the draft articles, was referred to the conference by the Assembly. A year later, by resolution 1504 (XV) of 12 December 1960, the Assembly also referred to the conference three draft articles on special missions (*see pages 149 and 150*) approved by the Commission at its twelfth session, in 1960, so that they could be considered together with the draft articles on permanent diplomatic relations.

The United Nations Conference on Diplomatic Intercourse and Immunities met in Vienna from 2 March to 14 April 1961.[[524]](#footnote-524) It was attended by delegates from eighty-one countries, seventy-five of which were Members of the United Nations and six of related agencies or parties to the Statute of the International Court of Justice. The Conference set up a Committee of the Whole, to which it referred the substantive items on its agenda, namely, consideration of the question of diplomatic intercourse and immunities, consideration of draft articles on special missions, and the adoption of instruments regarding the matters considered and of the Final Act of the Conference. The draft articles on special missions were referred by the Committee of the Whole to a Subcommittee on Special Missions.

The Conference adopted a convention entitled the “Vienna Convention on Diplomatic Relations,”[[525]](#footnote-525) consisting of fifty-three articles and covering most major aspects of permanent diplomatic relations between States. It also adopted an Optional Protocol concerning Acquisition of Nationality[[526]](#footnote-526) and an Optional Protocol concerning the Compulsory Settlement of Disputes.[[527]](#footnote-527) The texts of the Convention and Optional Protocols are reproduced in annex V, section C. By a resolution adopted by the Conference, the subject of special missions was referred back to the General Assembly with the recommendation that the Assembly entrust to the International Law Commission the task of further study of the topic (*see Part III.A, section 15*).

The Final Act of the Conference was signed on 18 April 1961. The Convention and Optional Protocols remained open for signature until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at United Nations Headquarters. They remain open for accession at any time by all Members of the United Nations or of any of the specialized agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly to become a party. The Convention and the two Optional Protocols entered into force on 24 April 1964. By 31 January 2007, 185 States were parties to the Vienna Convention on Diplomatic Relations, 52 States were parties to the Optional Protocol concerning Acquisition of Nationality and 65 States were parties to the Optional Protocol concerning the Compulsory Settlement of Disputes.

12. Consular intercourse and immunities

At its first session, in 1949, the Commission selected the subject of consular intercourse and immunities as one of the topics for codification without, however, including it in the list of topics to which it gave priority. At its seventh session, in 1955, the Commission decided to begin the study of this topic and appointed Jaroslav Zourek as Special Rapporteur.

The Commission considered this topic at its eighth session in 1956, and from its tenth session, in 1958, to its thirteenth session, in 1961. In connection with its work on this topic, the Commission had before it the reports of the Special Rapporteur[[528]](#footnote-528) and information provided by Governments.[[529]](#footnote-529)

At its twelfth session, in 1960, the Commission adopted on first reading sixty-five draft articles, together with commentaries, and transmitted the draft to Governments for their comments. At its thirteenth session, in 1961, the Commission adopted a final draft on consular relations, consisting of seventy-one articles accompanied by commentaries.[[530]](#footnote-530) In submitting the final draft to the General Assembly, the Commission recommended that the Assembly convene an international conference of plenipotentiaries to study the Commission’s draft and conclude one or more conventions on the subject.[[531]](#footnote-531)

The General Assembly, in resolution 1685 (XVI) of 18 December 1961, noted “with satisfaction that the draft articles on consular relations prepared by the International Law Commission constitute a good basis for the preparation of a convention on that subject,” decided that an international conference of plenipotentiaries should be convened at Vienna at the beginning of March 1963, and referred to the Conference the report adopted by the Commission containing the draft articles on consular relations. At the same time, in order “to provide an opportunity for completing the preparatory work by further expressions and exchanges of views concerning the draft articles at the seventeenth [1962] session,” the Assembly also requested Member States to submit written comments on the draft articles, by 1 July 1962, for circulation to Governments prior to the beginning of the seventeenth session, and decided to place on the provisional agenda of that session the item “Consular relations”.

In 1962, after a discussion on the draft articles on consular relations in the Sixth Committee, the General Assembly, by resolution 1813 (XVII) of 18 December 1962, requested the Secretary-General to transmit to the conference of plenipotentiaries the summary records and documentation relating to the consideration of this item at the Assembly’s seventeenth session, and invited States intending to participate in the conference to submit to the Secretary-General as soon as possible, for circulation to Governments, any amendment to the draft articles which they might wish to propose in advance of the conference.

The United Nations Conference on Consular Relations, which was attended by delegates of ninety-five States, met at Vienna from 4 March to 22 April 1963.[[532]](#footnote-532) The Conference assigned consideration of the draft articles prepared by the International Law Commission, and certain additional proposals, to two main committees, each composed of all the participating States. After the articles and proposals had been dealt with in the main committees, they were referred to a drafting committee, which prepared texts for submission to the Conference meeting in plenary session. The Conference adopted the Vienna Convention on Consular Relations,[[533]](#footnote-533) consisting of seventy-nine articles, an Optional Protocol concerning Acquisition of Nationality[[534]](#footnote-534) and an Optional Protocol concerning the Compulsory Settlement of Disputes,[[535]](#footnote-535) the texts of which are reproduced in annex V, section D.

The Final Act of the Conference was signed on 24 April 1963. The Convention and Optional Protocols remained open for signature until 31 October 1963 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1964, at United Nations Headquarters. They remain open for accession by all Members of the United Nations or of any of the specialized agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly to become a party. The Convention and both Optional Protocols came into force on 19 March 1967. By 31 January 2007, 171 States were parties to the Vienna Convention on Consular Relations, 39 States were parties to the Optional Protocol concerning Acquisition of Nationality and 45 States were parties to the Optional Protocol concerning the Compulsory Settlement of Disputes.

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

By resolution 1766 (XVII) of 20 November 1962, the General Assembly requested the International Law Commission to study the question of participation of new States in certain general multilateral treaties, concluded under the auspices of the League of Nations, which by their terms authorized the Council of the League to invite additional States to become parties but to which States that had not been so invited by the League Council before the dissolution of the League were unable to become parties for want of an invitation. This problem had originally been brought to the attention of the Assembly by the International Law Commission. In the report on its fourteenth session, in 1962, the Commission had pointed out that certain difficulties stood in the way of finding a speedy and satisfactory solution to this problem through the medium of the draft articles on the law of treaties, and it therefore suggested that consideration should be given to the possibility of solving the problem more expeditiously by other procedures, such as administrative action by the depositary and a resolution of the General Assembly, to the terms of which the assent of all the States entitled to a voice in the matter might be obtained.[[536]](#footnote-536)

In accordance with General Assembly resolution 1766 (XVII), the Commission resumed consideration of the question at its fifteenth session, in 1963. After examining the arrangements which were made in 1946 on the occasion of the dissolution of the League of Nations and the assumption by the United Nations of some of its functions and powers in relation to treaties concluded under the auspices of the League, the Commission reached the conclusion that the General Assembly appeared to be entitled, if it so desired, to designate an organ of the United Nations to assume and fulfil the powers which, under the participation clauses of the treaties in question, were formerly exercisable by the Council of the League. This procedure, which was endorsed by the Commission as a simplified and expeditious solution for achieving the object of extending participation in the treaties in question, was accordingly referred to by the Commission, in its report to the General Assembly, in listing various alternate methods which might be adopted. The Commission also observed in its report that a number of the treaties concerned might hold no interest for States and suggested that this aspect of the matter be further examined by the competent authorities. In addition, the Commission suggested that the General Assembly take steps to initiate the examination of those treaties with a view to determining what action might be necessary to adapt them to contemporary conditions.[[537]](#footnote-537)

On the basis of the conclusions reached by the Commission, the General Assembly, in resolution 1903 (XVIII) of 18 November 1963, decided that the Assembly was the appropriate organ of the United Nations to exercise the power conferred on the League Council by twenty-one general multilateral treaties of a technical and non-political character concluded under the auspices of the League of Nations to invite States to accede to those treaties; it also placed on record the assent to that decision by those Members of the United Nations which are parties to the treaties concerned.

By the same resolution, the General Assembly requested the Secretary-General: (*a*) to bring the terms of the resolution to the notice of any party not a Member of the United Nations; (*b*) to transmit the resolution to Member States which are parties to those treaties; (*c*) to consult, where necessary, with these States and the United Nations organs and specialized agencies concerned as to whether any of the treaties in question have ceased to be in force, have been superseded, have otherwise ceased to be of interest for accession by additional States, or require action to adapt them to contemporary conditions; and (*d*) to report to the Assembly at its nineteenth session, in 1964. Finally, the Assembly requested the Secretary-General to invite “each State which is a Member of the United Nations or member of a specialized agency or a party to the Statute of the International Court of Justice, or has been designated for this purpose by the General Assembly, and which otherwise is not eligible to become a party to the treaties in question, to accede thereto by depositing an instrument of accession with the Secretary-General of the United Nations”.

At its twentieth session, in 1965, the General Assembly considered a report of the Secretary-General[[538]](#footnote-538) submitted in pursuance of resolution 1903 (XVIII), and adopted, on 5 November 1965, resolution 2021 (XX) in which it recognized that nine treaties “listed in the annex to the present resolution may be of interest for accession by additional States” and drew the “attention of the parties to the desirability of adapting some of these treaties to contemporary conditions, particularly in the event that new parties should so request”.

14. Law of treaties

At its first session, in 1949, the Commission selected the law of treaties as a topic for codification to which it gave priority. The Commission appointed J. L. Brierly, Sir Hersch Lauterpacht, Sir Gerald Fitzmaurice and Sir Humphrey Waldock as the successive Special Rapporteurs for the topic at its first, fourth, seventh and thirteenth sessions, in 1949, 1952, 1955 and 1961, respectively. The Commission considered the topic at its second, third, eighth, eleventh and thirteenth to eighteenth sessions, in 1950, 1951, 1956, 1959 and from 1961 to 1966, respectively. In connection with its work on the topic, the Commission had before it the reports of the Special Rapporteurs,[[539]](#footnote-539) information provided by Governments[[540]](#footnote-540) as well as documents prepared by the Secretariat.[[541]](#footnote-541)

The Commission had originally envisaged its work on the law of treaties as taking the form of “a code of a general character,” rather than of one or more international conventions. In its report on its eleventh session, in 1959, to the General Assembly, the Commission stated:

“In short, the law of treaties is not itself dependent on treaty, but is part of general customary international law. Queries might arise if the law of treaties were embodied in a multilateral convention, but some States did not become parties to the convention, or became parties to it and then subsequently denounced it; for they would in fact be or remain bound by the provisions of the treaty in so far as these embodied customary international law de lege lata. No doubt this difficulty arises whenever a convention embodies rules of customary international law. In practice, this often does not matter. In the case of the law of treaties it might matter—for the law of treaties is itself the basis of the force and effect of all treaties. It follows from all this that if it were ever decided to cast the Code, or any part of it, in the form of an international convention, considerable drafting changes, and possibly the omission of some material, would almost certainly be required.”[[542]](#footnote-542)

At its thirteenth session, in 1961, the Commission changed the scheme of its work from a mere expository statement of the law of treaties to the preparation of draft articles capable of serving as a basis for an international convention. This decision was explained as follows by the Commission in its report on its fourteenth session, in 1962:

“First, an expository code, however well formulated, cannot in the nature of things be so effective as a convention for consolidating the law; and the consolidation of the law of treaties is of particular importance at the present time when so many new States have recently become members of the international community. Secondly, the codification of the law of treaties through a multilateral convention would give all the new States the opportunity to participate directly in the formulation of the law if they so wished; and their participation in the work of codification appears to the Commission to be extremely desirable in order that the law of treaties may be placed upon the widest and most secure foundations.”[[543]](#footnote-543)

The General Assembly, in resolution 1765 (XVII) of 20 November 1962, recommended that the Commission continue the work on the law of treaties, taking into account the views expressed in the Assembly and the written comments submitted by Governments.

At its fourteenth to sixteenth sessions, from 1962 to 1964, the Commission proceeded with the first reading of the draft articles and submitted the provisionally adopted draft articles to Governments for comment. The Commission completed the first reading of the draft articles at its sixteenth session, in 1964.

At its seventeenth session, in 1965, the Commission began the second reading of the draft articles in the light of the comments of Governments. It re-examined the question of the form ultimately to be given to the draft articles, and adhered to the views it had expressed in 1961 and 1962 in favour of a convention. The Commission noted that, at the General Assembly’s seventeenth session, in 1962, the Sixth Committee had stated in its report that the great majority of representatives had approved the Commission’s decision to give the codification of the law of treaties the form of a convention.

At its eighteenth session, in 1966, the Commission completed the second reading of the draft articles and adopted its final report on the law of treaties, setting forth seventy-five draft articles together with their commentaries.[[544]](#footnote-544) In submitting the final report to the General Assembly, the Commission recommended that the 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.[[545]](#footnote-545)

In drawing up the draft articles, the Commission decided to limit the scope of application of those articles to treaties concluded between States, to the exclusion of treaties between States and other subjects of international law (e.g., international organizations) and between such other subjects (*see Part III.A, section 20*). It also decided not to deal with international agreements not in written form. In addition, the Commission decided that the draft articles should not contain any provisions concerning the following topics: the effect of the outbreak of hostilities upon treaties (*see Part III.B, section 4*); succession of States in respect of treaties (*see Part III.A, section 17(a)*); the question of the international responsibility of a State with respect to a failure to perform a treaty obligation (*see Part III.A, section 25*); “most-favoured-nation clause” (*see Part III.A, section 19*); and the application of treaties providing for obligations or rights to be performed or enjoyed by individuals.[[546]](#footnote-546)

Following the discussion in the Sixth Committee on the report of the Commission on the work of its eighteenth session, the General Assembly by resolution 2166 (XXI) of 5 December 1966 decided to convene an international conference of plenipotentiaries 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. It requested the Secretary-General to convoke the first session of the conference early in 1968 and the second session early in 1969. By the same resolution, the Assembly invited Member States, the Secretary-General and the Directors-General of those specialized agencies which act as depositaries of treaties to submit their written comments and observations on the draft articles. The International Atomic Energy Agency also submitted written comments and observations.

The following year, on the recommendation of the Sixth Committee, the General Assembly, by resolution 2287 (XXII) of 6 December 1967, decided to convene the first session of the United Nations Conference on the Law of Treaties at Vienna in March 1968.

The first session of the United Nations Conference on the Law of Treaties was accordingly held at Vienna from 26 March to 24 May 1968 and was attended by representatives of 103 countries and observers from thirteen specialized and intergovernmental agencies. The second session was held from 9 April to 22 May 1969, also at Vienna, and was attended by representatives of 110 countries and observers from fourteen specialized and intergovernmental agencies.[[547]](#footnote-547) The first session of the Conference was devoted primarily to consideration by a Committee of the Whole and by a Drafting Committee of the set of draft articles adopted by the International Law Commission. The first part of the second session was devoted to meetings of the Committee of the Whole and of the Drafting Committee, completing their consideration of articles reserved from the previous session. The remainder of the second session was devoted to thirty plenary meetings which considered the articles adopted by the Committee of the Whole and reviewed by the Drafting Committee.

The Conference adopted the Vienna Convention on the Law of Treaties[[548]](#footnote-548) on 22 May 1969. The Convention is made up of a preamble, eighty-five articles and an annex.

In line with the draft articles prepared by the Commission, the Vienna Convention on the Law of Treaties applies to treaties between States, the term “treaty” being defined for the purposes of the Convention as “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”. Without prejudice to any relevant rules of the organization concerned, the Convention expressly provides that it applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization. Part I of the Convention also provides that the fact that international agreements concluded between States and other subjects of international law or between such other subjects of international law, or international agreements not in written form, are not covered by the Convention shall not affect (*a*) the legal force of such agreements, (*b*) the application to them of any of the rules set forth in the Convention to which they would be subject under international law independently of the Convention, and (*c*) the application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties. Finally, it is also provided that the Convention applies only to treaties which are concluded by States after the entry into force of the Convention with regard to such States, without prejudice to the application of any of the rules set forth in the Convention to which treaties would be subject under international law independently of the Convention.

The principal matters covered in the Convention are: conclusion and entry into force of treaties (part II), including reservations and provisional application of treaties; observance, application and interpretation of treaties (part III), including treaties and third States; amendment and modification of treaties (part IV); invalidity, termination and suspension of the operation of treaties (part V), including the procedure for the application of the provisions of that part and for the settlement of disputes concerning the application or interpretation of those provisions, and the consequences of the invalidity, termination or suspension of the operation of a treaty; miscellaneous provisions (part VI), reserving cases of State succession, State responsibility and outbreak of hostilities, as well as the case of an aggressor State, and dealing with the severance or absence of diplomatic or consular relations and the conclusion of treaties; and depositaries, notifications, corrections and registration (part VII). The conciliation procedure referred to in article 66 of part V is specified in an annex to the Convention. The text of the Convention is reproduced in annex V, section F.

The final provisions of the Convention open it for signature and for ratification or accession by all States Members of the United Nations or members of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice, and also by any other State invited by the General Assembly to become a party to the Convention. The Convention was opened for signature on 23 May 1969. It remained open for signature until 30 November 1969 at the Federal Ministry for Foreign Affairs of Austria and, subsequently, until 30 April 1970, at United Nations Headquarters. Signatures are subject to ratification. The Convention is open for accession by any non-signatory State entitled to become a party. It entered into force on 27 January 1980. By 31 January 2007, 108 States were parties to the Convention.

In addition to the Vienna Convention on the Law of Treaties, the Conference adopted two declarations (the Declaration on the Prohibition of Military, Political or Economic Coercion in the Conclusion of Treaties and the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties) and five resolutions which were annexed to the Final Act of the Conference.[[549]](#footnote-549)

In the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties, the Conference stated its conviction that multilateral treaties which deal with the codification and progressive development of international law, or the object and purpose of which are of interest to the international community as a whole, should be open to universal participation; noted that articles 81 and 83 of the Vienna Convention on the Law of Treaties enable the General Assembly to issue special invitations to States which are not members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency, or parties to the Statute of the International Court of Justice, to become parties to the Convention; and invited the General Assembly to give consideration, at its twenty-fourth session, to the matter of issuing invitations in order to ensure the widest possible participation in the Vienna Convention on the Law of Treaties. At the General Assembly’s twenty-fourth session, this matter was referred to the Sixth Committee, which recommended to the Assembly that the question of issuing invitations be deferred until the twenty-fifth session. The Assembly adopted this recommendation without objection. On the recommendation of the General Committee, the General Assembly further deferred the consideration of the matter in 1970, 1971, 1972 and 1973 until the following year. On 12 November 1974, the Assembly adopted resolution 3233 (XXIX) whereby it decided to invite all States to become parties to the Vienna Convention on the Law of Treaties.

15. Special missions

In submitting its final draft on diplomatic intercourse and immunities (*see pages 136 and 137*) to the General Assembly at its thirteenth session, in 1958, the Commission stated that, although the draft dealt only with permanent diplomatic missions, diplomatic relations also assumed other forms that might be placed under the heading of “ad hoc diplomacy,” covering itinerant envoys, diplomatic conferences and special missions sent to a State for limited purposes. In 1958, the Commission considered that these forms of diplomacy should also be studied, in order to bring out the rules of law governing them, and accordingly requested A. E. F. Sandström, the Special Rapporteur for the topic “diplomatic intercourse and immunities,” to undertake that study and to submit his report at a future session. The Commission decided at its eleventh session, in 1959, to place the question of ad hoc diplomacy as a special topic on the agenda for its twelfth session, and appointed Mr. Sandström as Special Rapporteur for the topic.

At its twelfth session, in 1960, on the basis of the Special Rapporteur’s report,[[550]](#footnote-550) the Commission adopted three draft articles on “special missions” together with commentaries. In the report covering the work of its twelfth session, the Commission stated that the draft should be regarded ‘‘as constituting only a preliminary survey”; the Commission, nevertheless, recommended that the General Assembly should refer the draft to the United Nations Conference on Diplomatic Intercourse and Immunities which was to meet in Vienna in the spring of 1961. Article 1, paragraph 1, of the draft defines “special mission” as follows:

“The expression ‘special mission’ means an official mission of State representatives sent by one State to another in order to carry out a special task. It also applies to an itinerant envoy who carries out special tasks in the States to which he proceeds.”[[551]](#footnote-551)

At the same session, the Commission, observing that the question of “diplomatic conferences” was linked not only to that of “special missions” but also to that of “relations between States and international organizations,” decided not to deal with the subject of “diplomatic conferences” for the moment.

The General Assembly, by resolution 1504 (XV) of 12 December 1960, decided that the draft articles on special missions should be referred to the Vienna Conference so that they could be considered together with the draft articles on permanent diplomatic missions.

At the Vienna Conference, the question of special missions was referred to a Subcommittee established by the Committee of the Whole. While stressing the importance of the subject of special missions, the Subcommittee noted that, because of lack of time, the draft articles on special missions had, in contrast with the usual practice, not been submitted to Governments for their comments before being drafted in final form, and that the draft articles did little more than indicate which of the rules on permanent missions applied, and which did not apply, to special missions. The Subcommittee considered that, while the basic rules might in fact be the same, it could not be assumed that such an approach necessarily covered the whole field of special missions. Following consideration of the topic by the Subcommittee and by the Committee of the Whole, the Vienna Conference adopted a resolution recommending to the General Assembly that it refer the topic back to the International Law Commission.[[552]](#footnote-552)

At its sixteenth session, the General Assembly adopted resolution 1687 (XVI) of 18 December 1961, requesting the Commission to study further the subject of special missions and to report thereon to the Assembly.

During its fifteenth session, in 1963, the Commission appointed Milan Bartoš as Special Rapporteur for the topic of special missions and decided that he should prepare draft articles, based on the provisions of the 1961 Vienna Convention on Diplomatic Relations but that he should keep in mind that special missions were, by virtue of both their functions and nature, an institution distinct from permanent missions. It was also agreed to await the Special Rapporteur’s recommendations before deciding whether the draft articles should be in the form of an additional protocol to the 1961 Vienna Convention or should be embodied in a separate convention or any other appropriate form. With regard to the scope of the topic, most of the members of the Commission expressed the opinion that for the time being the question of status of government delegates to international conferences should not be covered in the study on special missions.

The Commission considered this topic from its sixteenth session, in 1964, to its nineteenth session, in 1967. In connection with its work on this topic, the Commission had before it the reports of the Special Rapporteur,[[553]](#footnote-553) information provided by Governments[[554]](#footnote-554) as well as a document prepared by the Secretariat.[[555]](#footnote-555)

At its sixteenth session, in 1964, the Commission considered the first report of the Special Rapporteur[[556]](#footnote-556) and provisionally adopted sixteen articles, which were subsequently submitted to the General Assembly and to Governments for information. At the first part of its seventeenth session, in 1965, the Commission considered the second report of the Special Rapporteur[[557]](#footnote-557) and provisionally adopted twenty-eight articles, which follow on from the sixteen articles previously adopted. All draft articles adopted at the sixteenth and seventeenth sessions were submitted to the General Assembly for its consideration and were also transmitted to Governments for comment.

At its eighteenth session, in 1966, the Commission examined certain questions of a general nature affecting special missions which had arisen out of the opinions expressed in the Sixth Committee and the written comments by Governments and which it was important to settle as a preliminary to the later work on the draft articles.

By resolution 2167 (XXI) of 5 December 1966, the General Assembly recommended that the Commission continue its work relating to special missions with the object of presenting a final draft on the topic in its next report.

At its nineteenth session, in 1967, the Commission, after examining the Special Rapporteur’s fourth report[[558]](#footnote-558) and taking into account the written comments received from Governments and the views expressed in the Sixth Committee, adopted its final draft on special missions, comprising fifty draft articles, with commentaries,[[559]](#footnote-559) and submitted them to the General Assembly with a recommendation “that appropriate measures be taken for the conclusion of a convention on special missions”.[[560]](#footnote-560)

The Sixth Committee subsequently recommended that an item entitled “Draft convention on special missions” be placed on the provisional agenda of the General Assembly’s twenty-third session with a view to the adoption of such a convention by the Assembly. By resolution 2273 (XXII) of 1 December 1967, the Assembly adopted the recommendation of the Sixth Committee and invited Member States to submit comments and observations on the draft articles.

At the General Assembly’s twenty-third and twenty-fourth sessions, in 1968 and 1969, the Sixth Committee considered the item “Draft convention on special missions” on the basis of the draft adopted by the International Law Commission. At each session, Switzerland[[561]](#footnote-561) was invited to participate in the relevant proceedings of the Sixth Committee as an observer without the right to vote. By resolution 2530 (XXIV) of 8 December 1969, the General Assembly, upon the recommendation of the Sixth Committee, adopted the Convention on Special Missions[[562]](#footnote-562) and the Optional Protocol concerning the Compulsory Settlement of Disputes relating thereto,[[563]](#footnote-563) which are reproduced in annex V, section E. On the same date, 8 December 1969, while adopting the Convention on Special Missions, the General Assembly, in resolution 2531 (XXIV), also recommended that “the sending State should waive the immunity of members of its special mission in respect of civil claims of persons in the receiving State, when it can do so without impeding the performance of the functions of the special mission, and that, when immunity is not waived, the sending State should use its best endeavours to bring about a just settlement of the claims”. For the purposes of the Convention, a “special mission” means “a temporary mission, representing the State, which is sent by one State to another State with the consent of the latter for the purpose of dealing with it on specific questions or of performing in relation to it a specific task”.

The final provisions of the Convention open it for signature and for ratification or accession by all States Members of the United Nations or members of any of the specialized agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice, and also by any other State invited by the General Assembly to become a party to the Convention. The final provisions of the Optional Protocol open it for signature and for ratification or accession by all States which may become parties to the Convention. The Convention and the Optional Protocol were opened for signature on 16 December 1969 and remained open for signature until 31 December 1970. Signatures are subject to ratification. The Convention and the Optional Protocol are open for accession by any non-signatory State entitled to become a party. The Convention and the Optional Protocol came into force on 21 June 1985. By 31 January 2007, 38 States had become parties to the Convention and 17 States had become parties to the Optional Protocol.

Also by resolution 2530 (XXIV), the General Assembly decided to consider at its twenty-fifth session the question of issuing invitations in order to ensure the widest possible participation in the Convention. The Assembly deferred consideration of the matter in 1970, 1971, 1972 and 1973 until the following year. On 12 November 1974, on the recommendation of the Sixth Committee, the General Assembly adopted resolution 3233 (XXIX) whereby it noted the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties, adopted by the United Nations Conference on the Law of Treaties, in which the Assembly was invited to give consideration to the matter of issuing invitations in order to ensure the widest possible participation in that Convention. The Assembly by that resolution decided to invite all States to become parties to the Convention on Special Missions and its Optional Protocol concerning the Compulsory Settlement of Disputes.

16. Relations between States and international organizations[[564]](#footnote-564)

In the course of the consideration by the Sixth Committee, during the General Assembly’s thirteenth session, in 1958, of the Commission’s final report on diplomatic intercourse and immunities (*see page 137*), the representative of France proposed that the General Assembly should request the Commission to include in its agenda the study of the subject of relations between States and international organizations. In support of this proposal, he pointed out that the development of international organizations had increased the number and scope of the legal problems arising out of relations between the organizations and States and that these problems had only partially been solved by special conventions governing privileges and immunities of international organizations. It was therefore necessary, he stressed, not only to codify those special conventions but also to work out general principles which would serve as a basis for the progressive development of international law in the field.

On the recommendation of the Sixth Committee, the General Assembly adopted resolution 1289 (XIII) of 5 December 1958, inviting the Commission “to give further consideration to the question of relations between States and intergovernmental international organizations at the appropriate time, after study of diplomatic intercourse and immunities, consular intercourse and immunities and ad hoc diplomacy has been completed by the United Nations and in the light of the results of that study and of the discussion in the General Assembly”.

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

At its fifteenth and sixteenth sessions, in 1963 and 1964, respectively, the Commission considered the scope of and approach to the topic of relations between States and intergovernmental organizations on the basis of the report and working papers submitted by the Special Rapporteur.[[565]](#footnote-565) A majority of the Commission concluded that, while agreeing that in principle the topic of relations between States and intergovernmental organizations had a broad scope, for the purpose of its immediate study “the question of diplomatic law in its application to relations between States and intergovernmental organizations should receive priority”. Subsequently, the Commission concentrated its work with respect to the topic on the study of the status, privileges and immunities of representatives of States to international organizations. After completing its work on the first part of the topic, the Commission, at its twenty-eighth session, in 1976, commenced its consideration of the second part of the topic dealing with the status, privileges and immunities of international organizations, their officials, experts and other persons engaged in their activities not being representatives of States.[[566]](#footnote-566)

(a) Status, privileges and immunities of representatives of States to international organizations

The Commission considered the first part of the topic from its twentieth session, in 1968, to its twenty-third session, in 1971. In connection with its consideration of the topic, the Commission had before it the reports of the Special Rapporteur,[[567]](#footnote-567) information provided by Governments and international organizations[[568]](#footnote-568) as well as documents prepared by the Secretariat.[[569]](#footnote-569)

From its twentieth session, in 1968, to its twenty-second session, in 1970, the Commission proceeded with the first reading of the draft articles and transmitted the provisionally adopted draft articles with commentaries to Governments of Member States and Switzerland as well as the secretariats of the United Nations, the specialized agencies and the International Atomic Energy Agency for their observations.

By resolutions 2501 (XXIV) of 12 November 1969 and 2634 (XXV) of 12 November 1970, the General Assembly recommended that the Commission should continue its work on relations between States and international organizations, with the object of presenting in 1971 a final draft on the topic. It was also recommended that the Commission take into account the views expressed at the General Assembly session and the written comments submitted by Governments.

At its twenty-third session, in 1971, the Commission held the second reading of the draft articles. It established a working group that studied the whole draft from the stand-point of its general economy and structure and made recommendations thereon to the Commission.[[570]](#footnote-570)

At the same session, the Commission adopted the final set of eighty-two draft articles, with commentaries,[[571]](#footnote-571) and submitted it to the General Assembly with a recommendation that it should convene an international conference of plenipotentiaries to study the draft articles and to conclude a convention on the subject.[[572]](#footnote-572) In the light of the contents of the final draft, the title was changed to “Draft articles on the representation of States in their relations with international organizations”.[[573]](#footnote-573)

The scope of the draft was limited to international organizations having a universal character, to organs of such organizations in which States were parties and to conferences convened under the auspices of those organizations. Because the set of provisions on observer delegations to organs and conferences had not been included in the provisional sets of draft articles transmitted to Governments and international organizations, the Commission deemed it appropriate to present its provisions on observer delegations in the form of an annex to the final draft articles.[[574]](#footnote-574)

The General Assembly, in resolution 2780 (XXVI) of 3 December 1971, expressed its desire that an international convention be elaborated and concluded expeditiously on the basis of the Commission’s draft articles. By the same resolution, Member States and Switzerland were requested to submit written comments and observations on the draft articles and on the procedure to be adopted for the elaboration and conclusion of a convention on the subject. The Secretary-General and the Directors-General of the specialized agencies and the International Atomic Energy Agency were also invited to submit their written comments and observations on the draft articles.

The following year the General Assembly, by resolution 2966 (XXVII) of 14 December 1972, decided to convene the international conference as soon as practicable. In 1973 the Assembly, by resolution 3072 (XXVIII) of 30 November, decided that the conference would be held early in 1975 in Vienna.

The United Nations Conference on the Representation of States in Their Relations with International Organizations[[575]](#footnote-575) was thus held at Vienna from 4 February to 14 March 1975. It was attended by representatives of eighty-one States as well as observers from two States, seven specialized and related agencies, three other intergovernmental organizations and seven national liberation movements recognized by the Organization of African Unity and/or by the League of Arab States. The Conference established a Committee of the Whole and assigned to it the consideration of the draft articles adopted by the International Law Commission. It also set up a Drafting Committee, to which it entrusted, in addition to the responsibilities for drafting and for coordinating and reviewing all the texts adopted, the preparation of the title, preamble and final clauses of the Convention, as well as the preparation of the Final Act of the Conference.

On 13 March 1975, the Conference adopted the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character,[[576]](#footnote-576) consisting of ninety-two articles, the text of which is reproduced in annex V, section H. The Convention was opened for signature on 14 March 1975. It remained open for signature until 30 September 1975 at the Federal Ministry of Foreign Affairs of the Republic of Austria and, subsequently, until 30 March 1976 at United Nations Headquarters. Signatures are subject to ratification. The Convention remains open for accession by any State. It will enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession. As of 31 January 2007, 33 States had become parties to the Convention.

In addition to the Vienna Convention, the Conference adopted two resolutions relating, respectively, to the status of national liberation movements recognized by the Organization of African Unity and/or by the League of Arab States and to the application of the Convention in future activities of international organizations. These resolutions are annexed to the Final Act of the Conference.[[577]](#footnote-577) In light of the provisions of those resolutions, an item was placed on the agenda of the thirtieth session of the General Assembly, in 1975, entitled “Resolutions adopted by the United Nations Conference on the Representation of States in Their Relations with International Organizations: (*a*) resolution relating to the observer status of national liberation movements recognized by the Organization of African Unity and/or by the League of Arab States; (*b*) resolution relating to the application of the Convention in future activities of international organizations”. From its thirtieth to thirty-fourth sessions, the General Assembly deferred consideration of the item to its next session. It considered it at its thirty-fourth, thirty-fifth, thirty-seventh, thirty-ninth,[[578]](#footnote-578) forty-first, forty-third, forty-fifth, forty-seventh and forty-ninth sessions and adopted resolutions 35/167 of 15 December 1980, 37/104 of 16 December 1982, 39/76 of 13 December 1984, 41/71 of 3 December 1986, 43/160 of 9 December 1988, 45/37 of 28 November 1990 and 47/29 of 25 November 1992, and decisions 34/433 and 49/423. The General Assembly by its decision 49/423 deferred the consideration of the subject matter to its future session.

(b) Status, privileges and immunities of international organizations

At its twenty-eighth session, in 1976, the Commission requested the Special Rapporteur for the topic, Abdullah El-Erian, to prepare a preliminary report to enable it to take the necessary decisions and to define its course of action on the second part of the topic of relations between States and international organizations, namely, the status, privileges and immunities of international organizations and their officials, experts and other persons engaged in their activities who are not representatives of States.

At its twenty-ninth session, in 1977, the Commission decided to authorize the Special Rapporteur to continue his study on the lines indicated in his preliminary report[[579]](#footnote-579) and to prepare a further report having regard to the views expressed and the questions raised during the debate at the twenty-ninth session. It also decided to authorize the Special Rapporteur to seek additional information and expressed the hope that he would carry out his research in the customary manner, namely by investigating the agreements and practices of international organizations, whether within or outside the United Nations system, as well as the legislation and practice of States.

In resolution 32/151 of 19 December 1977, the General Assembly endorsed the conclusions reached by the Commission regarding the second part of the topic of relations between States and international organizations.

At the thirtieth session of the Commission, in 1978, the Commission approved the conclusions and recommendations set out in the second report of the Special Rapporteur[[580]](#footnote-580) that:

(a) General agreement existed both in the Commission and in the Sixth Committee of the General Assembly on the desirability of the Commission taking up the study of the second part of the topic “Relations between States and international organizations”;

(b) The Commission’s work on the second part of the topic should proceed with great prudence;

(c) For the purposes of its initial work on the second part of the topic, the Commission should adopt a broad outlook, inasmuch as the study should include regional organizations. The final decision on whether to include such organizations in the eventual codification could be taken only when the study was completed;

(d) The same broad outlook should be adopted in connection with the subject matter of the study, inasmuch as the question of priority would have to be deferred until the study was completed.

At its thirty-first session, in 1979, the Commission appointed Leonardo Díaz-Gonzalez as Special Rapporteur for this part of the topic.

The Commission considered the topic on the basis of the reports of the new Special Rapporteur,[[581]](#footnote-581) as well as documents prepared by the Secretariat,[[582]](#footnote-582) at its thirty-fifth, thirty-seventh, thirty-ninth, forty-second and forty-third sessions, in 1983, 1985, 1987, 1990 and 1991, respectively. The Commission proceeded with the first reading of the draft articles on the basis of the fourth, fifth and sixth reports of the Special Rapporteur[[583]](#footnote-583) at its forty-second and forty-third sessions, in 1990 and 1991, respectively.

At its forty-fourth session, in 1992, the Commission noted that the Planning Group had established a Working Group to review the progress so far achieved on the topic and to make a recommendation as to whether the Commission should continue with it and, if in the affirmative, in what direction. The Commission observed that the discussion of the first part of the topic, dealing with the status, privileges and immunities of representatives of States to international organizations, had resulted in draft articles which had formed the basis of the 1975 Convention on the Representation of States in Their Relations with International Organizations of a Universal Character. States had been slow to ratify the Convention or adhere to it and doubts had therefore arisen as to the advisability of continuing the work undertaken in 1976 on the second part of the topic, dealing with the status, privileges and immunities of international organizations and their personnel, a matter which seemed to a large extent covered by existing agreements. The Commission also noted that the passage of time had failed to bring any sign of increased acceptance of the Convention and the Commission had not given very active consideration to the topic. Eight reports had been presented by two successive Special Rapporteurs and all of the 22 articles contained therein had been referred to the Drafting Committee, but the Committee had not taken any action on them. Neither in the Commission nor in the Sixth Committee had the view been expressed that the topic should be more actively considered. Under the circumstances, the Commission, accepting the recommendation of the Planning Group that the topic should not be pursued further for the time being, decided not to pursue further during the term of office of its members the consideration of the topic, unless the General Assembly decided otherwise.

The General Assembly, in resolution 47/33 of 25 November 1992, endorsed the above decision of the Commission.

17. Succession of States and Governments

At its first session, in 1949, the Commission selected the subject of succession of States and Governments as one of the topics for codification without, however, including it in the list of topics to which it gave priority. At its fourteenth session, in 1962, the Commission was apprised of General Assembly resolution 1686 (XVI) of 18 December 1961, recommending that the Commission include on its priority list the topic of succession of States and Governments. In principle, all members of the Commission were in favour of including the topic on its priority list, but there were divergent views concerning the scope of the topic and the best approach to its study. The Commission decided to set up a Subcommittee on the Succession of States and Governments whose task was to submit to the Commission a preliminary report containing suggestions on the scope of the subject, the method of approach to the study and the means of providing the necessary documentation.[[584]](#footnote-584)

At its fifteenth session, in 1963, the Commission considered and unanimously approved the report of the Subcommittee.[[585]](#footnote-585) In the opinion of the Commission, the priority given to the study of the question of State succession was fully justified, and it was agreed that the question of the succession of Governments would, for the time being, be considered only to the extent necessary to supplement the study on State succession. Several members of the Commission stressed the importance which State succession had for new States and for the international community in view of the phenomenon of decolonization, and agreed with the Subcommittee’s view that special attention should be given in the study to the problems of concern to new States.

The Commission expressed its agreement with the broad outline, the order of priority of the headings and the detailed division of the topic recommended by the Subcommittee: succession in respect of treaties; succession in respect of rights and duties resulting from other sources than treaties (revised in 1968 to read “succession of States in respect of matters other than treaties”[[586]](#footnote-586)) and succession in respect of membership of international organizations. The Commission approved the Subcommittee’s recommendations concerning the relationship between the topic of State succession and other topics on the Commission’s agenda, in particular that the succession in respect of treaties would be considered in connection with the succession of States rather than in the context of the law of treaties.

The objectives proposed by the Subcommittee—a survey and evaluation of the current state of the law and practice in the matter of State succession and the preparation of draft articles on the topic in the light of new developments in international law—were approved by all members of the Commission. The Commission appointed Manfred Lachs as Special Rapporteur for the topic.

The General Assembly, in resolution 1902 (XVIII) of 18 November 1963, recommended that the Commission should “continue its work on the succession of States and Governments, taking into account the views expressed at the eighteenth session of the General Assembly, the report of the Subcommittee on the Succession of States and Governments and the comments which may be submitted by Governments, with appropriate reference to the views of States which have achieved independence since the Second World War”.

Following the resignation of Mr. Lachs, the Commission decided, at its nineteenth session, in 1967, to deal with the three aspects of the topic in accordance with the broad outline of the subject laid down in the report of the Subcommittee in 1963. The Commission appointed Special Rapporteurs for the first two aspects of the topic, succession in respect of treaties and succession of States in respect of matters other than treaties, and decided to leave aside for the time being the third aspect, succession in respect of membership of international organizations, without assigning it to a Special Rapporteur. It was considered that the third aspect related both to succession in respect of treaties and to relations between States and international organizations. In accordance with the decision taken in 1963, it was agreed to give priority to the study of State succession, considering the study of succession of Governments only to the extent necessary to supplement the study of State succession.

(a) Succession of States in respect of treaties

The Commission considered the sub-topic at its twentieth, twenty-second, twenty-fourth and twenty-sixth sessions, in 1968, 1970, 1972 and 1974, respectively. The Commission appointed Sir Humphrey Waldock and Sir Francis Vallat as the successive Special Rapporteurs for the sub-topic at its nineteenth and twenty-fifth sessions, in 1967 and 1973, respectively. In connection with its consideration of the topic, the Commission had before it the reports of the Special Rapporteurs,[[587]](#footnote-587) information provided by Governments and international organizations[[588]](#footnote-588) as well as documents prepared by the Secretariat.[[589]](#footnote-589)

At its twenty-fourth session, in 1972, the Commission conducted the first reading of the draft articles on succession of States in respect of treaties. At that session, the Commission adopted on first reading a provisional draft with commentaries and, in accordance with articles 16 and 21 of its Statute, decided to transmit it to Governments of Member States for their observations.

The General Assembly, in resolution 2926 (XXVII) of 28 November 1972, recommended that the Commission should continue its work on the sub-topic in the light of comments received from Member States on the provisional draft. In resolution 3071 (XXVIII) of 30 November 1973, the General Assembly recommended that the Commission complete at its twenty-sixth session, in 1974, the second reading of the draft on succession of States in respect of treaties, in the light of comments received from Member States.

At its twenty-sixth session, in 1974, the Commission adopted the final text of the draft articles on the succession of States in respect of treaties, with commentaries,[[590]](#footnote-590) and submitted it to the General Assembly with a recommendation that the General Assembly should invite Member States to submit their written comments and observations on the draft articles and should convene a conference of plenipotentiaries to study the draft articles and conclude a convention on the subject.[[591]](#footnote-591)

The General Assembly, in resolution 3315 (XXIX) of 14 December 1974, invited Member States to submit their written comments and observations on the draft articles prepared by the Commission and on the procedure by which and the form in which work on the draft articles should be completed. The following year, the Assembly, by resolution 3496 (XXX) of 15 December 1975, decided to convene a conference of plenipotentiaries in 1977 to consider the draft articles and to embody the results of its work in an international convention and such other instruments as it might deem appropriate. In the resolution, the Assembly urged Member States which had not yet done so to submit as soon as possible their written comments and observations on the draft articles. On 24 November 1976, the Assembly adopted resolution 31/18 by which it decided that the United Nations Conference on Succession of States in Respect of Treaties would be held from 4 April to 6 May 1977 at Vienna.

The Conference was held as scheduled but, having been unable to conclude its work in the time available, it recommended on 6 May 1977 that the General Assembly decide to reconvene the Conference in the first half of 1978 for a final session.[[592]](#footnote-592)

The resumed session of the Conference, approved by General Assembly resolution 32/47 of 8 December 1977, was held at Vienna from 31 July to 23 August 1978.[[593]](#footnote-593)

The delegations of one hundred States participated in the Conference (eighty-nine States in the 1977 session and ninety-four States in the resumed session). Two States were represented by observers at each of the 1977 and resumed sessions. In addition, the United Nations Council for Namibia[[594]](#footnote-594) participated in the Conference and the Palestine Liberation Organization and the South West Africa People’s Organization (SWAPO) were represented by observers, SWAPO at the 1977 session only. Four specialized and related agencies and one other intergovernmental organization sent observers to the 1977 session and two other intergovernmental organizations to both the 1977 and resumed sessions.

The Conference assigned to a Committee of the Whole the consideration of the draft articles adopted by the International Law Commission and entrusted to a Drafting Committee, in addition to its responsibilities for drafting and coordinating and reviewing all texts adopted, with the preparation of the title, preamble and final clauses of the Convention and the Final Act of the Conference. The Conference also established an Informal Consultations Group for the purpose of considering draft articles 6, 7 and 12 and, at the resumed session, an Ad hoc Group on Peaceful Settlement of Disputes. The Conference, on 22 August 1978, adopted the Vienna Convention on Succession of States in Respect of Treaties[[595]](#footnote-595) consisting of a preamble, fifty articles and an annex, the text of which is reproduced in annex V, section I. The Convention retains, to a considerable degree, the structure and the text of the draft articles adopted by the International Law Commission. The annex to the Convention specifies the conciliation procedure to which article 42 of the Convention relates.

The Final Act of the Conference, of which five resolutions adopted by the Conference form an integral part, was signed on 23 August 1978. The Convention was opened for signature on 23 August 1978 until 28 February 1979 at the Federal Ministry for Foreign Affairs of the Republic of Austria and, subsequently, until 31 August 1979 at United Nations Headquarters. Signatures are subject to ratification. The Convention remains open for accession by any State. The Convention entered into force on 6 November 1996. As of 31 January 2007, 21 States had become parties to the Convention.

Of the five resolutions adopted by the Conference, one, relating to incompatible treaty obligations and rights arising from a uniting of States, recommends that in such cases the successor States and the other States parties to the treaties in question make every effort to resolve the matter by mutual agreement. In another resolution, concerning Namibia, the Conference resolved that the relevant articles of the Convention shall be interpreted, in the case of Namibia, in conformity with United Nations resolutions on the question of Namibia and that South Africa was not the predecessor State of the future independent State of Namibia.[[596]](#footnote-596)

(b) Succession of States in respect of matters other than treaties

At its nineteenth session, in 1967, the Commission appointed Mohammed Bedjaoui as Special Rapporteur for the sub-topic of succession in respect of rights and duties resulting from sources other than treaties.[[597]](#footnote-597)

The Commission considered this sub-topic at its twentieth, twenty-first, twenty-fifth and from its twenty-seventh to thirty-third sessions, in 1968, 1969, 1973 and from 1975 to 1981, respectively. In connection with its consideration of this topic, the Commission had before it the reports of the Special Rapporteur,[[598]](#footnote-598) information provided by Governments[[599]](#footnote-599) as well as documents prepared by the Secretariat.[[600]](#footnote-600)

At its twenty-fifth session, in 1973, the Commission decided to limit its study for the time being to only one category of public property, namely property of the State. At the same session, it began the first reading of the draft articles.

The Commission completed the first reading of the draft articles on succession of States in respect of State property and State debts at its thirty-first session, in 1979, and on succession in respect of State archives, at its following session, in 1980. In accordance with articles 16 and 21 of its Statute, the draft articles adopted by the Commission on first reading were transmitted, through the Secretary-General, to Governments of Member States for their observations.

The General Assembly, in paragraph 4 (*a*) of resolution 35/163 of 15 December 1980, recommended that, taking into account the written comments of Governments and views expressed in debates in the General Assembly, the Commission should, at its thirty-third session, complete the second reading of the draft articles on succession of States in respect of matters other than treaties adopted at its thirty-first and thirty-second sessions.

At its thirty-third session, in 1981, the Commission re-examined the draft articles in the light of the comments of Governments and adopted the final text of its draft articles on succession of States in respect of State property, archives and debts, as a whole, with commentaries.[[601]](#footnote-601) In accordance with its Statute, the Commission submitted the final draft articles to the General Assembly with a recommendation that the Assembly should convene a conference of plenipotentiaries to study the draft articles and conclude a convention on the subject.[[602]](#footnote-602)

The General Assembly, in resolution 36/113 of 10 December 1981, decided to convene an international conference of plenipotentiaries to consider the draft articles on succession of States in respect of State property, archives and debts, and to embody the results of its work in an international convention and such other instruments as it might deem appropriate. In that resolution, the General Assembly also invited Member States to submit their written comments and observations on the final draft articles. In resolution 37/11 of 15 November 1982, the General Assembly decided that the United Nations Conference on Succession of States in respect of State Property, Archives and Debts would be held from 1 March to 8 April 1983 at Vienna.

The Conference was accordingly held at Vienna from 1 March to 8 April 1983. The delegations of ninety States participated in the Conference, as did also Namibia, represented by the United Nations Council for Namibia. In addition, the Palestine Liberation Organization, the African National Congress of South Africa and the Pan Africanist Congress of Azania were represented at the Conference. Two specialized and related agencies and two other intergovernmental organizations were represented by observers.

The Conference had before it written comments of Governments on the final draft articles on succession of States in respect of State property, archives and debts pursuant to General Assembly resolution 36/113 of 10 December 1981, as well as comments made orally on the draft articles in the Sixth Committee of the General Assembly at the thirty-sixth and thirty-seventh sessions of the Assembly. The comments were contained in an analytical compilation prepared by the Secretariat of the United Nations.[[603]](#footnote-603)

The Conference assigned to the Committee of the Whole the consideration of the draft articles on succession of States in respect of State property, archives and debts adopted by the International Law Commission. It entrusted to the Drafting Committee, in addition to the responsibility of drafting and coordinating and reviewing all the texts adopted, the preparation of the title, preamble and final clauses of the Convention, as well as the preparation of the Final Act of the Conference. The Conference, on 7 April 1983, adopted the Vienna Convention on Succession of States in respect of State Property, Archives and Debts,[[604]](#footnote-604) consisting of a preamble, fifty-one articles and an annex, the text of which is reproduced in annex V, section J. The Annex to the Convention specifies the conciliation procedure to which article 43 of the Convention relates. The Convention was opened for signature on that date until 31 December 1983 at the Federal Ministry for Foreign Affairs of the Republic of Austria and, subsequently, until 30 June 1984 at United Nations Headquarters. The Convention is subject to ratification. The Convention remains open for accession by any State. The Convention shall enter into force on the thirtieth day following the date of the deposit of the fifteenth instrument of ratification or accession. As of 31 January 2007, seven States had become parties to the Convention.

The Final Act of the Conference, of which six resolutions adopted by the Conference form an integral part, was signed on 8 April 1983. One of the resolutions adopted by the Conference recognizes that the provisions of the Convention may not in any circumstances impair the exercise of the lawful 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 Cooperation among States in accordance with the Charter of the United Nations, for peoples struggling against colonialism, alien domination, alien occupation, racial discrimination and *apartheid* and recognizes that the peoples in question possess permanent sovereignty over their resources and natural wealth and their rights to development, to information concerning their history and to the conservation of their cultural heritage. Another resolution, concerning Namibia, provides that the relevant articles of the Convention shall be interpreted, in the case of Namibia, in conformity with United Nations resolutions on the question of Namibia and that, in consequence, all the rights of the future independent State of Namibia should be reserved.[[605]](#footnote-605)

At its forty-seventh session, in 1995, the Commission took up another aspect of the topic of succession of States and Governments, namely “Nationality in relation to the succession of States” (*see Part III.A, section 24*).

18. Question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law

At the twenty-third session of the Commission, in 1971, it was suggested that the Commission should consider whether it would be possible to produce draft articles regarding such crimes as the murder, kidnapping and assaults upon diplomats and other persons entitled to special protection under international law. Though recognizing the importance and the urgency of the matter, the Commission had to defer its decision in view of the priority that had to be given to another topic. In considering its programme of work for 1972, however, the Commission decided that, if the General Assembly requested it to do so, it would prepare at its 1972 session a set of draft articles on that subject.

The General Assembly, in resolution 2780 (XXVI) of 3 December 1971, requested the Commission to study as soon as possible the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law with a view to preparing a set of draft articles dealing with offences committed against such agents and persons for submission to the Assembly at the earliest date which the Commission would consider appropriate. It also requested the Secretary-General to invite comments from Member States on the question of the protection of diplomats and to transmit them to the Commission.

At its twenty-fourth session, in 1972, the Commission, after an initial general discussion, set up a Working Group to review the problem involved and prepare a set of draft articles for submission to the Commission.[[606]](#footnote-606) This step, in contrast with the traditional procedure of appointing a Special Rapporteur to make a study of the subject and prepare draft articles, was based on the view of most of the members who participated in the general discussion that the subject was one of sufficient urgency and importance to justify the Commission adopting a more expeditious method of producing a set of draft articles for submission to the General Assembly at its twenty-seventh session.

At the conclusion of the initial stage of its work, the Working Group submitted to the Commission a first report[[607]](#footnote-607) containing a set of twelve draft articles on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons. Following the Commission’s consideration of the draft articles, the Working Group revised them and referred them back to the Commission in two further reports.[[608]](#footnote-608) The Commission considered those reports and provisionally adopted the draft of twelve articles, which it submitted to the General Assembly as well as to Governments for comments.

The General Assembly, in resolution 2926 (XXVII) of 28 November 1972, decided to consider at its twenty-eighth session the 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 Assembly. It also invited States and the specialized agencies and interested intergovernmental organizations to submit their written comments and observations on the draft articles prepared by the Commission.

At the twenty-eighth session of the General Assembly, in 1973, the Sixth Committee considered the provisions of the draft convention in two stages.[[609]](#footnote-609) In the first stage, it considered all the draft articles and the new articles proposed as well as the preamble and the final clauses and, except for article 9 which it decided to delete, referred them to a Drafting Committee either in their original form or in amended form, together with amendments submitted, as appropriate. In a second stage, it considered and adopted, in their original form or in amended form, the texts recommended by the Drafting Committee. The Drafting Committee was then entrusted with the coordination and further review of the text as a whole, before its adoption by the Sixth Committee for recommendation to the General Assembly. On 14 December 1973, the General Assembly adopted the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents,[[610]](#footnote-610) consisting of a preamble and twenty articles, annexed to resolution 3166 (XXVIII) of 14 December 1973. The text of the Convention, together with that of resolution 3166 (XXVIII),[[611]](#footnote-611) is reproduced in annex V, section G.

The Convention, which is subject to ratification, was opened for signature by all States at United Nations Headquarters until 31 December 1974. It remains open for accession by any State. The Convention came into force on 20 February 1977. As of 31 January 2007, 164 States had become parties to the Convention.

19. The most-favoured-nation clause

The topic of the most-favoured-nation clause was first raised in 1964 when the Commission was examining the question of treaties and third States. After considering the matter, the Commission concluded that it did not think it advisable to deal with the most-favoured-nation clause in the codification of the general law of treaties, although it felt that such clauses might at some future time appropriately form the subject of a special study.

At its nineteenth session, in 1967, in view of the manageable scope of the topic, of the interest expressed in it by representatives in the Sixth Committee and of the fact that the clarification of its legal aspects might be of assistance to the work of the United Nations Commission on International Trade Law, the Commission decided to place on its programme of work the topic of the most-favoured-nation clause in the law of treaties.

By resolution 2272 (XXII) of 1 December 1967, the General Assembly recommended that the Commission should study the topic of most-favoured-nation clauses in the law of treaties.

The Commission considered this topic at its twentieth, twenty-first, twenty-fifth, twenty-seventh, twenty-eighth and thirtieth sessions, in 1968, 1969, 1973, 1975, 1976 and 1978, respectively. The Commission appointed Endre Ustor and Nikolai A. Ushakov as the successive Special Rapporteurs for the topic at its nineteenth and twenty-ninth sessions, in 1967 and 1977, respectively. In connection with its consideration of the topic, the Commission had before it the working paper and reports of the Special Rapporteurs,[[612]](#footnote-612) information provided by Governments and international organizations[[613]](#footnote-613) as well as a document prepared by the Secretariat.[[614]](#footnote-614)

At its twentieth session, in 1968, after a general discussion on the matter, the Commission instructed the Special Rapporteur, Mr. Ustor, not to confine his studies to the domain of international trade but to explore the major fields of application of the clause. The Commission considered that it should clarify the scope and effect of the clause as a legal institution in the context of all aspects of its practical application.

The Commission proceeded with the first reading of the draft articles at its twenty-fifth, twenty-seventh and twenty-eighth sessions, in 1973, 1975 and 1976. At its twenty-eighth session, in 1976, the Commission decided to transmit the draft articles adopted on first reading, through the Secretary-General, to Governments of Member States for their observations in accordance with articles 16 and 21 of its Statute.

The General Assembly, in resolution 31/97 of 15 December 1976, welcomed the completion of the first reading of the draft articles and recommended that the Commission should conclude the second reading of them at its thirtieth session in the light of comments received from Member States, from organs of the United Nations which had competence on the subject matter and from interested intergovernmental organizations. This recommendation was reiterated by the Assembly in resolution 32/151 of 19 December 1977.

At its thirtieth session in 1978, the Commission re-examined the draft articles on the basis of the first report submitted by the new Special Rapporteur, Mr. Ushakov,[[615]](#footnote-615) comments received from Member States and international organizations and proposals submitted by certain members of the Commission for additional articles as follows: article 21 *bis,* “The most-favoured-nation clause in relation to arrangements between developing countries”;[[616]](#footnote-616) article A, “The most-favoured-nation clause and treatment extended in accordance with the Charter of Economic Rights and Duties of States”;[[617]](#footnote-617) article 21 *ter* “The most-favoured-nation clause and treatment extended under commodity agreements”;[[618]](#footnote-618) article 23 *bis* “The most-favoured-nation clause in relation to treatment extended by one member of a customs union to another member”[[619]](#footnote-619) and article 28 entitled “Settlement of disputes” with an annex.[[620]](#footnote-620)

At the same session, the Commission adopted the final text of thirty draft articles, with commentaries, on most-favoured-nation clauses.[[621]](#footnote-621) The text of the final draft is reproduced in annex IV, section 6.

In considering the relationship between the most-favoured-nation clause and the different levels of economic development, the Commission found that the operation of the clause in the sphere of economic relations, with particular reference to the developing countries, was not a matter that lent itself easily to codification of international law in the sense in which that term was used in article 15 of the Statute of the Commission, because the requirements for that process described therein, namely, extensive State practice, precedents and doctrine, were not easily discernible. The Commission, therefore, attempted to enter into the field of progressive development by adopting, inter alia, article 24, which was based on the proposal for a new article 21 *bis* mentioned above. The Commission, however, did not agree on the appropriateness of including in its final draft further provisions based on the two proposals for additional articles A and 21 *ter* and decided instead to bring their texts to the attention of the General Assembly so that Member States might take them into account as appropriate when undertaking the final codification of the topic. With regard to the question of most-favoured-nation clauses in relation to customs unions and similar associations of States, on which a proposal for a new article 23 *bis* had been submitted, the Commission, bearing in mind the inconclusiveness of the comments made thereon and the lack of time, agreed not to include an article on a customs union exception in the final draft. It was understood that the silence of the draft articles could not be interpreted as an implicit recognition of the existence or non-existence of such a rule but should, rather, be interpreted to mean that the ultimate decision was one to be taken by the States to which the draft was submitted, at the final stage of the codification of the topic. Likewise, the Commission decided not to include in its final draft a provision on the settlement of disputes such as that contained in the proposal for an additional article 28 but to refer the question to the General Assembly and Member States, and, ultimately, to the body which might be entrusted with the task of finalizing the draft articles.[[622]](#footnote-622)

The Commission decided, in conformity with article 23 of its Statute, to recommend to the General Assembly that the draft articles should be recommended to Member States with a view to the conclusion of a convention on the subject.[[623]](#footnote-623)

The General Assembly, by resolution 33/139 of 19 December 1978, inter alia, invited all States, organs of the United Nations which have competence on the subject matter and interested intergovernmental organizations to submit their written comments on the draft articles on most-favoured-nation clauses adopted by the International Law Commission as well as on those provisions relating to such clauses on which the Commission was unable to take decisions. The Assembly also requested States to comment on the Commission’s recommendation regarding the conclusion of a convention on the subject. The Assembly reiterated these invitations at its thirty-fifth, thirty-sixth, thirty-eighth and fortieth sessions, in 1980, 1981, 1983 and 1985.[[624]](#footnote-624)

By its decision 43/429 of 9 December 1988, the General Assembly, noting the complexity of codification or progressive development of the international law on most-favoured-nation clauses, and considering that additional time should be given to Governments for thorough study of the draft articles and for determining their respective positions on the most appropriate procedure for future work, decided to include the item in the provisional agenda of its forty-sixth session, in 1991.

The General Assembly, at its forty-sixth session, in 1991, gave further consideration to the topic. In its decision 46/416 of 9 December 1991, the Assembly, having noted with appreciation the valuable work done by the Commission on the most-favoured-nation clauses, as well as the observations and comments of Member States, of organs of the United Nations, of the specialized agencies and of interested intergovernmental organizations, decided to bring the draft articles on most-favoured-nations clauses, as contained in the report of the Commission on the work of its thirtieth session,[[625]](#footnote-625) to the attention of Member States and interested intergovernmental organizations for their consideration in such cases and to the extent as they deemed appropriate.

At its fifty-eighth session, in 2006, the Commission considered a proposal to include the topic “most-favoured-nation clauses” in its long-term programme of work. It recalled the outcome of its previous consideration of the topic, and noted that some of its members believed that the topic should not be reopened since the basic policy differences that caused the General Assembly to take no action on the Commission’s draft article had not been resolved, and should first be dealt with in international forums with the necessary technical expertise and policy mandate. Other members considered that, given the changes in the international situation and the continued importance of the most-favoured-nation clause in contemporary treaties, in particular in the fields of trade law and international investments, the time had come to undertake further work on the question.[[626]](#footnote-626)

20. Question of treaties concluded between States and international organizations or between two or more international organizations

The United Nations Conference on the Law of Treaties, held in 1969 at Vienna, adopted a resolution entitled “Resolution relating to article 1 of the Vienna Convention on the Law of Treaties,” annexed to the Final Act, recommending that the General Assembly should refer to the Commission the study of the question of treaties concluded between States and international organizations or between two or more international organizations (*see page 148*). Acting on this recommendation, the General Assembly, in resolution 2501 (XXIV) of 12 November 1969, recommended that the International Law Commission should study the question, in consultation with the principal international organizations.

At its twenty-second session, in 1970, the Commission included this question in its programme of work and set up a Subcommittee to consider the preliminary problems involved in the study of the topic. The Subcommittee’s report,[[627]](#footnote-627) as adopted by the Commission, requested the Secretariat to undertake certain preparatory work, in particular as regards United Nations practice, and asked the Chairman of the Subcommittee to submit to members of the Subcommittee a questionnaire concerning the method of treating the topic and its scope.

At the Commission’s twenty-third session, in 1971, the Subcommittee submitted to the Commission a report,[[628]](#footnote-628) containing a summary of the views expressed by members of the Subcommittee in reply to the questionnaire prepared by its Chairman, and recommendations to the Commission, in particular to appoint a Special Rapporteur for the topic and confirm the request addressed to the Secretary-General concerning certain preparatory work. The Commission considered the report and adopted it without change. At the same session, the Commission appointed Paul Reuter as Special Rapporteur for the topic.

The Commission considered the topic from its twenty-fifth to twenty-seventh and from its twenty-ninth to thirty-fourth sessions, from 1973 to 1975 and from 1977 to 1982, respectively. In connection with its consideration of the topic, the Commission had before it the reports of the Special Rapporteur,[[629]](#footnote-629) information provided by Governments and international organizations[[630]](#footnote-630) as well as documents prepared by the Secretariat.[[631]](#footnote-631)

At its twenty-fifth session, in 1973, the Commission requested the Special Rapporteur to begin the preparation of a set of draft articles on the basis of his first two reports and the comments made during that session.

At its twenty-sixth session, in 1974, the Commission began the first reading of the draft articles, which was completed at its thirty-second session, in 1980. In accordance with the decision taken by the Commission at its thirtieth session, in 1978, the Commission, upon provisional adoption of certain sets of draft articles, transmitted them to Governments and principal international organizations[[632]](#footnote-632) for comments and observations, before the draft as a whole was adopted on the first reading. That procedure was seen as making it possible for the Commission to undertake the second reading without much delay.

The General Assembly, in resolution 35/163 of 15 December 1980, invited the Commission to commence the second reading of the draft articles.

The Commission proceeded with the second reading of the draft articles at its thirty-third and thirty-fourth sessions, in 1981 and 1982, respectively, in accordance with the General Assembly recommendation contained in resolution 36/114 of 10 December 1981. At the latter session, the Commission adopted the final text of the draft articles, with commentaries, on the law of treaties between States and international organizations or between international organizations, and submitted it to the General Assembly with the recommendation that the Assembly convoke a conference to conclude a convention on the subject under article 23, subparagraph 1 (*d*) of its Statute.[[633]](#footnote-633)

By resolution 37/112 of 16 December 1982, the General Assembly decided that an international convention should be concluded on the basis of the draft articles adopted by the Commission. In addition, the Assembly invited States and the principal international organizations to submit comments on the final draft as well as on other questions, such as the participation of international organizations in the conference and the solution of the problem of how international organizations would be associated with the convention.

At its thirty-eighth session, the General Assembly, by resolution 38/139 of 19 December 1983, decided that the appropriate forum for the final consideration of the draft articles was a conference of plenipotentiaries, to be convened not earlier than 1985. It also appealed to potential participants in the Conference to undertake consultations on the draft articles and related questions prior to the thirty-ninth session of the Assembly, in order to facilitate the successful conclusion of the work of the Conference. The following year the General Assembly, by resolution 39/86 of 13 December 1984, decided that the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations would be held at Vienna from 18 February to 21 March 1986 and referred to the Conference as the basic proposal for its consideration the final set of draft articles adopted by the Commission at its thirty-fourth session, in 1982. It also appealed to participants in the Conference to organize consultations, primarily on the organization and methods of work of the Conference, including rules of procedure, and on major issues of substance, including final clauses and settlement of disputes, prior to the convening of the Conference in order to facilitate a successful conclusion of its work through the promotion of general agreement.

Informal consultations were held between 18 March and 1 May and between 8 and 12 July 1985.[[634]](#footnote-634) By resolution 40/76 of 11 December 1985, the General Assembly considered that those informal consultations proved useful in enabling thorough preparation for successful conduct of the Conference. The Assembly decided to transmit to the Conference, and to recommend that it adopt, the draft rules of procedure for the Conference, worked out during the informal consultations (annex I of the resolution). Also, the Assembly decided to transmit to the Conference for its consideration and action, as appropriate, a list of draft articles of the basic proposal, for which substantive consideration was deemed necessary (annex II of the resolution). Finally, the Assembly referred to the Conference for its consideration the draft final clauses presented by the co-Chairmen of the informal consultations on which an exchange of views had been held (annex III of the resolution).

The Conference was held at Vienna from 18 February to 21 March 1986. Ninety-seven States participated in the Conference, as did also Namibia, represented by the United Nations Council for Namibia. The Palestine Liberation Organization, the African National Congress of South Africa and the Pan Africanist Congress of Azania were represented by observers. Nineteen international intergovernmental organizations, including the United Nations, were represented at the Conference.

The Conference assigned to the Committee of the Whole those draft articles of the basic proposal which required substantive consideration as well as the preparation of the preamble and the final provisions of the Convention. It referred all other draft articles of the basic proposal directly to the Drafting Committee, which was furthermore responsible for considering the draft articles referred to it by the Committee of the Whole and for coordinating and reviewing the drafting of all texts adopted, as well as for the preparation of the Final Act of the Conference.

On 20 March 1986, the Conference adopted the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations,[[635]](#footnote-635) which consists of a preamble, 86 articles and an annex. The text of the Convention is reproduced in annex V, section K.

The Convention applies to treaties between one or more States and one or more international organizations and to treaties between international organizations, the term “treaty” being defined for the purposes of the Convention as an international agreement governed by international law and concluded in written form between one or more States and one or more international organizations or between international organizations whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation. The Convention does not apply to international agreements to which one or more States, one or more international organizations and one or more subjects of international law other than States or international organizations are parties, to international agreements to which one or more international organizations and one or more subjects of international law other than States or organizations are parties, to international agreements not in written form between one or more States and one or more international organizations, or between international organizations, or to international agreements between subjects of international law other than States or international organizations. That fact shall not affect (*a*) the legal force of such agreements; (*b*) the application to them of any of the rules set forth in the Convention to which they would be subject under international law independently of the Convention; or (*c*) the application of the Convention to the relations between States and international organizations or to the relations of organizations between themselves, where those relations are governed by international agreements to which other subjects of international law are also parties.

The principal matters covered in the Convention are: conclusion and entry into force of treaties (part II); observance, application and interpretation of treaties (part III); amendment and modification of treaties (part IV); invalidity, termination and suspension of the operation of treaties (part V); miscellaneous provisions (part VI), dealing, inter alia, with the relationship of the Convention to the Vienna Convention on the Law of Treaties and reserving questions that may arise in regard to a treaty from a succession of States, from the international responsibility of a State or from the outbreak of hostilities between States, from the international responsibility of an international organization, from the termination of the existence of the organization or from the termination of participation by a State in the membership of the organization, as well as questions that may arise in regard to the establishment of obligations and rights for States members of an international organization under a treaty to which that organization is a party; and depositaries, notifications, corrections and registration (part VII). The procedures for judicial settlement, arbitration and conciliation referred to in article 66 of the Convention are specified in an annex to the Convention.

On 21 March 1986, the Convention was opened for signature, by all States, Namibia, represented by the United Nations Council for Namibia, and international organizations invited to participate in the Conference.[[636]](#footnote-636) It remained open for signature until 31 December 1986 at the Federal Ministry for Foreign Affairs of the Republic of Austria and, subsequently, until 30 June 1987 at United Nations Headquarters. The Convention is subject to ratification by States and to acts of formal confirmation by international organizations. The Convention remains open for accession by any State and by any international organization which has the capacity to conclude treaties. The Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession by a State. By 31 January 2007, 28 States had deposited instruments of ratification, accession or succession.[[637]](#footnote-637)

In addition, the Conference adopted five resolutions which were annexed to the Final Act of the Conference.[[638]](#footnote-638) In accordance with one of the resolutions, the expenses of any arbitral tribunal and conciliation commission that may be set up under article 66 of the Convention shall be borne by the United Nations.

21. Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier

The General Assembly, by resolution 3501 (XXX) of 15 December 1975, while reaffirming the need for strict implementation by States of the provisions of the 1961 Vienna Convention on Diplomatic Relations, deplored instances of violations of the rules of diplomatic law and in particular of the provisions of that Convention. It further invited Member States to submit to the Secretary-General their comments and observations on ways and means to ensure the implementation of the provisions of the Convention as well as on the desirability of elaborating provisions concerning the status of the diplomatic courier.

By resolution 31/76 of 13 December 1976, the General Assembly, being concerned at continuing instances of violations of the rules of diplomatic law relating, in particular, to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, again invited Member States to comment on the desirability of elaborating provisions concerning the status of the diplomatic courier with due regard also to the question of the status of the diplomatic bag not accompanied by diplomatic courier. At the same time, the Assembly requested the International Law Commission at the appropriate time to study the proposals made or to be made by Member States on the elaboration of a protocol concerning the status of such courier and bag, which would constitute development and concretization of the Vienna Convention on Diplomatic Relations.

The Commission accordingly included in the agenda of its twenty-ninth session, in 1977, an item entitled “Proposals on the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier,” and established a Working Group to ascertain the most suitable ways and means of dealing with the topic. The Working Group agreed to recommend a number of conclusions to the Commission,[[639]](#footnote-639) including the following: (1) the topic should be inscribed on the Commission’s programme of work for study, as requested by the General Assembly; (2) the Commission should undertake the study of the topic at its next session without curtailing the time allocated for the consideration of the topics on the current programme of work to which priority had been given pursuant to the relevant recommendations of the General Assembly and the corresponding decisions of the Commission; and (3) in order to fulfill this aim, it would seem more appropriate for the Commission to adopt a procedure similar mutatis mutandis to the one it followed with respect to the protection and inviolability of diplomatic agents and other persons (see pages 169 and 170) by having the Working Group undertake the first stage of the study of the topic and report thereon to the Commission without appointing a Special Rapporteur. The Commission approved the conclusions reached by the Working Group concerning the ways and means of dealing with the item.[[640]](#footnote-640)

At its thirtieth session, in 1978, the Commission reconvened the Working Group, which studied at that session the proposals for the elaboration of a protocol as well as the relevant provisions of the 1961 Vienna Convention on Diplomatic Relations,[[641]](#footnote-641) the 1963 Vienna Convention on Consular Relations,[[642]](#footnote-642) the 1969 Convention on Special Missions,[[643]](#footnote-643) and the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character.[[644]](#footnote-644) The Working Group adopted as its basic position that the relevant provisions of those conventions, if any, should form the basis for any further study of the question. The Working Group tentatively identified the relevant issues relating to the diplomatic courier and the diplomatic bag and considered the extent to which these issues were covered by the conventions. Although the issues were formulated to apply to the “diplomatic” courier and the “diplomatic” bag as requested by the General Assembly, some members of the Working Group were of the view that the issues were also relevant to other couriers and bags and should eventually be extended to them as well. The Commission included the report of the Working Group[[645]](#footnote-645) in its report to the General Assembly on the session.[[646]](#footnote-646)

At its thirty-third session, in 1978, the General Assembly discussed the results of the Commission’s work under two separate agenda items in the Sixth Committee, namely “Implementation by States of the provisions of the Vienna Convention on Diplomatic Relations of 1961: report of the Secretary-General” (item 116) and “Report of the International Law Commission on the work of its thirtieth session” (item 114). In resolution 33/139 on the latter item, adopted on 19 December 1978, the General Assembly recommended that the Commission should continue the study, including those issues it had already identified, concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, in the light of comments made during the debate on the item in the Sixth Committee at the thirty-third session of the General Assembly and comments to be submitted by Member States, with a view to the possible elaboration of an appropriate legal instrument. With regard to the former item, the Assembly adopted, on the same day, resolution 33/140. The Assembly noted with appreciation the study by the Commission of the proposals on the elaboration of a protocol which could constitute a further development of international diplomatic law, decided that it would give further consideration to this question and expressed the view that, unless Member States indicated the desirability of an earlier consideration, it would be appropriate to do so when the International Law Commission submitted to the Assembly the results of its work on the possible elaboration of an appropriate legal instrument on the topic.

At its thirty-first session, in 1979, the Commission again re-established a Working Group, which studied issues on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. The results of the study were set out in the Commission’s report to the General Assembly.[[647]](#footnote-647) At the same session, the Commission decided to appoint Alexander Yankov as Special Rapporteur for the topic.

The Commission proceeded with its work on the topic from its thirty-second to thirty-eighth sessions and at its fortieth and forty-first sessions, from 1980 to 1986 and in 1988 and 1989, respectively. In connection with its consideration of the topic, the Commission had before it the reports of the Special Rapporteur,[[648]](#footnote-648) information provided by Governments[[649]](#footnote-649) as well as documents prepared by the Secretariat.[[650]](#footnote-650)

The Commission began the first reading of the draft articles at its thirty-third session, in 1981, which was completed at its thirty-eighth session, in 1986. The draft adopted on first reading was transmitted, in accordance with articles 16 and 21 of the Commission’s Statute, through the Secretary-General, to Governments for comments and observations.

The General Assembly, in resolutions 41/81 of 3 December 1986, and 42/156 of 7 December 1987, inter alia, urged Governments to give full attention to the request of the Commission for comments and observations on the draft articles adopted on first reading by the Commission.

At its fortieth session, in 1988, the Commission began the second reading of the draft articles. It re-examined the draft articles on the basis of the eighth report submitted by the Special Rapporteur.[[651]](#footnote-651) In that report, the Special Rapporteur analysed the comments and observations of Governments in connection with each draft article and proposed the revision of certain draft articles. In his view, the elaboration of the draft articles should be based on a comprehensive approach leading to a coherent and, as much as possible, uniform regime concerning all kinds of couriers and bags. He also underscored the significance which should be attached to functional necessity as the basic factor in determining the status of all kinds of couriers and bags. These considerations of the Special Rapporteur were generally shared by the Commission.

At its forty-first session, in 1989, the Commission adopted the final text of thirty-two draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, as a whole, as well as a draft optional protocol on the status of the courier and the bag of special missions, and a draft optional protocol on the status of the courier and the bag of international organizations of a universal character, with commentaries thereto.[[652]](#footnote-652) The texts of the final draft articles and optional protocols are reproduced in annex IV, section 7. In accordance with article 23 of its Statute, the Commission decided to recommend to the General Assembly that it convene an international conference of plenipotentiaries to study the draft articles and the optional protocols and to conclude a convention on the subject.[[653]](#footnote-653)

By resolution 44/36 of 4 December 1989, the General Assembly decided to hold at its forty-fifth session, in 1990, informal consultations, in the framework of the Sixth Committee, to study the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, the draft optional protocols thereto, as well as the question of how to deal further with those draft instruments with a view to facilitating the reaching of a generally acceptable decision in the latter respect. Those consultations were continued at the forty-sixth and forty-seventh sessions, pursuant to General Assembly resolutions 45/43 of 28 November 1990 and 46/57 of 9 December 1991. Various proposals were made to reconcile the divergences of views which existed on some articles, in particular article 28 on the inviolability of the bag, but no agreement was reached. On the recommendation of the Sixth Committee, the General Assembly decided, by its decision 47/415 of 25 November 1992, that the informal consultations would be resumed at the fiftieth session, in 1995.

At its fiftieth session, in 1995, the General Assembly adopted decision 50/416 of 11 December 1995, by which it decided to bring the draft articles, together with the observations made during the debates on them in the Sixth Committee, to the attention of Member States, and to remind Member States of the possibility that this field of international law and any further developments within it may be subject to codification at an appropriate time in the future.

22. Jurisdictional immunities of States and their property

At its first session, in 1949, the Commission selected the subject of jurisdictional immunities of States and their property as one of the topics for codification without, however, including it in the list of topics to which it gave priority. At its twenty-ninth session, in 1977, the Commission considered possible additional topics for study. The topic “Jurisdictional immunities of States and their property” was recommended for selection in the near future for active consideration by the Commission, bearing in mind its day-to-day practical importance as well as its suitability for codification and progressive development.

The General Assembly, in resolution 32/151 of 19 December 1977, invited the Commission, at an appropriate time and in the light of progress made on other topics on its agenda, to commence work on the topic of jurisdictional immunities of States and their property.

At its thirtieth session, in 1978, the Commission set up a Working Group to consider the question of the future work of the Commission on the topic and to report thereon to the Commission. The Working Group submitted to the Commission a report[[654]](#footnote-654) that dealt, inter alia, with general aspects of the topic and contained a number of recommendations. The Commission took note of the report of the Working Group and, on the basis of the recommendations contained therein, decided to begin its consideration of the topic “Jurisdictional immunities of States and their property”. It also appointed Sompong Sucharitkul as Special Rapporteur for the topic and invited him to prepare a preliminary report at an early juncture for consideration by the Commission. The Commission, further, requested the Secretary-General to invite Governments of Member States to submit relevant materials on the topic, including national legislation, decisions of national tribunals and diplomatic and official correspondence and requested the Secretariat to prepare working papers and materials on the topic as the need arose and as requested by the Commission or the Special Rapporteur.[[655]](#footnote-655)

The Commission considered the topic from its thirty-first to thirty-eighth and from its forty-first to forty-third sessions, from 1979 to 1986 and from 1989 to 1991. The Commission appointed Motoo Ogiso as the new Special Rapporteur for the topic at its thirty-ninth session, in 1987. In connection with its consideration of the topic, the Commission had before it the reports of the Special Rapporteurs[[656]](#footnote-656) and information provided by Governments.[[657]](#footnote-657)

At its thirty-first session, in 1979, the Commission had before it a preliminary report on the topic submitted by the Special Rapporteur, Mr. Sucharitkul.[[658]](#footnote-658) The report was designed to present an overall picture of the topic without proposing any solution for each or any of the substantive issues identified. During the discussion in the Commission at that session, a consensus emerged to the effect that for the immediate future the Special Rapporteur should continue his study, concentrating on general principles and thus confining the areas of initial interest to the substantive contents and constitutive elements of the general rules of jurisdictional immunities of States. It was also understood that the question of the extent of, or limitations on, the application of the rules of State immunity required an extremely careful and balanced approach, and that the exceptions identified in the preliminary report were merely noted as possible limitations, without any assessment or evaluation of their significance in State practice. It was furthermore agreed, in terms of priorities to be accorded in the treatment of the topic, that the Special Rapporteur should continue his work on the immunities of States from jurisdiction, leaving aside for the time being the question of immunity from execution of judgement. Another point which was noted was the widening functions of the State, which had enhanced the complexities of the problem of State immunities. Controversies had existed in the past concerning the divisibility of the functions of the State or the various distinctions between the activities carried on by modern States in fields of activity formerly undertaken by individuals, such as trade and finance. No generally accepted criterion for identifying the circumstances or areas in which State immunity could be invoked or accorded had been found. The greatest care was therefore called for in the treatment of this particular aspect of the topic.

The Commission began the first reading of the draft articles at its thirty-second session, in 1980, which was concluded at its thirty-eighth session, in 1986. At that session, the Commission transmitted the draft articles adopted on first reading through the Secretary-General to Governments for comments and observations in accordance with articles 16 and 21 of its Statute.

The General Assembly, in resolutions 41/81 of 3 December 1986 and 42/156 of 7 December 1987, inter alia, urged Governments to give full attention to the request of the Commission for comments and observations on the draft articles adopted on first reading by the Commission.

The Commission began the second reading of the draft articles based on the three reports of the new Special Rapporteur, Mr. Ogiso, at its forty-first session, in 1989, which was concluded at its forty-third session, in 1991. In his preliminary report, the Special Rapporteur analysed some of the comments and observations of Governments and proposed to revise or merge some of the draft articles based on those comments. In his second report, the Special Rapporteur gave further consideration to some of the draft articles on the basis of the written comments and observations of Governments and his analysis of relevant treaties, laws and State practice, and proposed certain revisions, additions or deletions complementary to those contained in his preliminary report. Responding to a request from some members of the Commission, the Special Rapporteur also included a brief review of the recent development of general State practice concerning State immunity. In his third report, the Special Rapporteur reviewed once again the entire set of draft articles and suggested certain reformulations, taking into account the views expressed by members of the Commission at its forty-first session, in 1989, as well as by Governments in their written comments and in the Sixth Committee of the General Assembly at its forty-fourth session.

In undertaking the second reading of the draft articles, at its forty-first session, in 1989, the Commission agreed with the Special Rapporteur that it should avoid entering yet again into a doctrinal debate on the general principles of State immunity, which had been extensively debated in the Commission and on which the views of the Commission remained divided; the Commission should instead concentrate its discussion on individual articles, so as to arrive at a consensus as to what kind of activities of the State should, or should not, enjoy immunity from jurisdiction of another State. This, in the view of the Commission, was the only pragmatic way of preparing a convention which would command wide support of the international community. The Commission also noted that the law of State jurisdictional immunity was in a state of flux as some States were in the process of amending their basic laws or had done so recently, and thus it was essential that the draft articles be given the opportunity to reflect such Government practice, and, moreover, to leave room for further development of the law of jurisdictional immunity of States.[[659]](#footnote-659)

At its forty-third session, in 1991, the Commission adopted the final text of twenty-two draft articles on the jurisdictional immunities of States and their property, with commentaries.[[660]](#footnote-660) In accordance with article 23 of its Statute, the Commission submitted the draft articles to the General Assembly, together with a recommendation that the Assembly convene an international conference of plenipotentiaries to examine the draft articles and to conclude a convention on the subject.[[661]](#footnote-661)

The General Assembly, by resolution 46/55 of 9 December 1991, invited States to submit their written comments and observations on the draft articles, and decided to establish at its forty-seventh session an open-ended working group of the Sixth Committee to examine, in the light of the written comments of Governments, as well as views expressed in debates at the forty-sixth session of the Assembly: (*a*) issues of substance arising out of the draft articles, in order to facilitate a successful conclusion of a convention through the promotion of general agreement; and (*b*) the question of the convening of an international conference, to be held in 1994 or subsequently, to conclude a convention on jurisdictional immunities of States and their property.

The Working Group began its work at the forty-seventh session of the General Assembly[[662]](#footnote-662) and resumed it, in accordance with General Assembly decision 47/414 of 25 November 1992, at the forty-eighth session.[[663]](#footnote-663) By its decision 48/413 of 9 December 1993, the General Assembly decided that consultations should be held in the framework of the Sixth Committee at its forty-ninth session, to continue consideration of the substantive issues regarding which the identification and attenuation of differences was desirable in order to facilitate the successful conclusion of a convention through general agreement; and also decided that, at its forty-ninth session, in the light of the progress thus far achieved and of the results of the said consultations, it would give full consideration to the recommendation of the International Law Commission that an international conference of plenipotentiaries be convened, to examine the draft articles on the jurisdictional immunities of States and their property and to conclude a convention on the subject.

At the forty-ninth session of the General Assembly, in 1994, the Sixth Committee, in accordance with General Assembly decision 48/413, decided to convene informal consultations. The consultations were held at six meetings, from 27 September to 3 October 1994. At the same session, the Chairman of the informal consultations introduced a document[[664]](#footnote-664) containing conclusions he had drawn from the consultations.[[665]](#footnote-665)

By resolution 49/61 of 9 December 1994, the General Assembly accepted the above-cited recommendation of the International Law Commission, invited States to submit to the Secretary-General their comments on the conclusions of the Chairman of the informal consultations held pursuant to General Assembly decision 48/413 of 9 December 1993, and on the reports of the Working Group established under General Assembly resolution 46/55 of 9 December 1991 and decision 47/414 of 25 November 1992, and decided to resume consideration, at its fifty-second session, in 1997, of the issues of substance, in the light of the reports mentioned above and the comments submitted by States thereon, and to determine, at its fifty-second or fifty-third session, the arrangements for the conference, including the date and place, due consideration being given to ensuring the widest possible agreement at the conference. It further decided to include in the provisional agenda of its fifty-second session the item entitled “Convention on jurisdictional immunities of States and their property”.

The item was considered at the fifty-second and fifty-third sessions of the General Assembly, in 1997 and 1998. By resolution 52/151 of 15 December 1997, the General Assembly, inter alia, decided to consider the item again at its fifty-third session with a view to establishing a working group at its fifty-fourth session, taking into account the comments submitted by States in accordance with resolution 49/61 of 9 December 1994. By resolution 53/98 of 8 December 1998, the General Assembly decided to establish at its fifty-fourth session, in 1999, an open-ended working group of the Sixth Committee to consider outstanding substantive issues related to the draft articles taking into account, inter alia, recent developments in State practice and legislation as well as the comments submitted by States on the topic. It also invited the International Law Commission to present any preliminary comments that it might have regarding outstanding substantive issues related to the draft articles in the light of the results of the informal consultations held in the Sixth Committee, in 1994, pursuant to General Assembly decision 48/413 of 9 December 1993.

At its fifty-first session, in 1999, the Commission established a Working Group on Jurisdictional Immunities of States and Their Property in accordance with General Assembly resolution 53/98. The Working Group concentrated its work on the five main issues identified in the conclusions of the Chairman of the informal consultations held in the Sixth Committee, in 1994, namely: (1) the concept of a State for purposes of immunity, (2) the criteria for determining the commercial character of a contract or transaction; (3) the concept of a State enterprise or other State entity in relation to commercial transactions; (4) contracts of employment; and (5) measures of constraint against State property. The Working Group also considered the question of the existence or non-existence of immunity in the case of violation by a State of *jus cogens* norms of international law, which was identified as an issue that might be considered in the light of recent State practice. In its report to the Commission,[[666]](#footnote-666) the Working Group made a number of suggestions regarding possible ways of solving the five issues. The Commission took note of the report of the Working Group and adopted the suggestions contained therein.

At the fifty-fourth session of the General Assembly, in 1999, an open-ended working group of the Sixth Committee established under General Assembly resolution 53/98 of 8 December 1998 considered the same five outstanding substantive issues as well as the possible form of the outcome of the work on the topic. It also considered the question identified by the Working Group of the Commission on the existence or non-existence of immunity in the case of violation by a State of *jus cogens* norms.[[667]](#footnote-667) The working group continued its consideration of the future form of, and outstanding substantive issues related to, the draft articles, at the fifty-fifth session of the General Assembly, in 2000, pursuant to General Assembly resolution 54/101 of 9 December 1999.[[668]](#footnote-668) As a result of the later discussions, the Chairman prepared a number of texts on the five outstanding issues as a possible basis for further discussions on the topic.[[669]](#footnote-669)

By resolution 55/150 of 12 December 2000, the General Assembly, having considered the reports of the working group of the Sixth Committee, decided to establish an Ad Hoc Committee on Jurisdictional Immunities of States and Their Property open to all States Members of the United Nations and to States Members of the specialized agencies, with the mandate to further the work done, consolidate areas of agreement and resolve outstanding issues with a view to elaborating a generally acceptable instrument based on the draft articles, and also on the discussions of the working group of the Sixth Committee and their results. By resolution 56/78 of 12 December 2001, the General Assembly decided that the Ad Hoc Committee should meet in February 2002, and that it should report to the General Assembly at its fifty-seventh session on the outcome of its work.

The Ad Hoc Committee on Jurisdictional Immunities of States and Their Property proceeded with its work in a Working Group of the Whole in two stages by discussing first, the five outstanding substantive issues and, second, the remainder of the draft articles with a view to identifying and resolving any further issues arising from the text.[[670]](#footnote-670) This was the first time that the entire draft articles had been considered in the General Assembly since their adoption by the Commission in 1991, taking into account subsequent developments in State practice. The Working Group made substantial progress on the five substantive issues by reducing the number of outstanding issues and narrowed the divergent views with respect to the remaining issues. The Working Group decided to reflect the remaining divergent views on certain draft articles in the revised text of the draft articles contained in its report. The Ad Hoc Committee emphasized the importance of elaborating in a timely manner a generally acceptable instrument and urged States to make every effort to resolve the remaining outstanding issues in the interest of arriving at an agreement.[[671]](#footnote-671)

After considering the report of the Ad Hoc Committee at its fifty-seventh session, in 2002, the General Assembly adopted resolution 57/16 of 19 November 2002 in which, noting that few issues remained outstanding and stressing the importance of uniformity and clarity in the law applicable to jurisdictional immunities of States and their property, decided that the Ad Hoc Committee should be reconvened in February 2003 and requested the Ad Hoc Committee to report to the General Assembly at its fifty-eighth session on the outcome of its work.

In 2003, the Ad Hoc Committee proceeded with the substantive discussion of the outstanding issues in a Working Group of the Whole. The Working Group established two informal consultative groups. It discussed and resolved all of the outstanding issues. The Ad Hoc Committee adopted its report[[672]](#footnote-672) containing the text of the draft articles,[[673]](#footnote-673) together with understandings with respect to draft articles 10 (Commercial transactions), 11 (Contracts of employment), 13 (Ownership, possession and use of property), 14 (Intellectual and industrial property), 17 (Effect of an arbitration agreement) and 19[[674]](#footnote-674) (State immunity from post-judgement measures of constraint) as well as a general understanding that the draft articles did not cover criminal proceedings.[[675]](#footnote-675) The Ad Hoc Committee recommended that the General Assembly take a decision on the form of the draft articles and noted that, if the General Assembly decided to adopt the draft articles as a convention, the draft articles would need a preamble and final clauses, including a general saving provision concerning the relationship between the articles and other international agreements relating to the same subject.[[676]](#footnote-676)

The Ad Hoc Committee was reconvened in 2004, pursuant to General Assembly resolution 58/74 of 9 December 2003, with the mandate to formulate a preamble and final clauses, with a view to completing a convention on jurisdictional immunities of States and their property. A preamble and set of final clauses for a draft Convention on jurisdictional immunities and their property, as well as the chapeau for the understandings with respect to certain provisions of the draft Convention, was subsequently developed by the Working Group of the Whole convened by the Ad Hoc Committee. The Working Group further reiterated the general understanding that the draft Convention did not cover criminal proceedings, but proposed to deal with the issue in a General Assembly resolution as opposed to the draft convention itself. The Ad Hoc Committee subsequently adopted the report of the Working Group and recommended to the General Assembly the adoption of the draft United Nations Convention on Jurisdictional Immunities of States and Their the United Nations Convention on Jurisdictional Immunities of Property, contained in its report.[[677]](#footnote-677) The Ad Hoc Committee also recommended that the General Assembly include in its resolution adopting States and Their Property the general understanding that the Convention did not cover criminal proceedings.

The General Assembly, in resolution 59/38 of 2 December 2004, having considered the report of the Ad Hoc Committee on Jurisdictional Immunities of States and their property, expressed its deep appreciation to the Commission and the Ad Hoc Committee on jurisdictional immunities of States and their property for their valuable work on the law of jurisdictional immunities of States and their property. It further agreed with the general understanding reached in the Ad Hoc Committee that the United Nations Convention on jurisdictional immunities of States and their property did not cover criminal proceedings.

By the same resolution, the General Assembly adopted the United Nations Convention on Jurisdictional Immunities of States and Their Property, consisting of thirty-three articles and an annex to the Convention relating to the understanding with respect to certain provisions of the Convention. The text of the Convention is reproduced in annex V, section M.

The Convention was open for signature by all States from 17 January 2005 until 17 January 2007, at United Nations Headquarters in New York. The Convention is subject to ratification, acceptance, approval or accession by States. Signatures are subject to ratification, acceptance or approval. It shall enter into force on the thirtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations. As of 31 January 2007, three States had become parties to the Convention.

23. The law of the non-navigational uses of international watercourses

The General Assembly, by resolution 2669 (XXV) of 8 December 1970, recommended that the Commission should take up the study of the law of the non-navigational uses of international watercourses with a view to its progressive development and codification and, in the light of its scheduled programme of work, should consider the practicability of taking the necessary action as soon as the Commission deemed it appropriate.

At its twenty-third session, in 1971, the Commission included the subject of non-navigational uses of international watercourses in its programme of work. The Commission also agreed that, for studying the rules of international law on that subject with a view to their progressive development and codification, all relevant materials on State practice should be compiled and analysed.[[678]](#footnote-678)

The General Assembly, by resolution 2780 (XXVI) of 3 December 1971, recommended that the Commission should decide upon the priority to be given to the topic.

At its twenty-fourth session, in 1972, the Commission indicated its intention to take up the Assembly’s recommendation when it came to discuss its long-term programme of work. The Commission furthermore reached the conclusion that the problem of the pollution of international waterways was of both substantial urgency and complexity. Accordingly, it requested the Secretariat to continue compiling the material relating to the topic with specific reference to the problems of the pollution of international watercourses.

At its twenty-fifth session, in 1973, the Commission gave special attention to the question of the priority to be given to the topic. It concluded, however, that a formal decision on the commencement of the substantive work should be taken after members had had an opportunity to review the supplementary report on the legal problems relating to the non-navigational uses of international watercourses being prepared by the Secretariat, which was issued in 1974.[[679]](#footnote-679)

At its twenty-sixth session, in 1974, the Commission, pursuant to the recommendation contained in General Assembly resolution 3071 (XXVIII) of 30 November 1973, set up a Subcommittee to consider the question. The Subcommittee submitted a report to the Commission[[680]](#footnote-680) that dealt with the nature of international watercourses and pointed out that a preliminary question to be examined was the scope of the term “international watercourses”. Recognizing the variations in practice and theory, the report proposed to request States to comment on a series of questions concerning the appropriate scope of “international watercourses” to be adopted in a study of the legal aspects of their non-navigational uses. It stated that another preliminary question was the type of activities to be included within the term “non-navigational uses”. Since uses could be conflicting, both on the national and on the international levels, the report proposed that the views of States should be sought as to the range of uses that the Commission should take account of in its work and as to whether certain special problems needed to be considered. Furthermore the report recommended that States be requested to reply to the questions whether the Commission should take up the problem of pollution of international watercourses at the initial stage in its study, and whether special arrangements should be made for ensuring that the Commission be provided with technical, scientific and economic advice. At the same session, the Commission adopted the report without change.

The General Assembly, by resolution 3315 (XXIX) of 14 December 1974, recommended that the Commission should continue its study of the law of the non-navigational uses of international watercourses taking into account, inter alia, comments received from Member States on the questions mentioned in the Subcommittee’s report.

The Commission proceeded with its work on the topic at its twenty-eighth, thirty-first and thirty-second sessions, from its thirty-fifth to forty-third sessions and at its forty-fifth and forty-sixth sessions, in 1976, 1979 and 1980, from 1983 to 1991 and in 1993 and 1994, respectively. The Commission appointed Richard D. Kearney, Stephen M. Schwebel, Jens Evensen, Stephen McCaffrey, and Robert Rosenstock as the successive Special Rapporteurs for the topic at its twenty-sixth, twenty-ninth, thirty-fourth, thirty-seventh and forty-fourth sessions, in 1974, 1977, 1982, 1985 and 1992, respectively. In connection with its consideration of the topic, the Commission had before it the reports of the Special Rapporteurs,[[681]](#footnote-681) information provided by Governments[[682]](#footnote-682) as well as documents prepared by the Secretariat.[[683]](#footnote-683)

At its twenty-eighth session, in 1976, the Commission held a general debate on the topic which led to agreement in the Commission that the question of determining the scope of the term “international watercourses” did not need to be pursued at the outset of the work. Instead, attention should be devoted to beginning the formulation of general principles applicable to legal aspects of the uses of those watercourses. In so doing, every effort should be made to devise rules which would maintain a delicate balance between rules too detailed to be generally applicable and rules too general to be effective. Furthermore, the rules should be designed to promote the adoption of regimes for individual international rivers and for that reason should have a residual character. Effort should also be devoted to making the rules as widely acceptable as possible and the sensitivity of States regarding their interests in water must be taken into account.

At its thirty-second session, in 1980, the Commission began the first reading of the draft articles. It decided to use, at least in the early stages of its work on the topic, the provisional working hypothesis recommended by the Drafting Committee as to the meaning of the term “international watercourse system”.[[684]](#footnote-684)

At its forty-third session, in 1991, the Commission adopted on first reading the draft articles as a whole. In accordance with articles 16 and 21 of its Statute, the Commission decided to transmit the draft articles, through the Secretary-General, to Governments of Member States for comments and observations.

The General Assembly, in resolution 46/54 of 9 December 1991, expressed its appreciation to the Commission for the completion of the first reading of the draft articles on the topic and urged the Governments to present their comments and observations on the draft in writing, as requested by the Commission.

At its forty-fifth session, in 1993, and forty-sixth session, in 1994, the Commission proceeded with its second reading of the draft articles on the basis of the reports submitted by the new Special Rapporteur for the topic, Mr. Rosenstock. In his first report,[[685]](#footnote-685) the Special Rapporteur analysed the written comments and observations received from Governments and raised two issues of a general character, namely whether the eventual form of the articles should be a convention or model rules, and the question of dispute settlement procedure. He also raised the possibility of including in the draft articles provisions on “unrelated confined groundwaters”. At its forty-fifth session, in 1993, the Commission requested the Special Rapporteur to undertake a study on the question of “unrelated confined groundwaters” in order to determine the feasibility of incorporating them in the topic. In his second report,[[686]](#footnote-686) the Special Rapporteur suggested amending certain draft articles adopted on first reading to include provisions on “unrelated confined groundwaters,”[[687]](#footnote-687) in order to encourage their management in a rational manner and prevent their depletion and pollution, and proposed a new article dealing with dispute settlement.

At its forty-sixth session, in 1994, having considered the second report of the Special Rapporteur, the Commission decided to refer the entire set of the draft articles to the Drafting Committee and invited it to proceed with their consideration, without the amendments on “unrelated confined groundwaters,” and to submit suggestions to the Commission on how the Commission should proceed on the question of “unrelated confined groundwaters”. At the same session, the Commission adopted the final text of a set of thirty-three draft articles on the law of the non-navigational uses of international watercourses, with commentaries, and a resolution on confined transboundary groundwater.[[688]](#footnote-688) In accordance with article 23 of its Statute, the Commission submitted the draft articles and the resolution to the General Assembly, together with a recommendation that a convention on the subject be elaborated by the Assembly or by an international conference of plenipotentiaries on the basis of the draft articles.[[689]](#footnote-689)

The General Assembly, by resolution 49/52 of 9 December 1994, expressed its appreciation to the Commission for its valuable work on the law of the non-navigational uses of international watercourses, and to the successive Special Rapporteurs for their contribution to that work, invited States to submit written comments and observations on the draft articles adopted by the Commission, and decided that, at its fifty-first session, in 1996, the Sixth Committee would convene as a Working Group of the Whole, open to States Members of the United Nations or members of specialized agencies, to elaborate a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the Commission in the light of the written comments and observations of States and views expressed in the debate at the forty-ninth session of the General Assembly. It also decided that the Working Group of the Whole would, without prejudice to the rules of procedure of the General Assembly, follow the methods of work and procedures outlined in the annex to the resolution, subject to any modifications which it might deem appropriate, and further decided to include in the provisional agenda of its fifty-first session an item entitled “Convention on the law of the non-navigational uses of international watercourses”.

The Working Group of the Whole of the Sixth Committee held two sessions, from 7 to 25 October 1996 and from 24 March to 4 April 1997, the second having been held pursuant to General Assembly resolution 51/206 of 17 December 1996. It had before it the draft articles on the topic adopted by the Commission, and comments, observations and proposals by States. The Working Group of the Whole established a Drafting Committee. As mandated by General Assembly resolution 51/206, upon completion of its mandate, the Working Group reported directly to the General Assembly.[[690]](#footnote-690)

By resolution 51/229 of 21 May 1997, the General Assembly, upon recommendation of the Working Group of the Whole, adopted the Convention on the Law of the Non-navigational Uses of International Watercourses, consisting of a preamble, thirty-seven articles and an appendix on arbitration. The text of the Convention is reproduced in annex V, section L.

The Convention was open for signature by all States and by regional economic integration organizations until 20 May 2000 at United Nations Headquarters in New York. The Convention is subject to ratification, acceptance, approval or accession by States and by regional economic integration organizations. It shall enter into force on the ninetieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession. As of 1 January 2007, 15 States had become parties to the Convention.[[691]](#footnote-691)

24. Nationality in relation to the succession of States[[692]](#footnote-692)

At its forty-fifth session, in 1993, the Commission, on the basis of the recommendation of the Working Group on the long-term programme, decided to include in the Commission’s agenda, subject to the approval of the General Assembly, the topic “State succession and its impact on the nationality of natural and legal persons”.

The General Assembly, by resolution 48/31 of 9 December 1993, endorsed the above decision of the Commission on the understanding that the final form to be given to the work on the topic would be decided after a preliminary study was presented to the Assembly.

At its forty-sixth session, in 1994, the Commission appointed Václav Mikulka as Special Rapporteur for the topic.

In resolution 49/51 of 9 December 1994, the General Assembly again endorsed the decision of the Commission on the understanding reflected above and requested the Secretary-General to invite Governments to submit relevant materials including national legislation, decisions of national tribunals and diplomatic and official correspondence relevant to the topic.

At its forty-seventh and forty-eighth sessions, in 1995 and 1996, respectively, the Commission convened a Working Group entrusted with the mandate to identify issues arising out of the topic, categorize those issues which were closely related thereto, give guidance to the Commission as to which issues could be most profitably pursued given contemporary concerns and present the Commission with a calendar of actions.[[693]](#footnote-693) In accordance with the Working Group’s conclusions,[[694]](#footnote-694) the Commission recommended to the General Assembly that it take note of the completion of the preliminary study of the topic and that it request the Commission to undertake the substantive study of the topic entitled “Nationality in relation to the succession of States,” on the understanding that inter alia:

(a) consideration of the question of the nationality of natural persons would be separated from that of the nationality of legal persons and that priority would be given to the former;

(b) without prejudicing a final decision, the result of the work on the question of the nationality of natural persons should take the form of a declaration of the General Assembly consisting of articles with commentaries; and

(c) the decision on how to proceed with respect to the question of the nationality of legal persons would be taken upon completion of the work on the nationality of natural persons and in the light of the comments that the General Assembly may invite States to submit to it on the practical problems raised by a succession of States in the field of legal persons.[[695]](#footnote-695)

The General Assembly, in resolution 51/160 of 16 December 1996, endorsed the Commission’s recommendations.

(a) Nationality of natural persons in relation to the succession of States

The Commission proceeded with its work on this part of the topic at its forty-ninth and fifty-first sessions, in 1997 and 1999, respectively, on the basis of the report of the Special Rapporteur,[[696]](#footnote-696) information provided by Governments[[697]](#footnote-697) and a memorandum by the Secretariat.[[698]](#footnote-698)

At its forty-ninth session, in 1997, the Commission adopted on first reading a draft preamble and a set of twenty-seven draft articles on nationality of natural persons in relation to the succession of States, with commentaries. In accordance with articles 16 and 21 of its Statute, the Commission decided to transmit them, through the Secretary-General, to Governments for comments and observations.

The General Assembly, in resolution 52/156 of 15 December 1997, drew the attention of Governments to the importance for the Commission of having their views on the draft articles, and urged them to submit their comments and observations in writing.

At its fifty-first session, in 1999, the Commission decided to establish a Working Group to review the text of the draft articles adopted on first reading, taking into account comments and observations by Governments. On the basis of the report of the Chairman of the Working Group,[[699]](#footnote-699) the Commission referred the draft preamble and a set of twenty-six draft articles to the Drafting Committee. Having considered the report of the Drafting Committee, the Commission adopted the final draft articles on nationality of natural persons in relation to the succession of States, with commentaries.[[700]](#footnote-700) The Commission decided to recommend to the General Assembly the adoption of the draft articles in the form of a declaration.[[701]](#footnote-701)

The final draft consists of a draft preamble and twenty-six draft articles divided into two parts: Part I General provisions (articles 1–19) and Part II Provisions relating to specific categories of succession of States (articles 20–26). Part II comprises four sections: Section 1 deals with succession in the case of a transfer of part of the territory; Section 2 deals with the case of unification of States; Section 3 deals with dissolution of a State; and Section 4 deals with separation of part or parts of the territory. The text of the draft articles is reproduced in annex IV, section 9.

By resolution 54/112 of 9 December 1999, the General Assembly decided to include in the provisional agenda of its fifty-fifth session, in 2000, an item entitled “Nationality of natural persons in relation to the succession of States,” with a view to the consideration of the draft articles and their adoption as a declaration. The General Assembly also invited Governments to submit comments and observations on the question of a convention on nationality of natural persons in relation to the succession of States, with a view to the General Assembly considering the elaboration of such a convention at a future session.

By resolution 55/153 of 12 December 2000, the Assembly took note of the articles, which were annexed to the resolution, invited Governments to take into account, as appropriate, the provisions contained in the articles in dealing with issues of nationality of natural persons in relation to the succession of States and recommended that all efforts be made for the wide dissemination of the text of the articles. It also decided to include in the provisional agenda of its fifty-ninth session, in 2004, an item entitled “Nationality of natural persons in relation to the succession of States”.

The General Assembly, in resolution 59/34 of 2 December 2004, reiterated its invitation to Governments to take into account, as appropriate, the provisions of the articles contained in the annex to the resolution 55/135, in dealing with issues of nationality of natural persons in relation to succession of States and encouraged States to consider, as appropriate, at the regional or subregional levels, the elaboration of legal instruments regulating questions of nationality of natural persons in relation to the succession of States, with a view, in particular, to preventing the occurrence of statelessness as a result of a succession of States. The General Assembly further invited Governments to submit comments concerning the advisability of elaborating a legal instrument on the question of nationality of natural persons in relation to the succession of States, including the avoidance of statelessness as a result of a succession of States and decided to include an item entitled “Nationality of natural persons in relation to the succession of States” in the provisional agenda of its sixty-third session, in 2008.

(b) Nationality of legal persons in relation to the succession of States

At its fiftieth session, in 1998, the Commission considered the second part of the topic on the basis of the report of the Special Rapporteur.[[702]](#footnote-702) On the suggestion of the Special Rapporteur, the Commission established a Working Group to consider the question of the possible orientation to be given to the second part of the topic, in order to facilitate the Commission’s decision on this issue. The Working Group agreed that there were, in principle, two options for enlarging the scope of the study of problems falling within the second part of the topic: either expand the study of the question of the nationality of legal persons beyond the context of the succession of States, or keep the study within the context of the succession of States, but go beyond the problem of nationality to include other questions. The Working Group noted, however, that in the absence of positive comments from States, the Commission would have to conclude that States were not interested in the study of the second part of the topic. The preliminary conclusions of the Working Group were endorsed by the Commission.[[703]](#footnote-703)

At its fifty-first session, in 1999, taking into account that no positive comments had been received from States with respect to the Commission’s study of the second part of the topic, the Commission recommended to the General Assembly that, with the adoption of the draft articles on nationality of natural persons in relation to the succession of States, the work of the Commission on the topic “Nationality in relation to the succession of States” be considered concluded.[[704]](#footnote-704)

25. State responsibility[[705]](#footnote-705)

At its first session, in 1949, the Commission selected State responsibility as one of the topics for codification without, however, including it in the list of topics to which it gave priority. At its sixth session, in 1954, the Commission took note of General Assembly resolution 799 (VIII) of 7 December 1953, requesting the Commission to undertake, as soon as it considered it advisable, the codification of the principles of international law governing State responsibility.[[706]](#footnote-706)

At its seventh session, in 1955, the Commission decided to begin the study of State responsibility and appointed F. V. García Amador as Special Rapporteur for the topic. At the next six sessions of the Commission, from 1956 to 1961, the Special Rapporteur presented six successive reports,[[707]](#footnote-707) dealing, on the whole, with the question of responsibility for injuries to the persons or property of aliens.

In pursuance of General Assembly resolution 1686 (XVI) of 18 December 1961, in which the Assembly recommended that the Commission continue its work on State responsibility, the Commission, at its fourteenth session, in 1962, held a debate on its programme of future work in the field of State responsibility. The idea that the topic of State responsibility should be one of those which should receive priority met with the general approval of the Commission. There were divergent views, however, concerning the best approach to the study of the question and the issues the study should cover. As a result, the Commission decided to set up a subcommittee whose task was to submit to the Commission at its next session a preliminary report containing suggestions concerning the scope and approach of the future study.

At its fifteenth session, in 1963, the Commission considered the report of the Subcommittee on State Responsibility.[[708]](#footnote-708) All members of the Commission who took part in the discussion agreed with the general conclusions of the report, namely: (1) that priority should be given to the definitions of the general rules governing the international responsibility of the State; and (2) that, in defining these general rules, the experience and material gathered in certain special sectors, especially that of responsibility for injuries to the persons or property of aliens, should not be overlooked and that careful attention should be paid to the possible repercussions which developments in international law may have had on State responsibility. The Subcommittee’s suggestion that the study of the responsibility of other subjects of international law, such as international organizations, should be left aside also met with the general approval of the members of the Commission. At the same session, the Commission appointed Roberto Ago as Special Rapporteur for the topic.

The General Assembly, in resolution 1902 (XVIII) of 18 November 1963, recommended that the Commission should “continue its work on State responsibility, taking into account the views expressed at the eighteenth session of the General Assembly and the report of the Subcommittee on State Responsibility and giving due consideration to the purposes and principles enshrined in the Charter of the United Nations”. In resolution 2272 (XXII) of 1 December 1967, the General Assemb1y recommended that the Commission expedite the study of the topic of State responsibility and, by resolution 2400 (XXIII) of 11 December 1968, recommended that the Commission “make every effort to begin substantive work” on the topic as from its next session.

The Commission proceeded with its work on the topic at its nineteenth, twenty-first and twenty-second sessions, from its twenty-fifth to thirty-eighth sessions, at its forty-first and forty-second sessions and from its forty-fourth to fifty-third sessions, in 1967, 1969 and 1970, from 1973 to 1986, in 1989 and 1990 and from 1992 to 2001, respectively. Following the resignation of Roberto Ago from the Commission in 1978, the Commission appointed Willem Riphagen, Gaetano Arangio-Ruiz and James Crawford as the successive Special Rapporteurs for the topic at its thirty-first, thirty-ninth and forty-ninth sessions, in 1979, 1987 and 1997, respectively. In connection with its consideration of the topic, the Commission had before it a note and the reports of the Special Rapporteurs,[[709]](#footnote-709) comments and observations received from Governments[[710]](#footnote-710) as well as documents prepared by the Secretariat.[[711]](#footnote-711)

At its twenty-first session, in 1969, the Commission, after examining the first report of the Special Rapporteur,[[712]](#footnote-712) requested the Special Rapporteur, Mr. Ago, to prepare a report containing a first set of draft articles on the topic, the aim being “to establish, in an initial part of the proposed draft articles, the conditions under which an act which is internationally illicit and which, as such, generates an international responsibility, can be imputed to a State”.[[713]](#footnote-713) The criteria laid down by the Commission as a guide for its future work on the topic were summarized as follows:

(a) The Commission intended to confine its study of international responsibility, for the time being, to the responsibility of States;

(b) The Commission would first examine the question of the responsibility of States for internationally wrongful acts. The question of responsibility arising from certain lawful acts, such as space and nuclear activities, would be examined as soon as the Commission’s programme of work permitted;

(c) The Commission agreed to concentrate its study on the determination of the principles which govern the responsibility of States for internationally wrongful acts, maintaining a strict distinction between this task and that of defining the rules that place obligations on States, the violation of which may generate responsibility;

(d) The study of the international responsibility of States would comprise two broad separate phases, the first covering the origin of international responsibility and the second the content of that responsibility. The first task was to determine what facts and circumstances must be established in order to be able to impute to a State the existence of an internationally wrongful act which, as such, is a source of international responsibility. The second task was to determine the consequences attached by international law to an internationally wrongful act in different cases, in order to arrive, on this basis, at a definition of the content, forms and degrees of responsibility. Once these tasks had been accomplished, the Commission would be able to decide whether a third phase should be added in the same context, covering the examination of certain problems relating to what has been termed the “implementation” of the international responsibility of States and questions concerning the settlement of disputes with regard to the application of the rules on responsibility.

At the Commission’s twenty-second session, in 1970, the Special Rapporteur presented a second report,[[714]](#footnote-714) entitled “The origin of international responsibility,” which examined the following general rules governing the topic as a whole: the principle of the internationally wrongful act as a source of responsibility; the essential conditions for the existence of an internationally wrongful act; and the capacity to commit such acts. Draft articles were submitted in respect of these fundamental rules. The Commission’s discussion of the report led it to a series of conclusions as to the method, substance, and terminology essential for the continuation of its work on State responsibility.

The draft articles, which were cast in a form that would have permitted them to be used as the basis for the conclusion of a convention if so decided, related solely to the *responsibility of States for internationally wrongful acts.* The Commission fully recognized the importance not only of questions of responsibility for internationally wrongful acts, but also of questions concerning the obligation to make good any injurious consequences arising out of certain activities not prohibited by international law (especially those which, because of their nature, present certain risks). The Commission took the view, however, that the latter category of questions could not be treated jointly with the former. Being obliged to bear any injurious consequences of an activity which is itself lawful, and being obliged to face the consequences (not necessarily limited to compensation) of the breach of a legal obligation, are not comparable situations. The limitation of the draft articles to responsibility of States for internationally wrongful acts merely meant that the Commission would make its study of the topic of international liability for injurious consequences arising out of certain acts not prohibited by international law separately from that of responsibility for internationally wrongful acts, so that two matters, which, in spite of certain appearances, are quite distinct, would not be dealt with in one and the same draft. Thus, the Commission emphasized that the expression “State responsibility,” which appeared in the title of the draft, was to be understood as meaning only “responsibility of States for internationally wrongful acts”.

The Commission also pointed out that the purpose of the draft articles was not to define the rules imposing on States, in one sector or another of inter-State relations, obligations whose breach could be a source of responsibility and which, in a certain sense, may be described as “primary”. On the contrary, in preparing its draft, the Commission undertook to define other rules which, in contradistinction to the primary rules, may be described as “secondary,” inasmuch as they were aimed at determining the legal consequences of failure to fulfil obligations established by the “primary” rules. Only these “secondary” rules fall within the actual sphere of responsibility for internationally wrongful acts. This does not mean that the content, nature and scope of the obligations imposed on the State by the “primary” rules of international law are of no significance in determining the rules governing responsibility for internationally wrongful acts. The essential fact nevertheless remains that it is one thing to state a rule and the content of the obligation it imposes, and another to determine whether that obligation has been breached and what the consequences of the breach must be. Only this second aspect comes within the actual sphere of the international responsibility that is the subject matter of the draft.

The draft articles are concerned only with the determination of the rules governing the international responsibility of the State for internationally wrongful acts, that is to say, the rules that govern all the new legal relationships to which an internationally wrongful act on the part of a State may give rise in different cases. They codify the rules governing the responsibility of States for internationally wrongful acts “in general,” not simply in certain particular sectors. The international responsibility of the State is made up of a set of legal situations which result from the breach of any international obligation, whether imposed by the rules governing one particular matter or by those governing another.[[715]](#footnote-715)

It was on the basis of these conclusions that the Commission undertook the preparation of draft articles on the topic, beginning the first reading thereof at its twenty-fifth session, in 1973.

The General Assembly, by resolution 3071 (XXVIII) of 30 November 1973, recommended that the Commission should continue on a priority basis at its twenty-sixth session its work on State responsibility with a view to the preparation of a first set of draft articles on responsibility of States for internationally wrongful acts, and that the Commission should undertake at an appropriate time a separate study of the topic of international liability for injurious consequences arising out of the performance of other activities.

At its twenty-fifth to thirtieth sessions, from 1973 to 1978, the Commission provisionally adopted on first reading chapters I, II and III of Part One of the draft articles on State responsibility for internationally wrongful acts. In 1978, in conformity with the pertinent provisions of its Statute, the Commission requested the Governments of Member States to transmit their observations and comments on those chapters.

The General Assembly, in resolution 33/139 of 19 December 1978, endorsed this decision of the Commission.

At its thirty-second session, in 1980, the Commission provisionally adopted on first reading the whole of Part One of the draft articles, concerning “the origin of international responsibility”. The Commission decided, in conformity with articles 16 and 21 of its Statute, to transmit the provisions of chapters IV and V to the Governments of Member States, through the Secretary-General, and to request them to transmit their observations and comments on those provisions. The Commission also decided to renew its request to Governments to transmit their observations and comments on chapters I, II and III.

At its forty-eighth session, in 1996, the Commission completed the first reading of Parts Two and Three of the draft articles and decided, in accordance with articles 16 and 21 of its Statute, to transmit the draft articles provisionally adopted by the Commission on first reading to Governments for comments and observations.

The General Assembly, in resolution 51/160 of 16 December 1996, expressed its appreciation to the Commission for the completion of the provisional draft articles and urged Governments to submit their comments and observations on the draft in writing, as requested by the Commission.

At its forty-ninth session, in 1997, the Commission began the second reading of the draft articles on the basis of the four reports submitted by the new Special Rapporteur, Mr. Crawford, as well as comments by Governments. At the same session, it established a working group on State Responsibility to address matters dealing with the second reading of the topic.[[716]](#footnote-716)

At its fiftieth session, in 1998, the Commission held an extensive debate[[717]](#footnote-717) on the issue of the treatment of State “crimes” and “delicts” in the draft articles based on the first report of the Special Rapporteur.[[718]](#footnote-718) Following the debate, the Commission noted that no consensus existed on this issue and that more work needed to be done on possible ways of dealing with the substantial questions raised. It was accordingly agreed that: (a) without prejudice to the views of any member of the Commission, draft article 19 concerning international crimes and delicts would be put aside for the time being while the Commission proceeded to consider other aspects of Part One; (b) consideration should be given to whether the systematic development in the draft articles of key notions such as obligations *erga omnes,* peremptory norms (*jus cogens*) and a possible category of the most serious breaches of international obligation could be sufficient to resolve the issues raised by article 19; (c) this consideration would occur, in the first instance, in the Working Group established on this topic and also in the Special Rapporteur’s second report; and (d) in the event that no consensus was achieved through this process of further consideration and debate, the Commission would return to the questions raised in the first report as to draft article 19, with a view to taking a decision thereon.[[719]](#footnote-719) At the same session, the Commission established a Working Group to assist the Special Rapporteur in the consideration of various issues during the second reading of the draft articles.

The Commission completed the second reading of the draft articles at its fifty-third session, in 2001. At that session, the Commission established two Working Groups on the topic: one open-ended Working Group to deal with the main outstanding issues on the topic, and the other Working Group to consider the commentaries to the draft articles.

On the recommendation of the first Working Group, the Commission agreed as an exception to its long-standing practice in adopting draft articles on second reading to include a brief summary of the debate concerning the main outstanding issues in the light of the importance of the topic and the complexity of the issues as well as the Working Group’s recommendations on those issues.[[720]](#footnote-720) On the basis of the Working Group’s recommendations,[[721]](#footnote-721) the Commission reached the following understandings:

(a) Serious breaches of obligations to the international community as a whole: Part Two, chapter III, would be retained; article 42, paragraph 1, concerning damages reflecting the gravity of the breach would be deleted; and previous references to serious breach of an obligation owed to the international community as a whole and essential for the protection of its fundamental interests, which mostly dealt with the question of invocation as expressed by the International Court of Justice in the *Barcelona Traction* case, would be replaced with the category of peremptory norms. Use of the category of peremptory norms was preferred since it concerned the scope of secondary obligations, and not their invocation, and the notion of peremptory norms was well established in the Vienna Convention on the Law of Treaties (*see annex V, section F*). The new formulation would not deal with trivial or minor breaches of peremptory norms, but only with serious breaches of peremptory norms. The Drafting Committee would give further consideration to aspects of consequences of serious breaches in order to simplify these, to avoid excessively vague formulas and to narrow the scope of its application to cases falling properly within the scope of the chapter.

(b) Countermeasures: It was undesirable to include all or a substantial part of the articles on countermeasures in article 23, which was devoted only to one aspect of the question. Such an attempt would overburden article 23 and could even make it incomprehensible. Article 23 would remain in chapter V of Part One and the chapter on countermeasures would remain in Part Three, but article 54, which dealt with countermeasures by States other than the injured State, would be deleted. Instead, there would be a saving clause leaving all positions on this issue unaffected. In addition, article 53 dealing with conditions relating to countermeasures, would be reconsidered and the distinction between countermeasures and provisional countermeasures would be deleted. That article would be simplified and brought substantially into line with the decisions of the arbitral tribunal in the *Air Services* case and of the International Court of Justice in the *Gabčíkovo-Nagymaros* case. Articles 51 and 52 on the obligations not subject to countermeasures and proportionality would be reconsidered, as necessary.

(c) Dispute settlement provisions: The Commission would not include provisions for a dispute settlement machinery, but would draw attention to the machinery elaborated by the Commission in the first reading draft as a possible means for settlement of disputes concerning State responsibility; and would leave it to the General Assembly to consider whether and what form of provisions for dispute settlement would be included in the event that the Assembly should decide to elaborate a convention.

(d) Form of the draft articles: The Commission, in the first instance, would recommend to the General Assembly that it take note of the draft articles and annex the text of the articles to a resolution, similar to the procedure followed by the Assembly with regard to the articles on “Nationality of natural persons in relation to the succession of States” in resolution 55/153 of 12 December 2000. The recommendation would also propose that, given the importance of the topic, in the second and later stage the Assembly should consider the adoption of a Convention on this topic, which would raise the question of dispute settlement mentioned above.

At the same session, the Commission also decided to amend the title of the topic to “Responsibility of States for internationally wrongful acts” to distinguish the topic from the responsibility of the State under internal law and from the concept of international “liability” for acts not prohibited by international law (*see Part III.A, section 26*).[[722]](#footnote-722)

At the same session, the Commission adopted the entire set of final draft articles on responsibility of States for internationally wrongful acts consisting of 59 articles as well as commentaries thereto.[[723]](#footnote-723) The draft articles are divided into four parts, as follows: Part One. The internationally wrongful act of a State, including Chapter I. General principles, Chapter II. Attribution of conduct to a State, Chapter III. Breach of an international obligation, Chapter IV. Responsibility of a State in connection with the act of another State and Chapter V. Circumstances precluding wrongfulness; Part Two. Content of the international responsibility of a State, including Chapter I. General principles, Chapter II. Reparation for injury and Chapter III. Serious breaches of obligations under peremptory norms of general international law; Part Three. The implementation of the international responsibility of a State, including Chapter I. Invocation of the responsibility of a State and Chapter II. Countermeasures; and Part Four. General provisions. The text of the draft articles is reproduced in annex IV, section 10.

The Commission decided, in accordance with article 23 of its Statute, to recommend to the General Assembly that it take note of the draft articles on responsibility of States for internationally wrongful acts in a resolution, and that it annex the draft articles to the resolution. The Commission decided further to recommend that the General Assembly consider, at a later stage, and in the light of the importance of the topic, the possibility of convening an international conference of plenipotentiaries to examine the draft articles on responsibility of States for internationally wrongful acts with a view to concluding a convention on the topic. The Commission was of the view that the question of the settlement of disputes could be dealt with by the above-mentioned international conference, if it considered that a legal mechanism on the settlement of disputes should be provided in connection with the draft articles.[[724]](#footnote-724)

The General Assembly, in resolution 56/83 of 12 December 2001, as recommended by the Commission, took note of the articles on responsibility of States for internationally wrongful acts, the text of which was annexed to the resolution, commended them to the attention of Governments without prejudice to the question of their future adoption or other appropriate action, and decided to include in the provisional agenda of its fifty-ninth session, in 2004, an item entitled “Responsibility of States for internationally wrongful acts”.

By resolution 59/35 of 2 December 2004, the General Assembly requested the Secretary- General to invite Governments to submit their written comments on any future action regarding the articles on Responsibility of States for internationally wrongful acts, to prepare an initial compilation of decisions of international courts, tribunals and other bodies referring to the articles and to invite Governments to submit information on their practice in this regard. It also decided to return to the topic at its sixty-second session, in 2007.

26. International liability for injurious consequences arising out of acts not prohibited by international law

From the outset of its work on the topic of State responsibility (*see Part III.A, section 25*) the Commission agreed that that topic should deal only with the consequences of internationally wrongful acts, and that, in defining the general rule concerning the principle of responsibility for internationally wrongful acts, it was necessary to adopt a formula which did not prejudge the existence of responsibility for lawful acts. That conclusion met with broad acceptance in the discussion of the Sixth Committee of the General Assembly at its twenty-fifth session, in 1970.

At its twenty-fifth session, in 1973, when the Commission started to work on the first set of draft articles on State responsibility, it referred to the matter in more definite terms: “ . . . if it is thought desirable—and views to this effect have already been expressed in the past both in the International Law Commission and in the Sixth Committee of the General Assembly—the International Law Commission can undertake the study of the so-called responsibility for risk after its study on responsibility for wrongful acts has been completed, or it can do so simultaneously but separately.”[[725]](#footnote-725)

The General Assembly, in resolution 3071 (XXVIII) of 30 November 1973, again supported the position of the Commission and recommended that the Commission should undertake a study of the new topic “at an appropriate time”. The Assembly, in resolutions 3315 (XXIX) of 14 December 1974 and 3495 (XXX) of 15 December 1975, repeated its recommendation that the Commission take up the topic ‘‘as soon as appropriate”, and finally in 1976, in resolution 31/97 of 15 December, it replaced that phrase by the words “at the earliest possible time”.

Pursuant to those recommendations of the General Assembly, the Commission agreed, at its twenty-ninth session, in 1977, to undertake the study on the topic at the earliest possible time, having regard, in particular, to the progress made on the draft articles on State responsibility for internationally wrongful acts.

The General Assembly, in resolution 32/151 of 19 December 1977, endorsed the conclusion of the Commission and invited it, at an appropriate time and in the light of progress made on the draft articles on State responsibility for internationally wrongful acts and on other topics in its current programme of work, to commence work on the topic of international liability for injurious consequences arising out of acts not prohibited by international law.

At its thirtieth session, in 1978, the Commission established a working group to consider, in a preliminary manner, the scope and nature of the topic. On the basis of the recommendations made by the Working Group,[[726]](#footnote-726) the Commission appointed Robert Q. Quentin-Baxter as Special Rapporteur for the topic and invited him to prepare a preliminary report at an early juncture. It also requested the Secretariat to collect and survey materials on the topic on a continuous basis.

At the Commission’s thirty-seventh session, in 1985, Julio Barbosa succeeded Robert Q. Quentin-Baxter as Special Rapporteur for the topic. In connection with its work on the topic prior to it being divided into two parts, the Commission had before it the reports of the Special Rapporteurs,[[727]](#footnote-727) information provided by Governments and international organizations[[728]](#footnote-728) as well as documents prepared by the Secretariat.[[729]](#footnote-729)

At its thirty-fifth session, in 1983, the Commission agreed that the Special Rapporteur should, with the help of the Secretariat, prepare a questionnaire to be addressed to selected international organizations with a view to ascertaining whether obligations which States owed to each other, and discharged, as members of international organizations might, to that extent, fulfil or replace some of the procedures indicated in the Special Rapporteur’s schematic outline contained in his third report. In compliance with this decision, a questionnaire was prepared and addressed to sixteen international organizations, selected on the basis of activities which might bear on the subject matter of the inquiry.

At its fortieth session, in 1988, the Commission began the first reading of the draft articles on the topic.

At its forty-fourth session, in 1992, the Commission established a Working Group to consider some of the general issues relating to the scope, the approach to be taken and the possible direction of the future work on the topic. On the basis of the recommendation of the Working Group,[[730]](#footnote-730) the Commission decided, with regard to the scope of the topic, that, pending a final decision, the topic should be understood as comprising both issues of prevention and of remedial measures. Prevention should, however, be considered first; only after having completed its work on that first part of the topic would the Commission proceed to the question of remedial measures. Remedial measures in that context might include those designed for mitigation of harm, restoration of what had been harmed and compensation for harm caused. Thus, the draft articles should deal first with preventive measures in respect of activities creating a risk of causing transboundary harm and secondly with articles on the remedial measures when such activities had caused transboundary harm. The Commission deferred, however, its decision on the question of the approach to be taken with regard to the nature of the articles or of the instrument to be drafted, until after the completion of the work on the topic. The articles would be considered and adopted on the basis of their merits based on their clarity and utility for the contemporary and future needs of the international community and their possible contribution to the promotion of the progressive development and codification of international law in that area. The Commission also deferred its decision on the title of the topic until after the completion of the draft articles.[[731]](#footnote-731)

At its forty-sixth and forty-seventh sessions, in 1994 and 1995, the Commission provisionally adopted draft articles 1 (Scope of the present articles), 2 (Use of terms), 11 (Prior authorisation), 12 (Risk assessment), 13 (Pre-existing activities), 14 (Measures to prevent or minimize the risk), 14 bis (Non-transference of risk), 15 (Notification and information), 16 (Exchange of information), 16 bis (Information to the public), 17 (National security and industrial secrets), 18 (Consultations on preventive measures), 19 (Rights of the State likely to be affected), 20 (Factors involved in an equitable balance of interests), A (Freedom of action and the limits thereto), B (Prevention), C (Liability and compensation) and D (Cooperation), with commentaries thereto.

At its forty-seventh session, in 1995, the Commission established a Working Group to identify activities within the scope of the topic. In the light of the Working Group’s report,[[732]](#footnote-732) the Commission agreed that it must, in its future work on the topic, have a clear view of the kind of activities to which the draft articles on the topic apply. It took the view that it could work on the basis that the types of activities listed in various conventions dealing with issues of transboundary harm came within the scope of the topic, but that eventually, more specificity might be required in the draft articles.

At its forty-eighth session, in 1996, the Commission established a Working Group to review the topic in all its aspects in the light of the reports of the Special Rapporteur and the discussions on the topic held over the years. In its report to the Commission, the Working Group submitted a single consolidated text of draft articles and commentaries thereto which were limited in terms of the scope of the topic and residual in character.[[733]](#footnote-733) The Commission was unable to examine the draft articles at that session. It, however, decided to transmit them to the General Assembly and to Governments for comments.[[734]](#footnote-734)

At its forty-ninth session, in 1997, the Commission, pursuant to General Assembly resolution 51/160 of 16 December 1996, established a Working Group to consider the question of how to proceed with the topic. The Working Group reviewed the work of the Commission on the topic since 1978. It noted that the scope and content of the topic remained unclear due to such factors as conceptual and theoretical difficulties, appropriateness of the title and the relation of the subject to the topic “State responsibility”. It further noted that the Commission had dealt with two distinct, though related, issues under the topic: “prevention” and “international liability”. The Working Group agreed that those issues henceforth should be dealt with separately. Noting that the work on prevention was already at an advanced stage, the Working Group believed that the Commission should proceed with its work on this aspect of the topic with a possible completion of the first reading in the near future. With respect to the second aspect, liability, the Working Group was of the view that, while retaining it, the Commission should await further comments from Governments before making any decision on the issue.[[735]](#footnote-735)

At the same session, the Commission considered and adopted the Working Group’s report.[[736]](#footnote-736) On the basis of the recommendation of the Working Group, the Commission decided, inter alia, to proceed with its work on the topic, undertaking prevention first under the subtitle “Prevention of transboundary damage from hazardous activities”.

The General Assembly, in resolution 52/156 of 15 December 1997, took note of the Commission’s decision.

(a) Prevention of transboundary damage from hazardous activities

At its forty-ninth session, in 1997, the Commission appointed Pemmaraju Sreenivasa Rao as Special Rapporteur for this part of the topic.

The Commission proceeded with its work on this part of the topic, on the basis of the reports of the Special Rapporteur[[737]](#footnote-737) and information provided by Governments,[[738]](#footnote-738) from its fiftieth to fifty-third sessions, from 1998 to 2001, respectively,

At its fiftieth session, in 1998, the Commission established a Working Group to ascertain whether the principles of procedure and content of the duty of prevention were appropriately reflected in the draft articles recommended by the Working Group to the Commission at its forty-eighth session, in 1996. On the basis of the Working Group’s discussions, the Special Rapporteur proposed at the same session a revised text of the draft articles,[[739]](#footnote-739) which the Commission referred to the Drafting Committee. The Commission considered the report of the Drafting Committee and adopted on first reading a set of seventeen draft articles on prevention of transboundary damage from hazardous activities. In accordance with articles 16 and 21 of the Statute, they were transmitted to Governments for comments and observations.

The General Assembly, in resolution 53/102 of 8 December 1998, expressed its appreciation to the Commission for the completion of the first reading of the draft articles on the prevention part of the topic and invited Governments to submit comments and observations in writing on the draft articles.

At its fifty-second session, in 2000, the Commission established a Working Group to examine the comments and observations made by States on the draft articles. On the basis of the discussion in the Working Group, the Special Rapporteur presented his third report[[740]](#footnote-740) containing a draft preamble and a revised set of draft articles on prevention, along with the recommendation that they be adopted as a framework convention. Furthermore, the third report addressed questions such as the scope of the topic, its relationship with liability, the relationship between an equitable balance of interests among States concerned and the duty of prevention, as well as duality of the regimes of liability and State responsibility. The Commission considered the report and decided to refer the draft preamble and draft articles contained therein to the Drafting Committee.

At its fifty-third session, in 2001, the Commission adopted and submitted to the General Assembly the final text of draft articles on prevention of transboundary harm from hazardous activities, with commentaries thereto.[[741]](#footnote-741) The draft articles consist of a preamble and nineteen articles: article 1 (Scope), article 2 (Use of terms), article 3 (Prevention), article 4 (Cooperation), article 5 (Implementation), article 6 (Authorization), article 7 (Assessment of risk), article 8 (Notification and information), article 9 (Consultations on preventive measures), article 10 (Factors involved in an equitable balance of interests), article 11 (Procedures in the absence of notification), article 12 (Exchange of information), article 13 (Information to the public), article 14 (National security and industrial secrets), article 15 (Non-discrimination), article 16 (Emergency preparedness), article 17 (Notification of an emergency), article 18 (Relationship to other rules of international law), and article 19 (Settlement of disputes). The text of the draft articles is reproduced in annex IV, section 11. In transmitting the final draft to the General Assembly, the Commission recommended that the General Assembly elaborate a convention on the basis of the draft articles.[[742]](#footnote-742)

The General Assembly, by resolution 56/82 of 12 December 2001, expressed its appreciation for the valuable work done by the Commission on the issue of prevention on the topic of international liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary harm from hazardous activities).[[743]](#footnote-743)

(b) International liability in case of loss from transboundary harm arising out of hazardous activities

The General Assembly, in resolution 53/102 of 8 December 1998, requested the Commission, while continuing its work on prevention, to examine other issues arising out of the topic, taking into account comments made by Governments, either in writing or in the Sixth Committee, and to submit its recommendations on the future work to be done on these issues to the Sixth Committee.

At its fifty-first session, in 1999, the Commission, while examining the first part of the topic (prevention, *see subsection (a), above*), decided to defer the consideration of the question of international liability, pending completion of the second reading of the draft articles on the prevention of transboundary damage from hazardous activities.[[744]](#footnote-744)

The General Assembly, in resolutions 54/111 of 9 December 1999 and 55/152 of 12 December 2000, requested the Commission to resume the consideration of the liability aspects of the topic as soon as the second reading of the draft articles on prevention was finalized. The General Assembly, by resolution 56/82 of 12 December 2001, requested the Commission to resume, during its fifty-fourth session, its consideration of the liability aspects of the topic, bearing in mind the interrelationship between prevention and liability, and taking into account the developments in international law and comments by Governments.

At its fifty-fourth session, in 2002, the Commission decided to include the topic “International liability for injurious consequences arising out of acts not prohibited by international law” on its programme of work and to resume its consideration of the second part of the topic.[[745]](#footnote-745) The Commission established a Working Group, chaired by Pemmaraju Sreenivasa Rao, to consider the conceptual outline of the topic. The Working Group recommended continuing to limit the scope of the remainder of the topic concerning liability to the same activities that were covered under the first part of the topic concerning prevention, which would effectively link the work on the two parts of the topic. The Working Group also set out the following initial understandings on the topic: (a) a threshold would have to be determined to trigger the application of the regime on allocation of loss caused; and (b) the loss to be covered should include loss to (i) persons, (ii) property, including elements of State patrimony and national heritage, and (iii) environment within national jurisdiction. The Working Group also considered the approach to be taken regarding the role of the operator and the State in the allocation of loss.[[746]](#footnote-746)

The General Assembly, in resolution 57/21 of 19 November 2002, took note of the Commission’s decision to proceed with its work on the topic, as requested by the Assembly in resolution 56/82.

The Commission appointed Pemmaraju Sreenivasa Rao as Special Rapporteur for the topic at its fifty-fourth session,in 2002,[[747]](#footnote-747) and proceeded with its consideration of the topic at its fifty-fifth to fifty-sixth sessions, from 2003 to 2004, and at its fifty-eighth session, in 2006. The Working Group was re-established, under the same chairmanship, at the Commission’s fifty-fifth[[748]](#footnote-748) and fifty-sixth sessions[[749]](#footnote-749), in 2003 and 2004, respectively. In connection with its work on the topic, the Commission had before it the reports of the Special Rapporteur,[[750]](#footnote-750) reports of the Working Group,[[751]](#footnote-751) a study undertaken by the Secretariat,[[752]](#footnote-752) as well as comments and observations received from Governments.[[753]](#footnote-753)

The Commission undertook the first reading of a set of draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities at its fifty-sixth session, in 2004. At that session, the Working Group examined the proposals for draft principles submitted by the Special Rapporteur in his second report[[754]](#footnote-754) with a view to recommending draft principles ripe for referral to the Drafting Committee. At the same session, the Commission adopted, on first reading, a set of eight draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, with commentaries thereto.[[755]](#footnote-755) In accordance with articles 16 and 21 of its Statute, the Commission decided to transmit the draft principles, through the Secretary-General, to Governments of Member States for comments and observations.[[756]](#footnote-756)

The Commission undertook and completed the second reading of the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities at its fifty-eighth session, in 2006, on the basis of the third report of the Special Rapporteur[[757]](#footnote-757) as well as the comments and observations received from Governments.[[758]](#footnote-758)

The Commission subsequently adopted, on second reading, the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, consisting of the text of a preamble and the following eight draft principles, as well as commentaries thereto: 1 (Scope of application), 2 (Use of terms), 3 (Purposes), 4 (Prompt and adequate compensation), 5 (Response measures), 6 (International and domestic remedies), 7 (Development of specific international regimes), and 8 (Implementation).[[759]](#footnote-759) The text of the draft principles is reproduced in annex IV, section 12.

The Commission submitted the draft preamble and draft principles to the General Assembly and recommended that, in accordance with article 23 of its Statute, the General Assembly endorse the draft principles by a resolution and urge States to take national and international action to implement them.[[760]](#footnote-760)

In resolution 61/36 of 4 December 2006, the General Assembly took note of the principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, and decided to undertake the consideration of the topic, together with the issue of the prevention of transboundary harm from hazardous activities, at its sixty-second session, in 2007.

27. Diplomatic protection

At its forty-seventh session, in 1995, the International Law Commission, on the basis of the recommendation of the Working Group on the long-term programme of work, decided to include in the Commission’s agenda, subject to the approval of the General Assembly, the topic “Diplomatic Protection”. The Commission noted that work on this topic would complement the Commission’s work on State responsibility (*see Part.III.A, section 25*) and should be of interest to all Member States. The Commission could consider, inter alia, the content and scope of the rule of exhaustion of local remedies; the rule of nationality of claims as applied to both natural and legal persons, including its relation to so-called “functional” protection; and problems of stateless persons and dual nationals. The Commission could also address the effect of dispute settlement clauses on domestic remedies and on the exercise of diplomatic protection.[[761]](#footnote-761)

The General Assembly, in resolution 50/45 of 11 December 1995, took note of the Commission’s suggestion to include the topic in its agenda and invited Governments to submit comments on this suggestion for consideration by the Sixth Committee of the General Assembly at its fifty-first session, in 1996.

At its forty-eighth session, in 1996, the Commission adopted a general outline of the main legal issues raised under the topic, including explanatory notes, prepared by the Working Group on the long-term programme of work, to assist Governments in deciding whether to approve further work. The Commission noted that the study could follow the traditional pattern of articles and commentaries, while leaving for future decision the question of its final form. [[762]](#footnote-762)

The General Assembly, in resolution 51/160 of 16 December 1996, invited the Commission to examine further the topic and to indicate its scope and content in the light of the comments and observations made during the debate in the Sixth Committee on the report of the Commission and any written comments submitted by Governments.

At its forty-ninth session, in 1997, the Commission established a Working Group to examine further the topic and to indicate its scope and content in accordance with General Assembly resolution 51/160. The Working Group attempted to (a) clarify the scope of the topic to the extent possible; and (b) identify the issues that should be studied in the context of the topic. The Commission adopted the report submitted by the Working Group.[[763]](#footnote-763)

The General Assembly, in resolution 52/156 of 15 December 1997, endorsed the Commission’s decision to include in its agenda the topic “Diplomatic protection”.

The Commission considered the topic at its forty-ninth and fiftieth sessions, in 1997 and 1998 and at its fifty-second to its fifty-eighth sessions, from 2000 to 2006. The Commission appointed Mohammed Bennouna and Christopher John R. Dugard as the successive Special Rapporteurs for the topic at its forty-ninth and fifty-first sessions, in 1997 and 1999, respectively.[[764]](#footnote-764) During its consideration of the topic, the Commission had before it eight reports[[765]](#footnote-765) of the Special Rapporteurs, three reports[[766]](#footnote-766) of Working Groups established at its forty-ninth, fiftieth and fifty-fifth sessions in 1997, 1998 and 2003, respectively, as well as comments and observations received from Governments.[[767]](#footnote-767)

The first reading of the draft articles on diplomatic protection was undertaken during the fifty-second to fifty-sixth sessions, from 2000 to 2004, on the basis of the first five reports[[768]](#footnote-768) submitted by the Special Rapporteur, Mr. Dugard. The Special Rapporteur submitted proposals for 27 draft articles, some of which the Commission decided not to take action on[[769]](#footnote-769). With regard to particular draft articles, the Commission established either a working group[[770]](#footnote-770) or an informal consultation[[771]](#footnote-771) to consider particular proposals of the Special Rapporteur, before referring them to the Drafting Committee.

At its fifty-sixth session, in 2004, the Commission completed the first reading of the draft articles on diplomatic protection and adopted a set of 19 draft articles as well as commentaries thereto.[[772]](#footnote-772) In accordance with articles 16 and 21 of its Statute, the Commission transmitted the draft articles adopted on first reading to Governments for comments and observations.[[773]](#footnote-773)

The General Assembly, in resolution 59/41 of 2 December 2004, expressed its appreciation to the Commission for the completion of the first reading of the draft articles on diplomatic protection. It further drew the attention of Governments to the importance for the Commission of having their views on the draft articles and commentary on diplomatic protection.

The Commission undertook and completed the second reading of the draft articles on diplomatic protection at its fifty-eighth session, in 2006, on the basis of the seventh report[[774]](#footnote-774) of the Special Rapporteur and of comments and observations received from Governments[[775]](#footnote-775) on the draft articles adopted on first reading in 2004. The Special Rapporteur’s report contained proposals for the consideration of draft articles 1 to 19 on second reading in light of the comments and observations received by Governments. It also contained a proposal for an additional draft article on the right of the injured national to receive compensation.

The Commission subsequently adopted, on second reading, the draft articles on diplomatic protection which were divided into four parts as follows: Part One. General Provisions, including articles 1 and 2; Part Two. Nationality, including Chapter I. General Principles, covering article 3, Chapter II. Natural Persons, covering articles 4 to 8, Chapter III. Legal Persons, covering articles 9 to 13; Part Three. Local Remedies, covering articles 14 to 15; and Part Four. Miscellaneous Provisions covering articles 16 to 19.[[776]](#footnote-776) The text of the draft articles is reproduced in annex IV, section 13.

In accordance with article 23 of its Statute, the Commission recommended to the General Assembly, that a convention be elaborated on the basis of the draft articles on diplomatic protection.[[777]](#footnote-777)

In resolution 61/35 of 4 December 2006, the General Assembly took noteof the draft articles on diplomatic protection and invited Governments to submit comments concerning the recommendation by the Commission to elaborate a convention on the basis of the articles. It further decided to return to the topic at its sixty-second session, in 2007.

28. Unilateral acts of States

At its forty-eighth session, in 1996, the International Law Commission, on the basis of the recommendation of the Working Group on the long-term programme of work, identified the topic of “Unilateral acts of States” as appropriate for codification and progressive development. The Working Group noted the relationship between this topic and the more general topic “Sources of international law” envisaged as a global topic of codification in the memorandum submitted by the Secretary-General at the first session of the Commission, in 1949.[[778]](#footnote-778) The Working Group concluded that the present topic was appropriate for immediate consideration for the following reasons: (1) it was a well delimited topic which had not been studied by any international official body; (2) it had been touched upon in several judgments of the International Court of Justice (ICJ), especially in the *Nuclear Tests* cases,[[779]](#footnote-779) but the dicta left room for uncertainties and questions; (3) States had abundant recourse to unilateral acts and their practice could be studied with a view to drawing general legal principles; and (4) the law of treaties provided a point of departure and a scheme of reference for approaching the rules relating to unilateral acts notwithstanding the differences between the two topics. The Working Group prepared a tentative general outline of the topic, including explanatory notes, which contained the following sections: (1) Definition and typology; (2) Legal effects and application; (3) Conditions of validity; and (4) Duration, amendment and termination.[[780]](#footnote-780)

The General Assembly, in resolution 51/160 of 16 December 1996, invited the Commission to examine further the topic “Unilateral acts of States” and to indicate its scope and content in the light of the comments and observations made during the debate in the Sixth Committee on the report of the Commission and any written comments that Governments may wish to submit.

The General Assembly, in resolution 52/156 of 15 December 1997, endorsed the Commission’s decision to include in its agenda the topic “Unilateral acts of States”.

The Commission appointed Victor Rodríguez Cedeño as Special Rapporteur at its forty-ninth session, in 1997,[[781]](#footnote-781) and proceeded with its work on the topic from its fiftieth session, in 1998 to its fifty-eighth session, in 2006. In connection with its consideration of the topic, the Commission had before it the reports of the Special Rapporteur,[[782]](#footnote-782) Government comments[[783]](#footnote-783) and the reports and conclusions of the open-ended Working Group established at its forty-ninth session, in 1997, and re-established each year from its fiftieth session, in 1998, to its fifty-third session, in 2001, and from its fifty-fifth session, in 2003, to its fifty-eighth session, in 2006.[[784]](#footnote-784) The Working Group was chaired by Enrique Candioti at its forty-ninth and fiftieth sessions, in 1997 and 1998 respectively, by the Special Rapporteur, Victor Rodríguez Cedeño, from its fifty-first session in 1999 to its fifty-third session in 2001, and by Alain Pellet from its fifty-third session in 2003 to its fifty-eighth session in 2006.

At its fifty-first session, in 1999, the Working Group reported to the Commission on issues related to the basic elements of a workable definition of unilateral acts as a starting point for further work on the topic as well as for gathering the relevant State practice; the setting of general guidelines according to which the practice of States should be gathered,[[785]](#footnote-785) and the direction that the work of the Special Rapporteur should take in the future.[[786]](#footnote-786)

At its fifty-fifth session, in 2003, the Commission adopted the seven recommendations, contained in Parts 1 and 2 of the report of the Working Group, on the scope of the topic and the method of work.[[787]](#footnote-787)

At its fifty-sixth session, in 2004, the Working Group agreed to retain a sample of unilateral acts sufficiently documented to allow for in-depth analysis. It also established a grid which would permit the use of uniform analytical tools.[[788]](#footnote-788) Individual members of the Working Group subsequently took up a number of studies, which were completed in accordance with the established grid, and transmitted to the Special Rapporteur for the preparation of his eighth report. The Commission, at its fifty-seventh session, in 2005, subsequently requested the Working Group to consider the points on which there was general agreement and which might form the basis for preliminary conclusions or proposals on the topic.[[789]](#footnote-789)

At its fifty-eighth session, in 2006, the Commission decided that, after extensive consideration of the topic, it was necessary to come to some conclusions. It was aware that the concept of an unilateral act was not uniform, and that it covered a wide spectrum of conduct. It noted further that differences among legal cultures partly accounted for the misunderstandings to which the topic had given rise as, for some, the concept of a juridical act necessarily implied an express manifestation of a will to be bound on the part of the author State, whereas for others any unilateral conduct by the State producing legal effects on the international plane could be categorized as an unilateral act.[[790]](#footnote-790)

At the same session, the Working Group was requested to prepare conclusions for the Commission on the topic taking into account the various views expressed, the draft Guiding Principles proposed by the Special Rapporteur in his ninth report[[791]](#footnote-791) and its previous work on the topic. The Commission, following consideration of the report of the Working Group, adopted a set of ten Guiding Principles, together with commentaries, applicable to unilateral declarations of States capable of creating legal obligations, [[792]](#footnote-792) and commended them to the attention of the General Assembly.[[793]](#footnote-793) The text of the Guiding Principles is reproduced in annex IV, section 14.

In resolution 61/34 of 4 December 2006, the General Assembly took noteof the Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations and commended their dissemination.

29. Fragmentation of international law: difficulties arising from the diversification and expansion of international law

At its fifty-second session, in 2000, the Commission decided to include the topic “Risks ensuing from fragmentation of international law” in its long-term programme of work.[[794]](#footnote-794) The Commission noted that the method and outcome of work on the topic did not fall strictly within the normal form of codification, but was within its competence and in accordance with its Statute.[[795]](#footnote-795) The General Assembly, in resolution 55/152 of 12 December 2000, took note of the Commission’s report concerning its long-term programme of work. In resolution 56/82 of 12 December 2001, the Assembly requested the Commission to further consider the topic, having due regard to comments made by Governments.

At its fifty-fourth session, in 2002, the Commission decided to include the topic in its programme of work, and changed the title to “Fragmentation of international law: difficulties arising from the diversification and expansion of international law”.[[796]](#footnote-796) The Commission proceeded with its work on the topic from its fifty-fourth session, in 2002, to its fifty-eighth session, in 2006. The Commission established a Study Group at its fifty-fourth session, in 2002, which was reconstituted at each session and chaired successively, by Bruno Simma, at its fifty-fourth session, in 2002, and by Martti Koskenniemi, at its fifty-fifth to fifty-eighth sessions, from 2003 to 2006.[[797]](#footnote-797) At each session, the Study Group submitted reports for consideration by the Commission.[[798]](#footnote-798)

At its fifty-fourth session, in 2002, the Study Group recommended the preparation of the following series of studies on specific aspects of the topic to assist international judges and practitioners in coping with the consequences of the diversification of international law: (*a*) the function and scope of the *lex specialis* rule and the question of “self-contained regimes”; (*b*) the interpretation of treaties in the light of “any relevant rules of international law applicable in the relations between the parties” (article 31 (3) (c) of the Vienna Convention on the Law of Treaties (*see annex V, section F*)), in the context of general developments in international law and concerns of the international community; (*c*) the application of successive treaties relating to the same subject matter (article 30 of the Vienna Convention on the Law of Treaties); (*d*) the modification of multilateral treaties between certain of the parties only (article 41 of the Vienna Convention on the Law of Treaties); and (*e*) hierarchy in international law: *jus cogens,* obligations *erga omnes,* Article 103 of the Charter of the United Nations, as conflict rules.[[799]](#footnote-799) The Study Group noted that the choice of subjects for study was guided by the Commission’s previous work relating to the law of treaties and the responsibility of States for internationally wrongful acts and that the Commission’s work on the topic would build upon and further develop those earlier texts.[[800]](#footnote-800)

At its fifty-fifth session, in 2003, the Study Group considered the preliminary conceptual questions addressed within the outline relating to the function and the scope of the *lex specialis* rule, prepared by the Study Group’s Chairman. The questions focused on the nature of the *lex specialis* rule, its acceptance and rationale, the relational distinction between the “general” and the “special” rule and the application of the *lex specialis* rule in regard to the “same subject matter”.[[801]](#footnote-801)

During its fifty-sixth session, in 2004, and fifty-seventh session, in 2005, the Study Group considered a number of outlines and studies on the different topics selected by the Study Group. The Study Group reaffirmed its approach to focus on the substantive aspects of fragmentation in the light of the Vienna Convention on the Law of Treaties while leaving aside institutional considerations pertaining to fragmentation. It reiterated its intention to attain an outcome that would be concrete and of practical value especially for legal experts in foreign offices and international organizations.[[802]](#footnote-802)

At its fifty-eighth session, in 2006, the Commission finalized its work on fragmentation of international law and took note of the set of forty-two conclusions contained in the report of the Study Group,[[803]](#footnote-803) which had to be read in connection with the analytical study, finalized by the Chairman of the Study Group, on which they were based.[[804]](#footnote-804) That study summarized and analysed the phenomenon of fragmentation on the basis of the studies prepared by the various members of the Study Group and taking into account the comments made in the Study Group.

The Commission, after taking note of the conclusions of the Study Group commended them to the attention of the General Assembly.[[805]](#footnote-805) The conclusions are reproduced in annex IV, section 15.

In resolution 61/34 of 4 December 2006, the General Assembly took noteof the conclusions of the Commission’s Study Group on the topic “Fragmentation of international law: difficulties arising from diversification and expansion of international law,” together with the analytical study on which they were based.

B. TOPICS AND SUB-TOPICS CURRENTLY UNDER CONSIDERATION BY THE COMMISSION

A brief account of the work of the International Law Commission on the topics and sub-topics currently under consideration is set out below.

1. Reservations to treaties[[806]](#footnote-806)

At its forty-fifth session, in 1993, the International Law Commission, on the basis of the recommendation of the Working Group on the long-term programme of work, decided to include in the Commission’s agenda, subject to the approval of the General Assembly, the topic “The law and practice relating to reservations to treaties”. The Commission noted that the 1969 Vienna Convention on the Law of Treaties (*see annex V, section F*), the 1978 Vienna Convention on Succession of States in Respect of Treaties (*see annex V, section I*) and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (*see annex V, section K*) set out some principles concerning reservations to treaties, but they did so in terms that were too general to act as a guide for State practice and left a number of important matters in the dark. These conventions provide ambiguous answers to the questions of differentiating between reservations and declarations of interpretation, the scope of declarations of interpretation, the validity of reservations (the conditions for the lawfulness of reservations and their applicability to another State) and the regime of objections to reservations (in particular, the admissibility and scope of objections to a reservation which is neither prohibited by the treaty nor contrary to its object and purpose). These conventions are also silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties (in particular the constituent instruments of international organizations and human rights treaties), reservations to codification treaties and problems resulting from particular treaty techniques (elaboration of additional protocols, bilateralization techniques). The Commission recognized the need not to challenge the regime established in articles 19 to 23 of the 1969 Vienna Convention on the Law of Treaties, but nonetheless considered that these provisions could be clarified and developed in draft protocols to existing conventions or a guide to practice.[[807]](#footnote-807)

The General Assembly, in resolution 48/31 of 9 December 1993, endorsed the above decision of the International Law Commission on the understanding that the final form to be given to the work on the topic would be decided after a preliminary study was presented to the Assembly.

At its forty-sixth session, in 1994, the Commission appointed Alain Pellet as Special Rapporteur for the topic.[[808]](#footnote-808)

The General Assembly, in resolution 49/51 of 9 December 1994, again endorsed the decision of the Commission on the understanding reflected above.

At its forty-seventh session, in 1995, the Commission had before it the first report[[809]](#footnote-809) of the Special Rapporteur. This preliminary report provided a detailed study of the Commission’s previous work on reservations and its outcome. It also provided an inventory of the problematic aspects of the topic including those relating to the ambiguities and gaps in the provisions concerning reservations contained in the Vienna Conventions on the Law of Treaties, as well as those connected with the specific object of certain treaties or provisions or arising from certain specific treaty approaches. Finally, it outlined the scope and form of the Commission’s future work, guided by the preservation of what had been achieved, and proposed the form that the results of the Commission’s work might take. Following the Commission’s consideration of the report, the Special Rapporteur summarized the conclusions he had drawn with respect to: (1) the title of the topic, which should now read “Reservations to treaties”; (2) the form of the results of the study, which should be a guide to practice in respect of reservations; (3) the flexible way in which the Commission’s work on the topic should be carried out; and (4) the consensus in the Commission that there should be no change in the relevant provisions of the Vienna Conventions. The Guide to Practice in the form of draft articles with commentaries would provide guidelines for the practice of States and international organizations in respect of reservations. These guidelines would, if necessary, be accompanied by model clauses.[[810]](#footnote-810) In the view of the Commission, those conclusions constituted the results of the preliminary study requested by the General Assembly in resolutions 48/31 of 9 December 1993 and 49/51 of 9 December 1994.[[811]](#footnote-811) The Commission authorized the Special Rapporteur to prepare a detailed questionnaire on reservations to treaties to ascertain the practice of, and the problems encountered by, States and international organizations, particularly those which are depositaries of multilateral conventions.[[812]](#footnote-812)

The General Assembly, in resolution 50/45 of 11 December 1995, took note of the Commission’s conclusions, invited the Commission to continue its work along the lines indicated in its report and invited States and international organizations, particularly those which are depositaries, to answer the questionnaire.

At its forty-eighth session, in 1996, the Commission had before it the Special Rapporteur’s second report[[813]](#footnote-813) as well as a bibliography.[[814]](#footnote-814) The report dealt with the issue of the unity or diversity of the legal regime of reservations to treaties, especially reservations to human rights treaties. The Special Rapporteur concluded that despite the diversity of treaties, the Vienna regime on reservations is generally applicable. Moreover, the coexistence of monitoring mechanisms does not preclude monitoring bodies from making determinations of the permissibility of reservations, even if States still can draw any consequences they wish from such determinations and react accordingly. The Special Rapporteur also proposed a draft resolution of the International Law Commission on reservations to normative multilateral treaties, including human rights treaties, which was addressed to the General Assembly for the purpose of drawing attention to and clarifying the legal aspects of the matter. The Commission did not have time to consider the report and the draft resolution. The Commission therefore deferred the debate on the topic to its next session.[[815]](#footnote-815)

At its forty-ninth session, in 1997, the Commission again had before it the second report of the Special Rapporteur on the topic concerning the question of the unity or diversity of the juridical regime for reservations. Wishing to contribute to discussions taking place in other forums on the subject of reservations to normative multilateral treaties, particularly human rights treaties, the Commission adopted a number of preliminary conclusions on the subject.[[816]](#footnote-816) The Commission welcomed comments by Governments on these preliminary conclusions and invited monitoring bodies set up by the relevant human rights treaties to submit their comments as well.[[817]](#footnote-817)

The General Assembly, in resolution 52/156 of 15 December 1997, took note of the Commission’s preliminary conclusions and its invitation to all treaty bodies set up by normative multilateral treaties that might wish to do so to provide, in writing, their comments and observations on the conclusions, while drawing the attention of Governments to the importance for the International Law Commission of having their views on the preliminary conclusions.

From its fiftieth session, in 1998, to its fifty-eighth session, in 2006, the Commission considered an additional eight reports (for a total of ten[[818]](#footnote-818)) by the Special Rapporteur,[[819]](#footnote-819) and provisionally adopted 78 draft guidelines and the commentaries thereto.[[820]](#footnote-820)

The Commission also held informal meetings with the Human Rights Treaty Bodies at the fifty-fifth to fifty-seventh sessions, in 2003 to 2005, during which there was an exchange of views aiming at a deeper understanding of the position of those bodies, in particular with regard to the preliminary conclusions on reservations to normative multilateral treaties, including human rights treaties.[[821]](#footnote-821)

The work of the Commission on the topic as described above has proceeded in accordance with the successive resolutions adopted by the General Assembly under the item relating to the report of the International Law Commission.[[822]](#footnote-822)

2. Responsibility of international organizations

At its fifty-second session, in 2000, the Commission, on the basis of the recommendation of the Working Group on the long-term programme of work, concluded that the topic “Responsibility of international organizations” was appropriate for inclusion in its long-term programme of work.[[823]](#footnote-823)

The General Assembly, in resolution 55/152 of 12 December 2000, took note of the Commission’s report concerning its long-term programme of work. In resolution 56/82 of 12 December 2001, the Assembly requested the Commission to begin its work on the topic.

At its fifty-fourth session, in 2002, the Commission decided to include the topic in its programme of work, to appoint Giorgio Gaja as Special Rapporteur for the topic, and to establish a Working Group on the topic.[[824]](#footnote-824) The Working Group considered the following issues: (a) the scope of the topic, including the concepts of responsibility and international organizations; (b) relations between the topic of responsibility of international organizations and the articles on State responsibility; (c) questions of attribution; (d) questions of responsibility of Member States for conduct that is attributed to an international organization; (e) other questions concerning the arising of responsibility for an international organization; (f) questions of content and implementation of international responsibility; (g) settlement of disputes; and (h) the practice to be taken into consideration. The Working Group recommended that the Secretariat approach international organizations with a view to collecting relevant materials, especially on questions of attribution and the responsibility of Member States for conduct that is attributed to an international organization.[[825]](#footnote-825)

The General Assembly, in resolution 57/21 of 19 November 2002, took note of the Commission’s decision to include the topic in its programme of work.

From its fifty-fifth to fifty-eighth sessions, held from 2003 to 2006, the Commission had received and considered four reports from the Special Rapporteur,[[826]](#footnote-826) as well as four sets of comments and observations received from Governments and international organizations,[[827]](#footnote-827) and provisionally adopted draft articles 1 to 30, with commentaries thereto.[[828]](#footnote-828) Working Groups were also established at the fifty-fifth session, in 2003, to consider the Special Rapporteur’s proposal for draft article 2, as well as to provide guidance to the Special Rapporteur on his next report;[[829]](#footnote-829) and at the fifty-seventh session, in 2005, to consider draft articles 8 and 16, as proposed by the Special Rapporteur.[[830]](#footnote-830)

The Commission’s work on this topic as described above has proceeded in accordance with the successive resolutions adopted by the General Assembly under the item relating to the report of the International Law Commission.[[831]](#footnote-831)

3. Shared natural resources

At its fifty-second session, in 2000, the Commission, on the basis of the recommendation of the Working Group on the long-term programme of work, concluded that the topic “Shared natural resources of States” was appropriate for inclusion in its long-term programme of work.[[832]](#footnote-832)

The General Assembly, in resolution 55/152 of 12 December 2000, took note of the Commission’s report concerning its long-term programme of work. In resolution 56/82 of 12 December 2001, the Assembly requested the Commission to further consider the topic having due regard to comments made by Governments.

At its fifty-fourth session, in 2002, the International Law Commission decided to include the topic “Shared natural resources” in its programme of work, to appoint Chusei Yamada as Special Rapporteur for the topic, and to establish a Working Group to assist the Special Rapporteur.[[833]](#footnote-833) The General Assembly, in resolution 57/21 of 19 November 2002, took note of the Commission’s decision to include the topic in its programme of work.

At its fifty-fifth session, in 2003, the Commission had before it the first report[[834]](#footnote-834) of the Special Rapporteur which provided the background on the topic and proposed to limit its scope to the study of confined transboundary groundwaters, oil and gas, with work proceeding initially on the study of confined transboundary groundwaters. The Special Rapporteur also submitted an addendum to the report which was technical in nature and sought to provide a better understanding of what constituted confined transboundary groundwaters. The Special Rapporteur noted that the problem of shared natural resources had first been dealt with by the Commission during its codification of the law of the non-navigational uses of international watercourses (*see pages 196 (footnote 681), 197 and 198*). At the time, the Commission had decided to exclude confined groundwaters unrelated to surface waters from the topic, but nonetheless considered that a separate study was warranted due to the importance of confined groundwaters in many parts of the world. The Special Rapporteur deemed it indispensable to know exactly what such groundwaters were in order to ascertain the extent to which the principles embodied in the 1997 Convention on the Law of the Non-navigational Uses of International Watercourses (*see annex V, section L*) could be applicable. The Special Rapporteur noted that the international efforts to manage groundwaters were taking place in different forums, that the law relating to groundwaters was more akin to that governing the exploitation of oil and gas, and that the Commission’s work on the topic of international liability, particularly regarding the prevention aspect, would be relevant.[[835]](#footnote-835)

The General Assembly, in resolution 58/77 of 9 December 2003, invited Governments to provide information to the International Law Commission regarding national legislation, bilateral and other agreements and arrangements with regard to the use and management of transboundary groundwaters, in particular those governing the quality and quantity of such waters, relevant to the topic. At the fifty-sixth session in 2004, the Commission agreed that a questionnaire, prepared by the Special Rapporteur, be circulated to Governments and relevant intergovernmental organizations asking for their views and information regarding groundwaters.[[836]](#footnote-836) The General Assembly in resolution 59/41 of 2 December 2004 drew the attention of Governments to the importance for the International Law Commission of having their views on the various aspects involved in the topic, in particular on their practice, bilateral or regional, relating to the allocation of groundwaters from transboundary aquifer systems and the management of non-renewable transboundary aquifer systems relating to the topic.

The Commission undertook the first reading of the draft articles from its fifty-sixth to fifty-eighth sessions, from 2004 to 2006, respectively. During this period, the Commission received and considered a further two (for a total of three) reports from the Special Rapporteur, containing proposals for draft articles.[[837]](#footnote-837) The Commission also had before it a set of comments and observations received from Governments and relevant intergovernmental organizations, which were circulated at the fifty-seventh session, in 2005.[[838]](#footnote-838) The Commission also established three open-ended working groups, the first, in 2004, chaired by the Special Rapporteur, to assist in furthering the Commission’s consideration of the topic; the second, in 2005, chaired by Enrique Candioti, to review and revise the 25 draft articles on the law of transboundary aquifers proposed by the Special Rapporteur, in his third report, taking into account the debate in the Commission; and the third in 2006, also chaired by Enrique Candioti, to complete the review and revision of the draft articles submitted by the Special Rapporteur.[[839]](#footnote-839)

At its fifty-eighth session, in 2006, the Commission adopted, on first reading, 19 draft articles[[840]](#footnote-840) on the law of transboundary aquifers and commentaries thereto. The Commission decided, in accordance with articles 16 to 21 of its statute, to transmit the draft articles through the Secretary General for comments and observations, with the request that such comments and observations be submitted to the Secretary General.[[841]](#footnote-841)

The General Assembly, in resolution 61/34 of 4 December 2006, expressed its appreciation for the completion of the first reading of the draft articles on the law of transboundary aquifers.

The Commission’s work on this topic, as described above, has proceeded in accordance with the successive resolutions adopted by the General Assembly under the item relating to the report of the International Law Commission.[[842]](#footnote-842)

4.  Effects of armed conflicts on treaties

At its fifty-second session, in 2000, the International Law Commission identified the topic “Effects of armed conflicts on treaties” for inclusion in its long-term programme of work.[[843]](#footnote-843) A brief syllabus describing the possible overall structure and approach to the topic was annexed to that year’s report of the Commission.[[844]](#footnote-844) The syllabus noted that the topic had been set aside by the Commission in its work on the law of treaties and formed part of the saving clause in the Vienna Convention on the Law of Treaties[[845]](#footnote-845) (*see annex V, section F*). The syllabus further recognized that the subject was ideal for codification and/or progressive development as, on the one hand, there was considerable practice and experience and, on the other hand, there were elements of uncertainty. It further noted that the topic received a wide range of support in the Working Group on the long-term programme of work and that it was generally recognized that there was a continuing need for clarification of the law in the area.

At its fifty-sixth session, in 2004, the Commission decided to include the topic “Effects of armed conflicts on treaties” in its programme of work and to appoint Ian Brownlie as Special Rapporteur for the topic.[[846]](#footnote-846)

The General Assembly, in resolution 55/152 of 12 December 2000, took note of the topic’s inclusion in the long-term programme of work and, by resolution 59/41 of 2 December 2004, endorsed the Commission’s decision to include the topic in its programme of work.

At its fifty-seventh and fifty-eighth sessions, in 2005 and 2006, respectively, the Commission received and considered the first two reports of the Special Rapporteur[[847]](#footnote-847), as well as a memorandum prepared by the Secretariat.[[848]](#footnote-848) At the fifty-seventh session, in 2005, the Commission endorsed the Special Rapporteur’s suggestion that the Secretariat circulate a note to Governments requesting information about their practice with regard to the topic, in particular the more contemporary practice.[[849]](#footnote-849)

The work of the Commission on the topic as described above has been proceeding in accordance with the successive resolutions adopted by the General Assembly under the item relating to the report of the International Law Commission.[[850]](#footnote-850)

5.  Expulsion of aliens

At its fiftieth session, in 1998, the Commission took note of the report of the Planning Group identifying, inter alia, the topic of expulsion of aliens for possible inclusion in the Commission’s long-term programme of work.[[851]](#footnote-851) The topic was subsequently included in the long-term programme at the fifty-second session, in 2000,[[852]](#footnote-852) and a syllabus describing the possible overall structure of and approach to the topic was annexed to that year’s report of the Commission.[[853]](#footnote-853)

At its fifty-sixth session, in 2004, the Commission decided to include the topic “Expulsion of aliens” in its programme of work and to appoint Maurice Kamto as Special Rapporteur for the topic.[[854]](#footnote-854)

The General Assembly, in resolution 55/152 of 12 December 2000, took note of the topic’s inclusion in the long-term programme of work and, in resolution 59/41 of 2 December 2004, endorsed the decision of the Commission to include the topic in its agenda.

At its fifty-seventh and fifty-eighth sessions, in 2005 and 2006, respectively, the Commission received two reports of the Special Rapporteur.[[855]](#footnote-855) The Commission also received a memorandum prepared by the Secretariat.[[856]](#footnote-856) The Special Rapporteur’s preliminary report, issued in 2005, provided an overall view of the subject while highlighting the legal problems which it raised and the methodological difficulties related to its consideration. The report dealt with the concept of expulsion of aliens, the right to expel, the grounds for expulsion, and the rights related to expulsion. It further examined a number of methodological issues and proposed a draft work plan and outline.

The work of the Commission on the topic as described above has been proceeding in accordance with the successive resolutions adopted by the General Assembly under the item relating to the report of the International Law Commission.[[857]](#footnote-857)

6. The obligation to extradite or prosecute (aut dedere aut judicare)

At its fifty-sixth session, in 2004, the Commission, on the basis of the recommendation of the Working Group on the long-term programme of work, identified the topic “Obligation to extradite or prosecute (*aut dedere aut judicare*)” for inclusion in its long-term programme of work.[[858]](#footnote-858) A brief syllabus describing the overall structure and approach to the topic was annexed to that year’s report of the Commission.[[859]](#footnote-859)

The General Assembly, in resolution 59/41 of 2 December 2004, took note of the Commission’s report concerning its long-term programme of work.

At its fifty-seventh session, in 2005, the Commission decided to include the topic in its programme of work and to appoint Zdzislaw Galicki as Special Rapporteur for the topic.[[860]](#footnote-860)

The General Assembly in resolution 60/22 of 23 November 2005 endorsed the decision of the Commission to include the topic in its programme of work.

At its fifty-eighth session, in 2006, the Commission had before it the preliminary report[[861]](#footnote-861) of the Special Rapporteur, dealing with the universality of suppression and the universality of jurisdiction, universal jurisdiction and the obligation to extradite or prosecute, the sources of the obligation to extradite or prosecute, and the scope of the obligation to extradite or prosecute.

The work of the Commission on the topic as described above has been proceeding in accordance with the successive resolutions adopted by the General Assembly under the item relating to the report of the International Law Commission.[[862]](#footnote-862)

**ANNEX I**

**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

Article 2a

1. The Commission shall consist of thirty-four members who shall be persons of recognized competence in international law.

2. No two members of the Commission shall be nationals of the same State.

3. In case of dual nationality a candidate shall be deemed to be a national of the State in which he ordinarily exercises civil and political rights.

Article 3

The members of the Commission shall be elected by the General Assembly from a list of candidates nominated by the Governments of States Members of the United Nations.

Article 4

Each Member may nominate for election not more than four candidates, of whom two may be nationals of the nominating State and two nationals of other States.

Article 5

The names of the candidates shall be submitted in writing by the Governments to the Secretary-General by 1 June of the year in which an election is held, provided that a Government may in exceptional circumstances substitute for a candidate whom it has nominated before 1 June another candidate whom it shall name not later than thirty days before the opening of the General Assembly.

Article 6

The Secretary-General shall as soon as possible communicate to the Governments of States Members the names submitted, as well as any curricula vitae of candidates that may have been submitted by the nominating Governments.

Article 7

The Secretary-General shall prepare the list referred to in article 3 above, comprising in alphabetical order the names of all the candidates duly nominated, and shall submit this list to the General Assembly for the purposes of the election.

Article 8

At the election the electors shall bear in mind that the persons to be elected to the Commission should individually possess the qualifications required and that in the Commission as a whole representation of the main forms of civilization and of the principal legal systems of the world should be assured.

Article 9[[863]](#footnote-863)

1. Those candidates, up to the maximum number prescribed for each regional group, who obtain the greatest number of votes and not less than a majority of the votes of the Members present and voting shall be elected.

2. In the event of more than one national of the same State obtaining a sufficient number of votes for election, the one who obtains the greatest number of votes shall be elected, and, if the votes are equally divided, the elder or eldest candidate shall be elected.

Article 10[[864]](#footnote-864)

The members of the Commission shall be elected for five years. They shall be eligible for re-election.

Article 11

In the case of a vacancy, the Commission itself shall fill the vacancy having due regard to the provisions contained in articles 2 and 8 above.

Article 12[[865]](#footnote-865)

The Commission shall sit at the European Office of the United Nations at Geneva. The Commission shall, however, have the right to hold meetings at other places after consultation with the Secretary-General.

Article 13[[866]](#footnote-866)

Members of the Commission shall be paid travel expenses, and shall also receive a special allowance, the amount of which shall be determined by the General Assembly.

Article 14

The Secretary-General shall, so far as he is able, make available staff and facilities required by the Commission to fulfil its task.

Chapter II. Functions of the International   
Law Commission

Article 15

In the following articles the expression “progressive development of international law” is used for convenience as meaning the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States. Similarly, the expression “codification of international law” is used for convenience as meaning the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and doctrine.

A. Progressive development of international law

Article 16

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

(a) It shall appoint one of its members to be Rapporteur;

(b) It shall formulate a plan of work;

(c) It shall circulate a questionnaire to the Governments, and shall invite them to supply, within a fixed period of time, data and information relevant to items included in the plan of work;

(d) It may appoint some of its members to work with the Rapporteur on the preparation of drafts pending receipt of replies to this questionnaire;

(e) It may consult with scientific institutions and individual experts; these experts need not necessarily be nationals of Members of the United Nations. The Secretary-General will provide, when necessary and within the limits of the budget, for the expenses of these consultations of experts;

(f) It shall consider the drafts proposed by the Rapporteur;

(g) When the Commission considers a draft to be satisfactory, it shall request the Secretary-General to issue it as a Commission document. The Secretariat shall give all necessary publicity to this document which shall be accompanied by such explanations and supporting material as the Commission considers appropriate. The publication shall include any information supplied to the Commission in reply to the questionnaire referred to in subparagraph (c) above;

(h) The Commission shall invite the Governments to submit their comments on this document within a reasonable time;

(i) The Rapporteur and the members appointed for that purpose shall reconsider the draft, taking into consideration these comments, and shall prepare a final draft and explanatory report which they shall submit for consideration and adoption by the Commission;

(j) The Commission shall submit the draft so adopted with its recommendations through the Secretary-General to the General Assembly.

Article 17

1. The Commission shall also consider proposals and draft multilateral conventions submitted by Members of the United Nations, the principal organs of the United Nations other than the General Assembly, specialized agencies, or official bodies established by intergovernmental 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 and 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 defining:

(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. Cooperation with other bodies

Article 25

1. The Commission may consult, if it considers it necessary, with any of the organs of the United Nations on any subject which is within the competence of that organ.

2. All documents of the Commission which are circulated to Governments by the Secretary-General shall also be circulated to such organs of the United Nations as are concerned. Such organs may furnish any information or make any suggestions to the Commission.

Article 26

1. The Commission may consult with any international or national organizations, official or non-official, on any subject entrusted to it if it believes that such a procedure might aid it in the performance of its functions.

2. For the purpose of distribution of documents of the Commission, the Secretary-General, after consultation with the Commission, shall draw up a list of national and international organizations concerned with questions of international law. The Secretary-General shall endeavour to include on this list at least one national organization of each Member of the United Nations.

3. In the application of the provisions of this article, the Commission and the Secretary-General shall comply with the resolutions of the General Assembly and the other principal organs of the United Nations concerning relations with Franco Spain and shall exclude both from consultations and from the list, organizations which have collaborated with the nazis and fascists.

4. The advisability of consultation by the Commission with intergovernmental organizations whose task is the codification of international law, such as those of the Pan American Union, is recognized.

ANNEX II

PRESENT AND FORMER MEMBERS OF THE INTERNATIONAL LAW COMMISSION

Names marked with an asterisk are those of members elected in 2006 by the General Assembly for the term 1 January 2007 to 31 December 2011.[[867]](#footnote-867)

| Name | Nationalityb | Period of servicec |
| --- | --- | --- |
| Emmanuel Akwei Addo | Ghana | 1997-2006 |
| Roberto Ago | Italy | 1957-1978 |
| Bola Adesumbo Ajibola | Nigeria | 1987-1991 |
| Richard Osuolale A. Akinjide | Nigeria | 1982-1986 |
| Husain M. Al-Baharna | Bahrain | 1987-2006 |
| Fernando Albonico | Chile | 1967-1971 |
| Gonzalo Alcivar | Ecuador | 1970-1972 |
| George H. Aldrich | United States of America | 1981 |
| Ricardo J. Alfaro | Panama | 1949-1953  1958-1959 |
| Awn S. Al-Khasawneh | Jordan | 1987-1999 |
| \*Ali Mohsen Fetais Al-Marri | Qatar | 2002- |
| Riyadh Mahmoud Sami Al-Qaysi | Iraq | 1982-1991 |
| Gilberto Amado | Brazil | 1949-1969 |
| Gaetano Arangio-Ruiz | Italy | 1985-1996 |
| Joao Clemente Baena Soares | Brazil | 1997-2006 |
| Mikuin Leliel Balanda | Zaired | 1982-1986 |
| Julio Barboza | Argentina | 1979-1996 |
| Yuri G. Barsegov | Union of Soviet Socialist Republicse | 1987-1991 |
| Milan Bartoš | Yugoslavia | 1957-1973 |
| Mohammed Bedjaoui | Algeria | 1965-1981 |
| John Alan Beesley | Canada | 1987-1991 |
| Mohamed Bennouna | Morocco | 1987-1998 |
| Ali Suat Bilge | Turkey | 1972-1976 |
| Boutros Boutros-Ghali | Egypt | 1979-1991 |
| Derek William Bowett | United Kingdom of Great Britain and Northern Ireland | 1992-1996 |
| James Leslie Brierly | United Kingdom of Great Britain and Northern Ireland | 1949-1951 |
| Herbert W. Briggs | United States of America | 1962-1966 |
| \*Ian Brownlie | United Kingdom of Great Britain and Northern Ireland | 1997- |
| Marcel Cadieux | Canada | 1962-1966 |
| \*Lucius Caflisch | Switzerland | 2007- |
| Carlos Calero-Rodrigues | Brazil | 1982-1996 |
| Juan José Calle y Calle | Peru | 1973-1981 |
| \*Enrique J. A. Candioti | Argentina | 1997- |
| Jorge Castañeda | Mexico | 1967-1986 |
| Erik Castrén | Finland | 1962-1971 |
| Choung Il Chee | Republic of Korea | 2002-2006 |
| \*Pedro Comissario Afonso | Mozambique | 2002- |
| Roberto Córdova | Mexico | 1949-1954 |
| James Richard Crawford | Australia | 1992-2001 |
| Emmanuel Kodjoe Dadzie | Ghana | 1977-1981 |
| Riad Daoudi | Syrian Arab Republic | 2002-2006 |
| John de Saram | Sri Lanka | 1992-1996 |
| Leonardo Díaz-González | Venezuela | 1977-1991 |
| \*Christopher John Robert Dugard | South Africa | 1997- |
| Constantin P. Economides | Greece | 1997-2001 2003-2006 |
| Douglas L. Edmonds | United States of America | 1954-1961 |
| Gudmundur Eiriksson | Iceland | 1987-1996 |
| Abdullah El-Erian | Egypt, United Arab Republic and Arab Republic of Egyptf | 1957-1958 1962-1978 |
| Nabil Elaraby | Egypt | 1994-2001 |
| Taslim Olawale Elias | Nigeria | 1962-1975 |
| Faris El-Khouri | Syria, United Arab Republicg | 1949-1961 |
| Khalafalla El Rasheed Mohamed Ahmed | Sudan | 1982-1986 |
| Nihat Erim | Turkey | 1959-1961 |
| \*Paula Escarameia | Portugal | 2002- |
| Constantin Th. Eustathiades | Greece | 1967-1971 |
| Jens Evensen | Norway | 1979-1984 |
| Luigi Ferrari Bravo | Italy | 1997-1998 |
| Sir Gerald Fitzmaurice | United Kingdom of Great Britain and Northern Ireland | 1955-1960 |
| Constantin Flitan | Romania | 1982-1986 |
| \* Salifou Fomba | Mali | 1992-1996  2002- |
| Laurel B. Francis | Jamaica | 1977-1991 |
| J. P. A. François | Netherlands | 1949-1961 |
| \*Giorgio Gaja | Italy | 1999- |
| \*Zdzislaw Galicki | Poland | 1997- |
| Francisco V. García Amador | Cuba | 1954-1961 |
| Raul I. Goco | Philippines | 1997-2001 |
| Bernhard Graefrath | German Democratic  Republic, Germanyh | 1987-1991 |
| André Gros | France | 1961-1963 |
| Mehmet Güney | Turkey | 1992-1996 |
| Gerhard Hafner | Austria | 1997-2001 |
| Edvard Hambro | Norway | 1972-1976 |
| \*Hussein Hassouna | Egypt | 2007- |
| Francis Mahon Hayes | Ireland | 1987-1991 |
| Qizhi He | China | 1994-2001 |
| Mauricio Herdocia Sacasa | Nicaragua | 1997-2001 |
| \*Mahmoud Hmoud | Jordan | 2007- |
| Shuhsi Hsu | China | 1949-1961 |
| Jiahua Huang | China | 1985-1986 |
| Manley O. Hudson | United States of America | 1949-1953 |
| Kamil E. Idris | Sudan | 1992-1996 2000-2001 |
| Adegoke Ajibola Igei | Nigeria |  |
| Luis Ignacio-Pinto | Dahomeyj | 1967-1969 |
| Jorge E. Illueca | Panama | 1982-1991 1997-2001 |
| \*Marie G. Jacobsson | Sweden | 2007- |
| Andreas J. Jacovides | Cyprus | 1982-1996 |
| S. P. Jagota | India | 1977-1986 |
| Eduardo Jimenezde Arechaga | Uruguay | 1960-1969 |
| Peter C. R. Kabatsi | Uganda | 1992-2001 2002-2006 |
| \*Maurice Kamto | Cameroon | 1999- |
| Victor Kanga | Cameroon | 1962-1964 |
| James Lutabanzibwa Kateka | United Republic of Tanzania | 1997-2006 |
| Richard D. Kearney | United States of America | 1967-1976 |
| \*Fathi Kemicha | Tunisia | 2002- |
| Thanat Khoman | Thailand | 1957-1959 |
| \*Roman Anatolyevitch Kolodkin | Russian Federation | 2003- |
| Vladimir M. Koretsky | Union of Soviet Socialist Republicse | 1949-1951 |
| Abdul G. Koroma | Sierra Leone | 1982-1993 |
| Martti Koskenniemi | Finland | 2002-2006 |
| Feodor I. Kozhevnikov | Union of Soviet Socialist Republicse | 1952-1953 |
| Sergei B. Krylov | Union of Soviet Socialist Republicse | 1954-1956 |
| Mochtar Kusuma-Atmadja | Indonesia | 1992-2001 |
| Valery I. Kuznetsov | Russian Federation | 2002 |
| Manfred Lachs | Poland | 1962-1966 |
| José M. Lacleta Muñoz | Spain | 1982-1986 |
| Sir Hersch Lauterpacht | United Kingdom of Great Britain and Northern Ireland | 1952-1954 |
| Chieh Liu | China | 1962-1966 |
| Igor Ivanovich Lukashuk | Russian Federation | 1995-2001 |
| Antonio de Luna Garcia | Spain | 1962-1966 |
| Ahmed Mahiou | Algeria | 1982-1996 |
| Chafic Malek | Lebanon | 1982-1986 |
| William Mansfield | New Zealand | 2002-2006 |
| Alfredo Martínez Moreno | El Salvador | 1973-1976 |
| Michael J. Matheson | United States of America | 2003-2006 |
| Ahmed Matine-Daftary | Irank | 1957-1961 |
| Stephen C. McCaffrey | United States of America | 1982-1991 |
| \*Donald McRae | Canada | 2007- |
| \*Teodor Viorel Melescanu | Romania | 1997-2001 2003- |
| Václav Mikulka | Czechoslovakia,Czech Republicl | 1992-1998 |
| Djamchid Momtaz | Iran (Islamic Republic of) | 2000-2006 |
| Zhengyu Ni | China | 1982-1984 |
| \*Bernd H. Niehaus | Costa Rica | 2002- |
| Frank X. J. C. Njenga | Kenya | 1976-1991 |
| \*Georg Nolte | Germany | 2007- |
| Motoo Ogiso | Japan | 1982-1991 |
| \*Bayo Ojo | Nigeria | 2007- |
| Didier Opertti Badan | Uruguay | 1997- 2006 |
| Luis Padilla Nervo | Mexico | 1955-1963 |
| Radhabinod Pal | India | 1952-1966 |
| Guillaume Pambou-Tchivounda | Gabon | 1992-2006 |
| Angel Modesto Paredes | Ecuador | 1962-1966 |
| John J. Parker | United States of America | 1954 |
| Stanislaw M. Pawlak | Poland | 1987-1991 |
| \*Alain Pellet | France | 1990- |
| \*Rohan Perera | Sri Lanka | 2007- |
| Obed Pessou | Dahomeyi | 1962-1966 |
| \*Ernest Petric | Slovenia | 2007- |
| Christopher Walter Pinto | Sri Lanka | 1973-1981 |
| Syed Sharifuddin Pirzada | Pakistan | 1982-1986 |
| Robert Q. Quentin-Baxter | New Zealand | 1972-1984 |
| Alfred Ramangasoavina | Madagascar | 1967-1976 |
| Pemmaraju Sreenivasa Rao | India | 1987-2006 |
| Sir Benegal N. Rau | India | 1949-1951 |
| Edilbert Razafindralambo | Madagascar | 1982-1996 |
| Paul Reuter | France | 1964-1989 |
| Willem Riphagen | Netherlands | 1977-1986 |
| Patrick Lipton Robinson | Jamaica | 1992-1996 |
| Victor Rodrígues Cedeño | Venezuela | 1997-2006 |
| Shabtai Rosenne | Israel | 1962-1971 |
| Robert Rosenstock | United States of America | 1992-2003 |
| Zenon Rossides | Cyprus | 1972-1976 |
| Emmanuel J. Roukounas | Greece | 1985-1991 |
| José María Ruda | Argentina | 1964-1972 |
| \*Gilberto Vergne Saboia | Brazil | 2007- |
| Milan Šahović | Yugoslavia | 1974-1981 |
| Carlos Salamanca Figueroa | Bolivia | 1954-1956 |
| A. E. F. Sandström | Sweden | 1949-1961 |
| Georges Scelle | France | 1949-1960 |
| Stephen M. Schwebel | United States of America | 1977-1980 |
| Bernardo Sepulveda | Mexico | 1997-2006 |
| César Sepúlveda Gutiérrez | Mexico | 1987-1991 |
| José Sette Câmara | Brazil | 1970-1978 |
| Jiuyong Shi | China | 1987-1993 |
| Bruno Simma | Germany | 1997-2002 |
| Sir Ian Sinclair | United Kingdom of Great Britain and Northern Ireland | 1982-1986 |
| Nagendra Singh | India | 1967-1972 |
| \*Narinder Singh | India | 2007- |
| Luis Solari Tudela | Peru | 1987-1991 |
| Jean Spiropoulos | Greece | 1949-1957 |
| Constantin A. Stavropoulos | Greece | 1982-1984 |
| Sompong Sucharitkul | Thailand | 1977-1986 |
| Alberto Szekely | Mexico | 1992-1996 |
| Abdul Hakim Tabibi | Afghanistan | 1962-1981 |
| Arnold J. P. Tammes | Netherlands | 1967-1976 |
| Doudou Thiam | Senegal | 1970-1999 |
| Peter Tomka | Slovakia | 1999-2002 |
| Christian Tomuschat | Federal Republic of Germany, Germanyh | 1985-1996 |
| Senjin Tsuruoka | Japan | 1961-1981 |
| Grigory I. Tunkin | Union of Soviet Socialist Republicse | 1957-1966 |
| Nikolai A. Ushakov | Union of Soviet Socialist Republicse | 1967-1986 |
| Endre Ustor | Hungary | 1967-1976 |
| \*Eduardo Valencia-Ospina | Colombia | 2003- |
| Sir Francis Vallat | United Kingdom of Great Britain and Northern Ireland | 1973-1981 |
| \*Edmundo Vargas Carreño | Chile | 1992-1996  2007- |
| \*Stephen Vasciannie | Jamaica | 2007- |
| \*Marcelo Vázquez-Bermudez | Ecuador | 2007- |
| Alfred Verdross | Austria | 1957-1966 |
| Vladlen Vereshetin | Russian Federation | 1992-1994 |
| Stephen Verosta | Austria | 1977-1981 |
| Francisco Villagrán Kramer | Guatemala | 1992-1996 |
| \*Amos Wako | Kenya | 2007- |
| Sir Humphrey Waldock | United Kingdom of Great Britain and Northern Ireland | 1961-1972 |
| \*Nugroho Wisnumurti | Indonesia | 2007- |
| \*Hanqin Xue | China | 2002- |
| \*Chusei Yamada | Japan | 1992- |
| Alexander Yankov | Bulgaria | 1977-1996 |
| Mustafa Kamil Yasseen | Iraq | 1960-1976 |
| Jesús María Yepes | Colombia | 1949-1953 |
| Kisaburo Yokota | Japan | 1957-1960 |
| Jaroslav Zourek | Czechoslovakiak | 1949-1961 |

ANNEX III

JURIDICAL STATUS OF THE MEMBERS  
OF THE INTERNATIONAL LAW COMMISSION  
AT THE PLACE OF ITS PERMANENT SEAT\*

The Government of Switzerland, in a communiqué addressed to the Secretary-General of the United Nations, transmitted the text of the decision taken by the Swiss Federal Council regarding the juridical status of the members of the International Law Commission at Geneva, the place of its permanent seat. The text of the decision reads as follows:

“On the proposal of the Federal Political Department, the Federal Council decided on 9 May 1979 to accord, by analogy, to the members of the International Law Commission, for the duration of the Commission’s sessions at Geneva, the privileges and immunities to which the Judges of the International Court of Justice are entitled while present in Switzerland. These are the privileges and immunities enjoyed by the heads of mission accredited to the international organizations at Geneva. The members of the International Law Commission will be entitled to a special red identity card.”

ANNEX IV

DRAFTS PREPARED BY THE  
INTERNATIONAL LAW COMMISSION

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

Whereas the States of the world form a community governed by international law,

Whereas the progressive development of international law requires effective organization of the community of States,

Whereas a great majority of the States of the world have accordingly established a new international order under the Charter of the United Nations, and most of the other States of the world have declared their desire to live within this order,

Whereas a primary purpose of the United Nations is to maintain international peace and security, and the reign of law and justice is essential to the realization of this purpose, and

Whereas it is therefore desirable to formulate certain basic rights and duties of States in the light of new developments of international law and in harmony with the Charter of the United Nations,

The General Assembly of the United Nations adopts and proclaims this Declaration on Rights and Duties of States:

Article 1

Every State has the right to independence and hence to exercise freely, without dictation by any other State, all its legal powers, including the choice of its own form of government.

Article 2

Every State has the right to exercise jurisdiction over its territory and over all persons and things therein, subject to the immunities recognized by international law.

Article 3

Every State has the duty to refrain from intervention in the internal or external affairs of any other State.

Article 4

Every State has the duty to refrain from fomenting civil strife in the territory of another State, and to prevent the organization within its territory of activities calculated to foment such civil strife.

Article 5

Every State has the right to equality in law with every other State.

Article 6

Every State has the duty to treat all persons under its jurisdiction with respect for human rights and fundamental freedoms, without distinction as to race, sex, language, or religion.

Article 7

Every State has the duty to ensure that conditions prevailing in its territory do not menace international peace and order.

Article 8

Every State has the duty to settle its disputes with other States by peaceful means in such a manner that international peace and security, and justice, are not endangered.

Article 9

Every State has the duty to refrain from resorting to war as an instrument of national policy, and to refrain from the threat or use of force against the territorial integrity or political independence of another State, or in any other manner inconsistent with international law and order.

Article 10

Every State has the duty to refrain from giving assistance to any State which is acting in violation of article 9, or against which the United Nations is taking preventive or enforcement action.

Article 11

Every State has the duty to refrain from recognizing any territorial acquisition by another State acting in violation of article 9.

Article 12

Every State has the right of individual or collective self-defence against armed attack.

Article 13

Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty.

Article 14

Every State has the duty to conduct its relations with other States in accordance with international law and with the principle that the sovereignty of each State is subject to the supremacy of international law.

2. Principles of International Law Recognized in the  
Charter of the Nürnberg Tribunal and in the  
Judgment of the Tribunal\*

Principle I

Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment.

Principle II

The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

Principle III

The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

Principle IV

The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

Principle V

Any person charged with a crime under international law has the right to a fair trial on the facts and law.

Principle VI

The crimes hereinafter set out are punishable as crimes under international law:

(a) Crimes against peace:

(i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;

(ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

(b) War crimes:

Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation to slave-labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war, of persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

(c) Crimes against humanity:

Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.

Principle VII

Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.

3. Draft Code of Crimes (1954 and 1996)

(a) Draft Code of Offences against the Peace  
and Security of Mankind (1954)\*

Article 1

Offences against the peace and security of mankind, as defined in this Code, are crimes under international law, for which the responsible individuals shall be punished.

Article 2

The following acts are offences against the peace and security of mankind:

(1) Any act of aggression, including the employment by the authorities of a State of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation of a competent organ of the United Nations.

(2) Any threat by the authorities of a State to resort to an act of aggression against another State.

(3) The preparation by the authorities of a State of the employment of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation of a competent organ of the United Nations.

(4) The organization, or the encouragement of the organization, by the authorities of a State, of armed bands within its territory or any other territory for incursions into the territory of another State, or the toleration of the organization of such bands in its own territory, or the toleration of the use by such armed bands of its territory as a base of operations or as a point of departure for incursions into the territory of another State, as well as direct participation in or support of such incursions.

(5) The undertaking or encouragement by the authorities of a State of activities calculated to foment civil strife in another State, or the toleration by the authorities of a State of organized activities calculated to foment civil strife in another State.

(6) The undertaking or encouragement by the authorities of a State of terrorist activities in another State, or the toleration by the authorities of a State of organized activities calculated to carry out terrorist acts in another State.

(7) Acts by the authorities of a State in violation of its obligations under a treaty which is designed to ensure international peace and security by means of restrictions or limitations on armaments, or on military training, or on fortifications, or of other restrictions of the same character.

(8) The annexation by the authorities of a State of territory belonging to another State, by means of acts contrary to international law.

(9) The intervention by the authorities of a State in the internal or external affairs of another State, by means of coercive measures of an economic or political character in order to force its will and thereby obtain advantages of any kind.

(10) Acts by the authorities of a State or by private individuals committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such, including:

(i) Killing members of the group;

(ii) Causing serious bodily or mental harm to members of the group;

(iii) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(iv) Imposing measures intended to prevent births within the group;

(v) Forcibly transferring children of the group to another group.

(11) Inhuman acts such as murder, extermination, enslavement, deportation or persecutions, committed against any civilian population on social, political, racial, religious or cultural grounds by the authorities of a State or by private individuals acting at the instigation or with the toleration of such authorities.

(12) Acts in violation of the laws or customs of war.

(13) Acts which constitute:

(i) Conspiracy to commit any of the offences defined in the preceding paragraphs of this article; or

(ii) Direct incitement to commit any of the offences defined in the preceding paragraphs of this article; or

(iii) Complicity in the commission of any of the offences defined in the preceding paragraphs of this article; or

(iv) Attempts to commit any of the offences defined in the preceding paragraphs of this article.

Article 3

The fact that a person acted as Head of State or as responsible government official does not relieve him of responsibility for committing any of the offences defined in this Code.

Article 4

The fact that a person charged with an offence defined in this Code acted pursuant to an order of his Government or of a superior does not relieve him of responsibility in international law if, in the circumstances at the time, it was possible for him not to comply with that order.

(b) Draft Code of Crimes against the Peace and  
Security of Mankind (1996)\*

Part One. General provisions

Article 1. Scope and application of the present Code

1. The present Code applies to the crimes against the peace and security of mankind set out in part two.

2. Crimes against the peace and security of mankind are crimes under international law and punishable as such, whether or not they are punishable under national law.

Article 2. Individual responsibility

1. A crime against the peace and security of mankind entails individual responsibility.

2. An individual shall be responsible for the crime of aggression in accordance with article 16.

3. An individual shall be responsible for a crime set out in article 17, 18, 19 or 20 if that individual:

(a) Intentionally commits such a crime;

(b) Orders the commission of such a crime which in fact occurs or is attempted;

(c) Fails to prevent or repress the commission of such a crime in the circumstances set out in article 6;

(d) Knowingly aids, abets or otherwise assists, directly and substantially, in the commission of such a crime, including providing the means for its commission;

(e) Directly participates in planning or conspiring to commit such a crime which in fact occurs;

(f) Directly and publicly incites another individual to commit such a crime which in fact occurs;

(g) Attempts to commit such a crime by taking action commencing the execution of a crime which does not in fact occur because of circumstances independent of his intentions.

Article 3. Punishment

An individual who is responsible for a crime against the peace and security of mankind shall be liable to punishment. The punishment shall be commensurate with the character and gravity of the crime.

Article 4. Responsibility of States

The fact that the present Code provides for the responsibility of individuals for crimes against the peace and security of mankind is without prejudice to any question of the responsibility of States under international law.

Article 5. Order of a Government or a superior

The fact that an individual charged with a crime against the peace and security of mankind acted pursuant to an order of a Government or a superior does not relieve him of criminal responsibility, but may be considered in mitigation of punishment if justice so requires.

Article 6. Responsibility of the superior

The fact that a crime against the peace and security of mankind was committed by a subordinate does not relieve his superiors of criminal responsibility, if they knew or had reason to know, in the circumstances at the time, that the subordinate was committing or was going to commit such a crime and if they did not take all necessary measures within their power to prevent or repress the crime.

Article 7. Official position and responsibility

The official position of an individual who commits a crime against the peace and security of mankind, even if he acted as head of State or Government, does not relieve him of criminal responsibility or mitigate punishment.

Article 8. Establishment of jurisdiction

Without prejudice to the jurisdiction of an international criminal court, each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in articles 17, 18, 19 and 20, irrespective of where or by whom those crimes were committed. Jurisdiction over the crime set out in article 16 shall rest with an international criminal court. However, a State referred to in article 16 is not precluded from trying its nationals for the crime set out in that article.

Article 9. Obligation to extradite or prosecute

Without prejudice to the jurisdiction of an international criminal court, the State Party in the territory of which an individual alleged to have committed a crime set out in article 17, 18, 19 or 20 is found shall extradite or prosecute that individual.

Article 10. Extradition of alleged offenders

1. To the extent that the crimes set out in articles 17, 18, 19 and 20 are not extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider the present Code as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the conditions provided in the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the conditions provided in the law of the requested State.

4. Each of those crimes shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territory of any other State Party.

Article 11. Judicial guarantees

1. An individual charged with a crime against the peace and security of mankind shall be presumed innocent until proved guilty and shall be entitled without discrimination to the minimum guarantees due to all human beings with regard to the law and the facts and shall have the rights:

(a) In the determination of any charge against him, to have a fair and public hearing by a competent, independent and impartial tribunal duly established by law;

(b) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(c) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(d) To be tried without undue delay;

(e) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him and without payment by him if he does not have sufficient means to pay for it;

(f) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(g) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(h) Not to be compelled to testify against himself or to confess guilt.

2. An individual convicted of a crime shall have the right to his conviction and sentence being reviewed according to law.

Article 12. Non bis in idem

1. No one shall be tried for a crime against the peace and security of mankind of which he has already been finally convicted or acquitted by an international criminal court.

2. An individual may not be tried again for a crime of which he has been finally convicted or acquitted by a national court except in the following cases:

(a) By an international criminal court, if:

(i) The act which was the subject of the judgement in the national court was characterized by that court as an ordinary crime and not as a crime against the peace and security of mankind; or

(ii) The national court proceedings were not impartial or independent or were designed to shield the accused from international criminal responsibility or the case was not diligently prosecuted;

(b) By a national court of another State, if:

(i) The act which was the subject of the previous judgement took place in the territory of that State; or

(ii) That State was the main victim of the crime.

3. In the case of a subsequent conviction under the present Code, the court, in passing sentence, shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 13. Non-retroactivity

1. No one shall be convicted under the present Code for acts committed before its entry into force.

2. Nothing in this article precludes the trial of anyone for any act which, at the time when it was committed, was criminal in accordance with international law or national law.

Article 14. Defences

The competent court shall determine the admissibility of defences in accordance with the general principles of law, in the light of the character of each crime.

Article 15. Extenuating circumstances

In passing sentence, the court shall, where appropriate, take into account extenuating circumstances in accordance with the general principles of law.

Part Two. Crimes against the peace   
and security of mankind

Article 16. Crime of aggression

An individual who, as leader or organizer, actively participates in or orders the planning, preparation, initiation or waging of aggression committed by a State shall be responsible for a crime of aggression.

Article 17. Crime of genocide

A crime of genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

Article 18. Crimes against humanity

A crime against humanity means any of the following acts, when committed in a systematic manner or on a large scale and instigated or directed by a Government or by any organization or group:

(a) Murder;

(b) Extermination;

(c) Torture;

(d) Enslavement;

(e) Persecution on political, racial, religious or ethnic grounds;

(f) Institutionalized discrimination on racial, ethnic or religious grounds involving the violation of fundamental human rights and freedoms and resulting in seriously disadvantaging a part of the population;

(g) Arbitrary deportation or forcible transfer of population;

(h) Arbitrary imprisonment;

(i) Forced disappearance of persons;

(j) Rape, enforced prostitution and other forms of sexual abuse;

(k) Other inhumane acts which severely damage physical or mental integrity, health or human dignity, such as mutilation and severe bodily harm.

Article 19. Crimes against United Nations   
and associated personnel

1. The following crimes constitute crimes against the peace and security of mankind when committed intentionally and in a systematic manner or on a large scale against United Nations and associated personnel involved in a United Nations operation with a view to preventing or impeding that operation from fulfilling its mandate:

(a) Murder, kidnapping or other attack upon the person or liberty of any such personnel;

(b) Violent attack upon the official premises, the private accommodation or the means of transportation of any such personnel likely to endanger his or her person or liberty.

2. This article shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies.

Article 20. War crimes

Any of the following war crimes constitutes a crime against the peace and security of mankind when committed in a systematic manner or on a large scale:

(a) Any of the following acts committed in violation of international humanitarian law:

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

iii) Wilfully causing great suffering or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer of unlawful confinement of protected persons;

(viii) Taking of hostages;

(b) Any of the following acts committed wilfully in violation of international humanitarian law and causing death or serious injury to body or health:

(i) Making the civilian population or individual civilians the object of attack;

(ii) Launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;

(iii) Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;

(iv) Making a person the object of attack in the knowledge that he is hors de combat;

(v) The perfidious use of the distinctive emblem of the red cross, red crescent or red lion and sun or of other recognized protective signs;

(c) Any of the following acts committed wilfully in violation of international humanitarian law:

(i) The transfer by the Occupying Power of parts of its own civilian population into the territory it occupies;

(ii) Unjustifiable delay in the repatriation of prisoners of war or civilians;

(d) Outrages upon personal dignity in violation of international humanitarian law, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

(e) Any of the following acts committed in violation of the laws or customs of war:

(i) Employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;

(ii) Wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(iii) Attack, or bombardment, by whatever means, of undefended towns, villages, dwellings or buildings or of demilitarized zones;

(iv) Seizure of, destruction of or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;

(v) Plunder of public or private property;

(f) Any of the following acts committed in violation of international humanitarian law applicable in armed conflict not of an international character:

(i) Violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(ii) Collective punishments;

(iii) Taking of hostages;

(iv) Acts of terrorism;

(v) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

(vi) Pillage;

(vii) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are generally recognized as indispensable;

(g) In the case of armed conflict, using methods or means of warfare not justified by military necessity with the intent to cause widespread, long-term and severe damage to the natural environment and thereby gravely prejudice the health or survival of the population and such damage occurs.

4. Draft Convention on the Elimination of  
Future Statelessness\*

Preamble

Whereas the Universal Declaration of Human Rights proclaims that “everyone has the right to a nationality,”

Whereas the Economic and Social Council has recognized that the problem of stateless persons demands “the taking of joint and separate action by Member nations in cooperation with the United Nations to ensure that everyone shall have an effective right to a nationality,”

Whereas statelessness often results in suffering and hardship shocking to conscience and offensive to the dignity of man,

Whereas statelessness is frequently productive of friction between States,

Whereas statelessness is inconsistent with the existing principle which postulates nationality as a condition of the enjoyment by the individual of certain rights recognized by international law,

Whereas the practice of many States has increasingly tended to the progressive elimination of statelessness,

Whereas it is imperative, by international agreement, to eliminate the evils of statelessness,

The Contracting Parties

Hereby agree as follows:

Article 1

A person who would otherwise be stateless shall acquire at birth the nationality of the Party in whose territory he is born.

Article 2

For the purpose of article 1, a foundling, so long as his place of birth is unknown, shall be presumed to have been born in the territory of the Party in which he is found.

Article 3

For the purpose of article 1, birth on a vessel shall be deemed to have taken place within the territory of the State whose flag the vessel flies. Birth on an aircraft shall be considered to have taken place within the territory of the State where the aircraft is registered.

Article 4

If a child is not born in the territory of a State which is a Party to this Convention he shall, if otherwise stateless, acquire the nationality of the Party of which one of his parents is a national. The nationality of the father shall prevail over that of the mother.

Article 5

If the law of a Party entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon acquisition of another nationality.

Article 6

The change or loss of the nationality of a spouse or of a parent shall not entail the loss of nationality by the other spouse or by the children unless they have or acquire another nationality.

Article 7

1. Renunciation shall not result in loss of nationality unless the person renouncing it has or acquires another nationality.

2. A person who seeks naturalization in a foreign country or who obtains an expatriation permit for that purpose shall not lose his nationality unless he acquires the nationality of that foreign country.

3. A person shall not lose his nationality, so as to become stateless, on the ground of departure, stay abroad, failure to register or on any other similar ground.

Article 8

A Party may not deprive its nationals of their nationality by way of penalty or on any other ground if such deprivation renders them stateless.

Article 9

A Party may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.

Article 10

1. Every treaty providing for the transfer of a territory shall include provisions for ensuring that, subject to the exercise of the right of option, the inhabitants of that territory shall not become stateless.

2. In the absence of such provisions, a State to which territory is transferred, or which otherwise acquires territory, or a new State formed on territory previously belonging to another State or States, shall confer its nationality upon the inhabitants of such territory unless they retain their former nationality by option or otherwise or have or acquire another nationality.

Article 11

1. The Parties undertake to establish, within the framework of the United Nations, an agency to act, when it deems appropriate, on behalf of stateless persons before Governments or before the tribunal referred to in paragraph 2.

2. The Parties undertake to establish, within the framework of the United Nations, a tribunal which shall be competent to decide any dispute between them concerning the interpretation or application of this Convention and to decide complaints presented by the agency referred to in paragraph 1 on behalf of a person claiming to have been denied nationality in violation of the provisions of the Convention.

3. If, within two years after the entry into force of the Convention, the agency or the tribunal referred to in paragraphs I and 2 has not been established by the Parties, any of the Parties shall have the right to request the General Assembly to establish such agency or tribunal.

4. The Parties agree that any dispute between them concerning the interpretation or application of the Convention shall, if not referred to the tribunal provided for in paragraph 2, be submitted to the International Court of Justice.

Article 12

1. The present Convention, having been approved by the General Assembly, shall until . . . (a year after the approval of the General Assembly) be open for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign is addressed by the General Assembly.

2. The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. After . . . (the above date) the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 13

1. At the time of signature, ratification or accession any State may make a reservation permitting it to postpone, for a period not exceeding two years, the application of the Convention pending the enactment of necessary legislation.

2. No other reservations to the present Convention shall be admissible.

Article 14

1. The present Convention shall enter into force on the ninetieth day following the date of the deposit of the . . . (e.g., third or sixth) instrument of ratification or accession.

2. For each State ratifying or acceding to the present Convention subsequently to the latter date, the Convention shall enter into force on the ninetieth day following the deposit of the instrument of ratification or accession by that State.

Article 15

Any Party to the present Convention may denounce it at any time by a written notification addressed to the Secretary-General of the United Nations. Such denunciation shall take effect for the said Party one year after the date of its receipt by the Secretary-General.

Article 16

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States referred to in article 12 of the following particulars:

(a) Signatures, ratifications and accessions under article 12;

(b) Reservations under article 13;

(c) The date upon which the present Convention enters into force in pursuance of article 14;

(d) Denunciations under article 15.

Article 17

1. The present Convention shall be deposited with the Secretariat of the United Nations.

2. A certified copy of the Convention shall be transmitted to all Members of the United Nations and to the non-member States referred to in article 12.

Article 18

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its entry into force.

5. Model Rules on Arbitral Procedure\*

Preamble

The undertaking to arbitrate is based on the following fundamental rules:

1. Any undertaking to have recourse to arbitration in order to settle a dispute between States constitutes a legal obligation which must be carried out in good faith.

2. Such an undertaking results from agreement between the parties and may relate to existing disputes or to disputes arising subsequently.

3. The undertaking must be embodied in a written instrument, whatever the form of the instrument may be.

4. The procedures suggested to States Parties to a dispute by these model rules shall not be compulsory unless the States concerned have agreed, either in the compromis or in some other undertaking, to have recourse thereto.

5. The parties shall be equal in all proceedings before the arbitral tribunal.

The existence of a dispute and the scope  
of the undertaking to arbitrate

Article 1

1. If, before the constitution of the arbitral tribunal, the parties to an undertaking to arbitrate disagree as to the existence of a dispute, or as to whether the existing dispute is wholly or partly within the scope of the obligation to go to arbitration, such preliminary question shall, at the request of any of the parties and failing agreement between them upon the adoption of another procedure, be brought before the International Court of Justice for decision by means of its summary procedure.

2. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

3. If the arbitral tribunal has already been constituted, any dispute concerning arbitrability shall be referred to it.

The compromis

Article 2

1. Unless there are earlier agreements which suffice for the purpose, for example in the undertaking to arbitrate itself, the parties having recourse to arbitration shall conclude a compromis which shall specify, as a minimum:

(a) The undertaking to arbitrate according to which the dispute is to be submitted to the arbitrators;

(b) The subject matter of the dispute and, if possible, the points on which the parties are or are not agreed;

(c) The method of constituting the tribunal and the number of arbitrators.

2. In addition, the compromis shall include any other provisions deemed desirable by the parties, in particular:

(i) The rules of law and the principles to be applied by the tribunal, and the right, if any, conferred on it to decide ex aequo et bono as though it had legislative functions in the matter;

(ii) The power, if any, of the tribunal to make recommendations to the parties;

(iii) Such power as may be conferred on the tribunal to make its own rules of procedure;

(iv) The procedure to be followed by the tribunal; provided that, once constituted, the tribunal shall be free to override any provisions of the compromis which may prevent it from rendering its award;

(v) The number of members required for the constitution of a quorum for the conduct of the hearings;

(vi) The majority required for the award;

(vii) The time limit within which the award shall be rendered;

(viii) The right of the members of the tribunal to attach dissenting or individual opinions to the award, or any prohibition of such opinions;

(ix) The languages to be employed in the course of the proceedings;

(x) The manner in which the costs and disbursements shall be apportioned;

(xi) The services which the International Court of Justice may be asked to render.

This enumeration is not intended to be exhaustive.

Constitution of the tribunal

Article 3

1. Immediately after the request made by one of the States Parties to the dispute for the submission of the dispute to arbitration, or after the decision on the arbitrability of the dispute, the parties to an undertaking to arbitrate shall take the necessary steps, either by means of the compromis or by special agreement, in order to arrive at the constitution of the arbitral tribunal.

2. If the tribunal is not constituted within three months from the date of the request made for the submission of the dispute to arbitration, or from the date of the decision on arbitrability, the President of the International Court of Justice shall, at the request of either party, appoint the arbitrators not yet designated. If the President is prevented from acting or is a national of one of the parties, the appointments shall be made by the Vice-President. If the Vice-President is prevented from acting or is a national of one of the parties, the appointments shall be made by the oldest member of the Court who is not a national of either party.

3. The appointments referred to in paragraph 2 shall, after consultation with the parties, be made in accordance with the provisions of the compromis or of any other instrument consequent upon the undertaking to arbitrate. In the absence of such provisions, the composition of the tribunal shall, after consultation with the parties, be determined by the President of the International Court of Justice or by the judge acting in his place. It shall be understood that in this event the number of the arbitrators must be uneven and should preferably be five.

4. Where provision is made for the choice of a president of the tribunal by the other arbitrators, the tribunal shall be deemed to be constituted when the president is selected. If the president has not been chosen within two months of the appointment of the arbitrators, he shall be designated in accordance with the procedure prescribed in paragraph 2.

5. Subject to the special circumstances of the case, the arbitrators shall be chosen from among persons of recognized competence in international law.

Article 4

1. Once the tribunal has been constituted, its composition shall remain unchanged until the award has been rendered.

2. A party may, however, replace an arbitrator appointed by it, provided that the tribunal has not yet begun its proceedings. Once the proceedings have begun, an arbitrator appointed by a party may not be replaced except by mutual agreement between the parties.

3. Arbitrators appointed by mutual agreement between the parties, or by agreement between arbitrators already appointed, may not be changed after the proceedings have begun, save in exceptional circumstances. Arbitrators appointed in the manner provided for in article 3, paragraph 2, may not be changed even by agreement between the parties.

4. The proceedings are deemed to have begun when the president of the tribunal or the sole arbitrator has made the first procedural order.

Article 5

If, whether before or after the proceedings have begun, a vacancy should occur on account of the death, incapacity or resignation of an arbitrator, it shall be filled in accordance with the procedure prescribed for the original appointment.

Article 6

1. A party may propose the disqualification of one of the arbitrators on account of a fact arising subsequently to the constitution of the tribunal. It may only propose the disqualification of one of the arbitrators on account of a fact arising prior to the constitution of the tribunal if it can show that the appointment was made without knowledge of that fact or as a result of fraud. In either case, the decision shall be taken by the other members of the tribunal.

2. In the case of a sole arbitrator or of the president of the tribunal, the question of disqualification shall, in the absence of agreement between the parties, be decided by the International Court of Justice on the application of one of them.

3. Any resulting vacancy or vacancies shall be filled in accordance with the procedure prescribed for the original appointments.

Article 7

Where a vacancy has been filled after the proceedings have begun, the proceedings shall continue from the point they had reached at the time the vacancy occurred. The newly appointed arbitrator may, however, require that the oral proceedings shall be recommenced from the beginning, if these have already been started.

Powers of the tribunal and the process of arbitration

Article 8

1. When the undertaking to arbitrate or any supplementary agreement contains provisions which seem sufficient for the purpose of a compromis, and the tribunal has been constituted, either party may submit the dispute to the tribunal by application. If the other party refuses to answer the application on the ground that the provisions above referred to are insufficient, the tribunal shall decide whether there is already sufficient agreement between the parties on the essential elements of a compromis as set forth in article 2. In the case of an affirmative decision, the tribunal shall prescribe the necessary measures for the institution or continuation of the proceedings. In the contrary case, the tribunal shall order the parties to complete or conclude the compromis within such time limits as it deems reasonable.

2. If the parties fail to agree or to complete the compromis within the time limit fixed in accordance with the preceding paragraph, the tribunal, within three months after the parties report failure to agree—or after the decision, if any, on the arbitrability of the dispute—shall proceed to hear and decide the case on the application of either party.

Article 9

The arbitral tribunal, which is the judge of its own competence, has the power to interpret the compromis and the other instruments on which that competence is based.

Article 10

1. In the absence of any agreement between the parties concerning the law to be applied, the tribunal shall apply:

(a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

(b) International custom, as evidence of a general practice accepted as law;

(c) The general principles of law recognized by civilized nations;

(d) Judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. If the agreement between the parties so provides, the tribunal may also decide ex aequo et bono.

Article 11

The tribunal may not bring in a finding of non liquet on the ground of the silence or obscurity of the law to be applied.

Article 12

1. In the absence of any agreement between the parties concerning the procedure of the tribunal, or if the rules laid down by them are insufficient, the tribunal shall be competent to formulate or complete the rules of procedure.

2. All decisions shall be taken by a majority vote of the members of the tribunal.

Article 13

If the languages to be employed are not specified in the compromis, this question shall be decided by the tribunal.

Article 14

1. The parties shall appoint agents before the tribunal to act as intermediaries between them and the tribunal.

2. They may retain counsel and advocates for the prosecution of their rights and interests before the tribunal.

3. The parties shall be entitled through their agents, counsel or advocates to submit in writing and orally to the tribunal any arguments they may deem expedient for the prosecution of their case. They shall have the right to raise objections and incidental points. The decisions of the tribunal on such matters shall be final.

4. The members of the tribunal shall have the right to put questions to agents, counsel or advocates, and to ask them for explanations. Neither the questions put nor the remarks made during the hearing are to be regarded as an expression of opinion by the tribunal or by its members.

Article 15

1. The arbitral procedure shall in general comprise two distinct phases: pleadings and hearing.

2. The pleadings shall consist in the communication by the respective agents to the members of the tribunal and to the opposite party of memorials, counter-memorials and, if necessary, of replies and rejoinders. Each party must attach all papers and documents cited by it in the case.

3. The time limits fixed by the compromis may be extended by mutual agreement between the parties, or by the tribunal when it deems such extension necessary to enable it to reach a just decision.

4. The hearing shall consist in the oral development of the parties’ arguments before the tribunal.

5. A certified true copy of every document produced by either party shall be communicated to the other party.

Article 16

1. The hearing shall be conducted by the president. It shall be public only if the tribunal so decides with the consent of the parties.

2. Records of the hearing shall be kept and signed by the president, registrar or secretary; only those so signed shall be authentic.

Article 17

1. After the tribunal has closed the written pleadings, it shall have the right to reject any papers and documents not yet produced which either party may wish to submit to it without the consent of the other party. The tribunal shall, however, remain free to take into consideration any such papers and documents which the agents, advocates or counsel of one or other of the parties may bring to its notice, provided that they have been made known to the other party. The latter shall have the right to require a further extension of the written pleadings so as to be able to give a reply in writing.

2. The tribunal may also require the parties to produce all necessary documents and to provide all necessary explanations. It shall take note of any refusal to do so.

Article 18

1. The tribunal shall decide as to the admissibility of the evidence that may be adduced, and shall be the judge of its probative value. It shall have the power, at any stage of the proceedings, to call upon experts and to require the appearance of witnesses. It may also, if necessary, decide to visit the scene connected with the case before it.

2. The parties shall cooperate with the tribunal in dealing with the evidence and in the other measures contemplated by paragraph 1. The tribunal shall take note of the failure of any party to comply with the obligations of this paragraph.

Article 19

In the absence of any agreement to the contrary implied by the undertaking to arbitrate or contained in the compromis, the tribunal shall decide on any ancillary claims which it considers to be inseparable from the subject matter of the dispute and necessary for its final settlement.

Article 20

The tribunal, or in case of urgency its president subject to confirmation by the tribunal, shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

Article 21

1. When, subject to the control of the tribunal, the agents, advocates and counsel have completed their presentation of the case, the proceedings shall be formally declared closed.

2. The tribunal shall, however, have the power, so long as the award has not been rendered, to reopen the proceedings after their closure, on the ground that new evidence is forthcoming of such a nature as to constitute a decisive factor, or if it considers, after careful consideration, that there is a need for clarification on certain points.

Article 22

1. Except where the claimant admits the soundness of the defendant’s case, discontinuance of the proceedings by the claimant party shall not be accepted by the tribunal without the consent of the defendant.

2. If the case is discontinued by agreement between the parties, the tribunal shall take note of the fact.

Article 23

If the parties reach a settlement, it shall be taken note of by the tribunal. At the request of either party, the tribunal may, if it thinks fit, embody the settlement in an award.

Article 24

The award shall normally be rendered within the period fixed by the compromis, but the tribunal may decide to extend this period if it would otherwise be unable to render the award.

Article 25

1. Whenever one of the parties has not appeared before the tribunal, or has failed to present its case, the other party may call upon the tribunal to decide in favour of its case.

2. The arbitral tribunal may grant the defaulting party a period of grace before rendering the award.

3. On the expiry of this period of grace, the tribunal shall render an award after it has satisfied itself that it has jurisdiction. It may only decide in favour of the submissions of the party appearing, if satisfied that they are well founded in fact and in law.

Deliberations of the Tribunal

Article 26

The deliberations of the tribunal shall remain secret.

Article 27

1. All the arbitrators shall participate in the decisions.

2. Except in cases where the compromis provides for a quorum, or in cases where the absence of an arbitrator occurs without the permission of the president of the tribunal, the arbitrator who is absent shall be replaced by an arbitrator nominated by the President of the International Court of Justice. In the case of such replacement the provisions of article 7 shall apply.

The award

Article 28

1. The award shall be rendered by a majority vote of the members of the tribunal. It shall be drawn up in writing and shall bear the date on which it was rendered. It shall contain the names of the arbitrators and shall be signed by the president and by the members of the tribunal who have voted for it. The arbitrators may not abstain from voting.

2. Unless otherwise provided in the compromis, any member of the tribunal may attach his separate or dissenting opinion to the award.

3. The award shall be deemed to have been rendered when it has been read in open court, the agents of the parties being present or having been duly summoned to appear.

4. The award shall immediately be communicated to the parties.

Article 29

The award shall, in respect of every point on which it rules, state the reasons on which it is based.

Article 30

Once rendered, the award shall be binding upon the parties. It shall he carried out in good faith immediately, unless the tribunal has allowed a time limit for the carrying out of the award or of any part of it.

Article 31

During a period of one month after the award has been rendered and communicated to the parties, the tribunal may, either of its own accord or at the request of either party, rectify any clerical, typographical or arithmetical error in the award, or any obvious error of a similar nature.

Article32

The arbitral award shall constitute a definitive settlement of the dispute.

Interpretation of the award

Article *3*3

1. Any dispute between the parties as to the meaning and scope of the award shall, at the request of either party and within three months of the rendering of the award, be referred to the tribunal which rendered the award.

2. If, for any reason, it is found impossible to submit the dispute to the tribunal which rendered the award, and if within the above-mentioned time limit the parties have not agreed upon another solution, the dispute may be referred to the International Court of Justice at the request of either party.

3. In the event of a request for interpretation, it shall be for the tribunal or for the International Court of Justice, as the case may be, to, decide whether and to what extent execution of the award shall be stayed pending a decision on the request.

Article 34

Failing a request for interpretation, or after a decision on such a request has been made, all pleadings and documents in the case shall be deposited by the president of the tribunal with the International Bureau of the Permanent Court of Arbitration or with another depositary selected by agreement between the parties.

Validity and annulment of the award

Article 35

The validity of an award may be challenged by either party on one or more of the following grounds:

(a) That the tribunal has exceeded its powers;

(b) That there was corruption on the part of a member of the tribunal;

(c) That there has been a failure to state the reasons for the award or a serious departure from a fundamental rule of procedure;

(d) That the undertaking to arbitrate or the compromis is a nullity.

Article 36

1. If, within three months of the date on which the validity of the award is contested, the parties have not agreed on another tribunal, the International Court of Justice shall be competent to declare the total or partial nullity of the award on the application of either party.

2. In the cases covered by article 35, subparagraphs (a) and (c), validity must be contested within six months of the rendering of the award, and in the cases covered by subparagraphs (b) and (d) within six months of the discovery of the corruption or of the facts giving rise to the claim of nullity, and in any case within ten years of the rendering of the award.

3. The Court may, at the request of the interested party, and if circumstances so require, grant a stay of execution pending the final decision on the application for annulment.

Article 37

If the award is declared invalid by the International Court of Justice, the dispute shall be submitted to a new tribunal constituted by agreement between the parties, or, failing such agreement, in the manner provided by article 3.

Revision of the award

Article 38

1. An application for the revision of the award may be made by either party on the ground of the discovery of some fact of such a nature as to constitute a decisive factor, provided that when the award was rendered that fact was unknown to the tribunal and to the party requesting revision, and that such ignorance was not due to the negligence of the party requesting revision.

2. The application for revision must be made within six months of the discovery of the new fact, and in any case within ten years of the rendering of the award.

3. In the proceedings for revision, the tribunal shall, in the first instance, make a finding as to the existence of the alleged new fact and rule on the admissibility of the application.

4. If the tribunal finds the application admissible, it shall then decide on the merits of the dispute.

5. The application for revision shall, whenever possible, be made to the tribunal which rendered the award.

6. If, for any reason, it is not possible to make the application to the tribunal which rendered the award, it may, unless the parties otherwise agree, be made by either of them to the International Court of Justice.

7. The tribunal or the Court may, at the request of the interested party, and if circumstances so require, grant a stay of execution pending the final decision on the application for revision.

6. Draft Articles on Most-Favoured-Nation Clauses\*

Article 1. Scope of the present articles

The present articles apply to most-favoured-nation clauses contained in treaties between States.

Article 2. Use of terms

1. For the purposes of the present articles:

(a) “treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(b) “granting State” means a State which has undertaken to accord most-favoured-nation treatment;

(c) “beneficiary State” means a State to which a granting State has undertaken to accord most-favoured-nation treatment;

(d) “third State” means any State other than the granting State or the beneficiary State;

(e) “condition of compensation” means a condition providing for compensation of any kind agreed between the granting State and the beneficiary State, in a treaty containing a most-favoured-nation clause or otherwise;

(f) “condition of reciprocal treatment” means a condition of compensation providing for the same or, as the case may be, equivalent treatment by the beneficiary State of the granting State or of persons or things in a determined relationship with it as that extended by the granting State to a third State or to persons or things in the same relationship with that third State.

2. The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

Article 3*.*Clauses not within the scope of the present articles

The fact that the present articles do not apply to a clause on most-favoured treatment other than a most-favoured-nation clause referred to in article 4 sha11 not affect:

(a) the legal effect of such a clause;

(b) the application to it of any of the rules set forth in the present articles to which it would be subject under international law independently of the present articles.

Article 4. Most-favoured-nation clause

A most-favoured-nation clause is a treaty provision whereby a State undertakes an obligation towards another State to accord most-favoured-nation treatment in an agreed sphere of relations.

Article 5. Most-favoured-nation treatment

Most-favoured-nation treatment is treatment accorded by the granting State to the beneficiary State, or to persons or things in a determined relationship with that State, not less favourable than treatment extended by the granting State to a third State or to persons or things in the same relationship with that third State.

Article 6. Clauses in international agreements  
between States to which other subjects  
of international law are also parties

Notwithstanding the provisions of articles 1, 2, 4 and 5, the present articles shall apply to the relations of States as between themselves under an international agreement containing a clause on most-favoured-nation treatment to which other subjects of international law are also parties.

Article 7. Legal basis of most-favoured-nation treatment

Nothing in the present articles shall imply that a State is entitled to be accorded most-favoured-nation treatment by another State otherwise than on the basis of an international obligation undertaken by the latter State.

Article 8. The source and scope of most-favoured-nation treatment

1. The right of the beneficiary State to most-favoured-nation treatment arises only from the most-favoured-nation clause referred to in article 4, or from the clause on most-favoured-nation treatment referred to in article 6, in force between the granting State and the beneficiary State.

2. The most-favoured-nation treatment to which the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, is entitled under a clause referred to in paragraph 1 is determined by the treatment extended by the granting State to a third State or to persons or things in the same relationship with that third State.

Article 9. Scope of rights under a most-favoured-nation clause

1. Under a most-favoured-nation clause the beneficiary State acquires, for itself or for the benefit of persons or things in a determined relationship with it, only those rights which fall within the limits of the subject matter of the clause.

2. The beneficiary State acquires the rights under paragraph 1 only in respect of persons or things which are specified in the clause or implied from its subject matter.

Article 10. Acquisition of rights under a   
most-favoured-nation clause

1. Under a most-favoured-nation clause the beneficiary State acquires the right to most-favoured-nation treatment only if the granting State extends to a third State treatment within the limits of the subject matter of the clause.

2. The beneficiary State acquires rights under paragraph 1 in respect of persons or things in a determined relationship with it only if they:

(a) belong to the same category of persons or things as those in a determined relationship with a third State which benefit from the treatment extended to them by the granting State and

(b) have the same relationship with the beneficiary State as the persons and things referred to in subparagraph (a) have with that third State.

Article 11. Effect of a m*o*st-favoured-nation clause not made  
subject to compensation

If a most-favoured-nation clause is not made subject to a condition of compensation, the beneficiary State acquires the right to most-favoured-nation treatment without the obligation to accord any compensation to the granting State.

Article 12. Effect of a most-favoured-nation clause made  
subject to compensation

If a most-favoured-nation clause is made subject to a condition of compensation, the beneficiary State acquires the right to most-favoured-nation treatment only upon according the agreed compensation to the granting State.

Article 13. Effect of a most-favoured-nation clause made  
subject to reciprocal treatment

If a most-favoured-nation clause is made subject to a condition of reciprocal treatment, the beneficiary State acquires the right to most-favoured-nation treatment only upon according the agreed reciprocal treatment to the granting State.

Article 14. Compliance with agreed terms and conditions

The exercise of rights arising under a most-favoured-nation clause for the beneficiary State or for persons or things in a determined relationship with that State is subject to compliance with the relevant terms and conditions laid down in the treaty containing the clause or otherwise agreed between the granting State and the beneficiary State.

Article 15. Irrelevance of the fact that treatment is extended  
to a third State against compensation

The acquisition without compensation of rights by the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, under a most-favoured-nation clause not made subject to a condition of compensation is not affected by the mere fact that the treatment by the granting State of a third State or of persons or things in the same relationship with that third State has been extended against compensation.

Article 16. Irrelevance of limitations agreed between   
the granting State and a third State

The acquisition of rights by the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, under a most-favoured-nation clause is not affected by the mere fact that the treatment by the granting State of a third State or of persons or things in the same relationship with that third State has been extended under an international agreement between the granting State and the third State limiting the application of that treatment to relations between them.

Article 17. Irrelevance of the fact that treatment is extended to a third  
State under a bilateral or a multilateral agreement

The acquisition of rights by the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, under a most-favoured-nation clause is not affected by the mere fact that the treatment by the granting State of a third State or of persons or things in the same relationship with that third State has been extended under an international agreement, whether bilateral or multilateral.

Article 18. Irrelevance of the fact that treatment is extended to a  
third State as national treatment

The acquisition of rights by the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, under a most-favoured-nation clause is not affected by the mere fact that the treatment by the granting State of a third State or of persons or things in the same relationship with that third State has been extended as national treatment.

Article 19. Most-favoured-nation treatment and national or other  
treatment with respect to the same subject matter

1. The right of the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, to most-favoured-nation treatment under a most-favoured-nation clause is not affected by the mere fact that the granting State has agreed to accord as well to that beneficiary State national treatment or other treatment with respect to the same subject matter as that of the most-favoured-nation clause.

2. The right of the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, to most-favoured-nation treatment under a most-favoured-nation clause is without prejudice to national treatment or other treatment which the granting State has accorded to that beneficiary State with respect to the same subject matter as that of the most-favoured-nation clause.

Article 20. Arising of rights under a most-favoured-nation clause

1. The right of the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, to most-favoured-nation treatment under a most-favoured-nation clause not made subject to a condition of compensation arises at the moment when the relevant treatment is extended by the granting State to a third State or to persons or things in the same relationship with that third State.

2. The right of the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, to most-favoured-nation treatment under a most-favoured-nation clause made subject to a condition of compensation arises at the moment when the relevant treatment is extended by the granting State to a third State or to persons or things in the same relationship with that third State and the agreed compensation is accorded by the beneficiary State to the granting State.

3. The right of the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, to most-favoured-nation treatment under a most-favoured-nation clause made subject to a condition of reciprocal treatment arises at the moment when the relevant treatment is extended by the granting State to a third State or to persons or things in the same relationship with that third State and the agreed reciprocal treatment is accorded by the beneficiary State to the granting State.

Article 21. Termination or suspension of rights under a  
most-favoured-nation clause

1. The right of the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, to most-favoured-nation treatment under a most-favoured-nation clause is terminated or suspended at the moment when the extension of the relevant treatment by the granting State to a third State or to persons or things in the same relationship with that third State is terminated or suspended.

2. The right of the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, to most-favoured-nation treatment under a most-favoured-nation clause made subject to a condition of compensation is equally terminated or suspended at the moment of termination or suspension by the beneficiary State of the agreed compensation.

3. The right of the beneficiary State for itself or for the benefit of persons or things in a determined relationship with it, to most-favoured-nation treatment under a most-favoured-nation clause made subject to a condition of reciprocal treatment is equally terminated or suspended at the moment of termination or suspension by the beneficiary State of the agreed reciprocal treatment.

Article 22. Compliance with the laws and regulations  
of the granting State

The exercise of rights arising under a most-favoured-nation clause for the beneficiary State or for persons or things in a determined relationship with that State is subject to compliance with the relevant laws and regulations of the granting State. Those laws and regulations, however, shall not be applied in such a manner that the treatment of the beneficiary State or of persons or things in a determined relationship with that State is less favourable than that of the third State or of persons or things in the same relationship with that third State.

Article 23. The most-favoured-nation clause   
in relation to treatment under a   
generalized system of preferences

A beneficiary State is not entitled, under a most-favoured-nation clause, to treatment extended by a developed granting State to a developing third State on a non-reciprocal basis within a scheme of generalized preferences, established by that granting State, which conforms with a generalized system of preferences recognized by the international community of States as a whole or, for the States members of a competent international organization, adopted in accordance with its relevant rules and procedures.

Article 24. The most-favoured-nation clause in relation to  
arrangements between developing States

A developed beneficiary State is not entitled under a most-favoured-nation clause to any preferential treatment in the field of trade extended by a developing granting State to a developing third State in conformity with the relevant rules and procedures of a competent international organization of which the States concerned are members.

Article 25. The most-favoured-nation clause   
in relation to treatment  
extended to facilitate frontier traffic

1. A beneficiary State other than a contiguous State is not entitled under a most-favoured-nation clause to the treatment extended by the granting State to a contiguous third State in order to facilitate frontier traffic.

2. A contiguous beneficiary State is entitled under a most-favoured-nation clause to treatment not less favourable than the treatment extended by the granting State to a contiguous third State in order to facilitate frontier traffic only if the subject-matter of the clause is the facilitation of frontier traffic.

Article 26*.*The most-favoured-nation clause in relation to rights  
and facilities extended to a landlocked third State

1. A beneficiary State other than a landlocked State is not entitled under a most-favoured-nation clause to rights and facilities extended by the granting State to a landlocked third State in order to facilitate its access to and from the sea.

2. A landlocked beneficiary State is entitled under a most-favoured-nation clause to the rights and facilities extended by the granting State to a landlocked third State in order to facilitate its access to and from the sea only if the subject matter of the clause is the facilitation of access to and from the sea.

Article 27. Cases of State succession, State responsibility  
and outbreak of hostilities

The provisions of the present articles shall not prejudge any question that may arise in regard to a most-favoured-nation clause from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States.

Article 28. Non-retroactivity of the present articles

1. Without prejudice to the application of any rule set forth in the present articles to which most-favoured-nation clauses would be subject under international law independently of these articles, they apply only to a most-favoured-nation clause in a treaty which is concluded by States after the entry into force of the present articles with regard to such States.

2. Without prejudice to the application of any rule set forth in the present articles to which clauses on most-favoured-nation treatment would be subject under international law independently of these articles, they apply to the relations of States as between themselves only under a clause on most-favoured-nation treatment contained in an international agreement which is concluded by States and other subjects of international law after the entry into force of the present articles with regard to such States.

Article 29. Provisions otherwise agreed

The present articles are without prejudice to any provision on which the granting State and the beneficiary State may otherwise agree.

Article 30. New rules of international law in favour of  
developing countries

The present articles are without prejudice to the establishment of new rules of international law in favour of developing countries.

7. Draft Articles on the Status of the Diplomatic Courier  
and the Diplomatic Bag Not Accompanied by  
Diplomatic Courier and Draft Optional Protocols\*

(a) Draft Articles on the Status of the Diplomatic Courier  
and the Diplomatic Bag Not Accompanied  
by Diplomatic Courier

Part I. General provisions

Article 1. Scope of the present articles

The present articles apply to the diplomatic courier and the diplomatic bag employed for the official communications of a State with its missions, consular posts or delegations, wherever situated, and for the official communications of those missions, consular posts or delegations with the sending State or with each other.

Article 2. Couriers and bags not within the scope  
of the present articles

The fact that the present articles do not apply to couriers and bags employed for the official communications of special missions or international organizations shall not affect:

(a) the legal status of such couriers and bags;

(b) the application to such couriers and bags of any rules set forth in the present articles which would be applicable under international law independently of the present articles.

Article 3. Use of terms

1. For the purposes of the present articles:

(1) “diplomatic courier” means a person duly authorized by the sending State, either on a regular basis or for a special occasion as a courier ad hoc, as:

(a) a diplomatic courier within the meaning of the Vienna Convention on Diplomatic Relations of 18 April 1961;

(b) a consular courier within the meaning of the Vienna Convention on Consular Relations of 24 April 1963; or

(c) a courier of a permanent mission, a permanent observer mission, a delegation or an observer delegation within the meaning of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character of 14 March 1975;

who is entrusted with the custody, transportation and delivery of the diplomatic bag and is employed for the official communications referred to in article 1;

(2) “diplomatic bag” means the packages containing official correspondence, and documents or articles intended exclusively for official use, whether accompanied by diplomatic courier or not, which are used for the official communications referred to in article 1 and which bear visible external marks of their character as:

(a) a diplomatic bag within the meaning of the Vienna Convention on Diplomatic Relations of 18 April 1961;

(b) a consular bag within the meaning of the Vienna Convention on Consular Relations of 24 April 1963; or

(c) a bag of a permanent mission, a permanent observer mission, a delegation or an observer delegation within the meaning of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character of 14 March 1975;

(3) “sending State” means a State dispatching a diplomatic bag to or from its missions, consular posts or delegations;

(4) “receiving State” means a State having on its territory missions, consular posts or delegations of the sending State which receive or dispatch a diplomatic bag;

(5) “transit State” means a State through whose territory a diplomatic courier or a diplomatic bag passes in transit;

(6) “mission” means:

(a) a permanent diplomatic mission within the meaning of the Vienna Convention on Diplomatic Relations of 18 April 1961; and

(b) a permanent mission or a permanent observer mission within the meaning of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character of 14 March 1975;

(7) “consular post” means a consulate-general, consulate, vice-consulate or consular agency within the meaning of the Vienna Convention on Consular Relations of 24 April 1963;

(8) “delegation” means a delegation or an observer delegation within the meaning of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character of 14 March 1975;

(9) “international organization” means an intergovernmental organization.

2. The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in other international instruments or the internal law of any State.

Article 4. Freedom of official communications

1. The receiving State shall permit and protect the official communications of the sending State, effected through the diplomatic courier or the diplomatic bag, as referred to in article 1.

2. The transit State shall accord to the official communications of the sending State, effected through the diplomatic courier or the diplomatic bag, the same freedom and protection as is accorded by the receiving State.

Article 5. Duty to respect the laws and regulations of the  
receiving State and the transit State

1. The sending State shall ensure that the privileges and immunities accorded to its diplomatic courier and diplomatic bag are not used in a manner incompatible with the object and purpose of the present articles.

2. Without prejudice to the privileges and immunities accorded to him, it is the duty of the diplomatic courier to respect the laws and regulations of the receiving State and the transit State.

Article 6. Non-discrimination and reciprocity

1. In the application of the provisions of the present articles, the receiving State or the transit State shall not discriminate as between States.

2. However, discrimination shall not be regarded as taking place:

(a) where the receiving State or the transit State applies any of the provisions of the present articles restrictively because of a restrictive application of that provision to its diplomatic courier or diplomatic bag by the sending State;

(b) where States by custom or agreement extend to each other more favourable treatment with respect to their diplomatic couriers and diplomatic bags than is required by the present articles.

Part II. Status of the diplomatic courier and the captain  
of a ship or aircraft entrusted with  
the diplomatic bag

Article 7. Appointment of the diplomatic courier

Subject to the provisions of articles 9 and 12, the sending State or its missions, consular posts or delegations may freely appoint the diplomatic courier.

Article 8. Documentation of the diplomatic courier

The diplomatic courier shall be provided with an official document indicating his status and essential personal data, including his name and, where appropriate, his official position or rank, as well as the number of packages constituting the diplomatic bag which is accompanied by him and their identification and destination.

Article 9. Nationality of the diplomatic courier

1. The diplomatic courier should in principle be of the nationality of the sending State.

2. The diplomatic courier may not be appointed from among persons having the nationality of the receiving State except with the consent of that State, which may be withdrawn at any time. However, when the diplomatic courier is performing his functions in the territory of the receiving State, withdrawal of consent shall not take effect until he has delivered the diplomatic bag to its consignee.

3. The receiving State may reserve the right provided for in paragraph 2 also with regard to:

(a) nationals of the sending State who are permanent residents of the receiving State;

(b) nationals of a third State who are not also nationals of the sending State.

Article 10. Functions of the diplomatic courier

The functions of the diplomatic courier consist in taking custody of the diplomatic bag entrusted to him and transporting and delivering it to its consignee.

Article 11. End of the functions of the diplomatic courier

The functions of the diplomatic courier come to an end, inter alia, upon:

(a) fulfilment of his functions or his return to the country of origin;

(b) notification by the sending State to the receiving State and, where necessary, the transit State that his functions have been terminated;

(c) notification by the receiving State to the sending State that, in accordance with paragraph 2 of article 12, it ceases to recognize him as a diplomatic courier.

Article 12. The diplomatic courier declaredpersona non grata  
or not acceptable

1. The receiving State may, at any time and without having to explain its decision, notify the sending State that the diplomatic courier is persona non grata or not acceptable. In any such case, the sending State shall, as appropriate, either recall the diplomatic courier or terminate his functions to be performed in the receiving State. A person may be declared non grata or not acceptable before arriving in the territory of the receiving State.

2. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1, the receiving State may cease to recognize the person concerned as a diplomatic courier.

Art*i*cle 13. Facilities accorded to the diplomatic courier

1. The receiving State or the transit State shall accord to the diplomatic courier the facilities necessary for the performance of his functions.

2. The receiving State or the transit State shall, upon request and to the extent practicable, assist the diplomatic courier in obtaining temporary accommodation and in establishing contact through the telecommunications network with the sending State and its missions, consular posts or delegations, wherever situated.

Article 14*. E*ntry into the territory of the receiving State  
or the transit State

1. The receiving State or the transit State shall permit the diplomatic courier to enter its territory in the performance of his functions.

2. Visas, where required, shall be granted by the receiving State or the transit State to the diplomatic courier as promptly as possible.

Article 15. Freedom of movement

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State or the transit State shall ensure to the diplomatic courier such freedom of movement and travel in its territory as is necessary for the performance of his functions.

Article 16. Personal protection and inviolability

The diplomatic courier shall be protected by the receiving State or the transit State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

Article 17. Inviolability of temporary accommodation

1. The temporary accommodation of the diplomatic courier carrying a diplomatic bag shall, in principle, be inviolable. However:

(a) prompt protective action may be taken if required in case of fire or other disaster;

(b) inspection or search may be undertaken where serious grounds exist for believing that there are in the temporary accommodation articles the possession, import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State or the transit State.

2. In the case referred to in paragraph 1 (a), measures necessary for the protection of the diplomatic bag and its inviolability shall be taken.

3. In the case referred to in paragraph 1 (b), inspection or search shall be conducted in the presence of the diplomatic courier and on condition that it be effected without infringing the inviolability either of the person of the diplomatic courier or of the diplomatic bag and would not unduly delay or impede the delivery of the diplomatic bag. The diplomatic courier shall be given the opportunity to communicate with his mission in order to invite a member of that mission to be present when the inspection or search takes place.

4. The diplomatic courier shall, to the extent practicable, inform the authorities of the receiving State or the transit State of the location of his temporary accommodation.

Article 18*.*Immunity from jurisdiction

1. The diplomatic courier shall enjoy immunity from the criminal jurisdiction of the receiving State or the transit State in respect of acts performed in the exercise of his functions.

2. He shall also enjoy immunity from the civil and administrative jurisdiction of the receiving State or the transit State in respect of acts performed in the exercise of his functions. This immunity shall not extend to an action for damages arising from an accident involving a vehicle the use of which may have entailed the liability of the courier to the extent that those damages are not recoverable from insurance. Pursuant to the laws and regulations of the receiving State or the transit State, the courier shall, when driving a motor vehicle, be required to have insurance coverage against third-party risks.

3. No measures of execution may be taken in respect of the diplomatic courier, except in cases where he does not enjoy immunity under paragraph 2 and provided that the measures concerned can be taken without infringing the inviolability of his person, his temporary accommodation or the diplomatic bag entrusted to him.

4. The diplomatic courier is not obliged to give evidence as a witness on matters connected with the exercise of his functions. He may, however, be required to give evidence on other matters, provided that this would not unduly delay or impede the delivery of the diplomatic bag.

5. The immunity of the diplomatic courier from the jurisdiction of the receiving State or the transit State does not exempt him from the jurisdiction of the sending State.

Article 19. Exemption from customs duties, dues and taxes

1. The receiving State or the transit State shall, in accordance with such laws and regulations as it may adopt, permit entry of articles for the personal use of the diplomatic courier carried in his personal baggage and grant exemption from all customs duties, taxes and related charges on such articles other than charges levied for specific services rendered.

2. The diplomatic courier shall, in the performance of his functions, be exempt in the receiving State or the transit State from all dues and taxes, national, regional or municipal, except for indirect taxes of a kind which are normally incorporated in the price of goods or services and charges levied for specific services rendered.

Article 20. Exemption from examination and inspection

1. The diplomatic courier shall be exempt from personal examination.

2. The personal baggage of the diplomatic courier shall be exempt from inspection, unless there are serious grounds for believing that it contains articles not for the personal use of the diplomatic courier or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State or the transit State. An inspection in such a case shall be conducted in the presence of the diplomatic courier.

Article 21. Beginning and end of privileges and immunities

1. The diplomatic courier shall enjoy privileges and immunities from the moment he enters the territory of the receiving State or the transit State in order to perform his functions, or, if he is already in the territory of the receiving State, from the moment he begins to exercise his functions.

2. The privileges and immunities of the diplomatic courier shall cease at the moment when he leaves the territory of the receiving State or the transit State, or on the expiry of a reasonable period in which to do so. However, the privileges and immunities of the diplomatic courier ad hoc who is a resident of the receiving State shall cease at the moment when he has delivered to the consignee the diplomatic bag in his charge.

3. Notwithstanding paragraph 2, immunity shall continue to subsist with respect to acts performed by the diplomatic courier in the exercise of his functions.

Article 22. Waiver of immunities

1. The sending State may waive the immunities of the diplomatic courier.

2. The waiver shall, in all cases, be express and shall be communicated in writing to the receiving State or the transit State.

3. However, the initiation of proceedings by the diplomatic courier shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

4. The waiver of immunity from jurisdiction in respect of judicial proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement or decision, for which a separate waiver shall be necessary.

5. If the sending State does not waive the immunity of the diplomatic courier in respect of a civil action, it shall use its best endeavours to bring about an equitable settlement of the case.

Article 23. Status of the captain of a ship or aircraft entrusted  
with the diplomatic bag

1. The captain of a ship or aircraft in commercial service which is scheduled to arrive at an authorized port of entry may be entrusted with the diplomatic bag.

2. The captain shall be provided with an official document indicating the number of packages constituting the bag entrusted to him, but he shall not be considered to be a diplomatic courier.

3. The receiving State shall permit a member of a mission, consular post or delegation of the sending State to have unimpeded access to the ship or aircraft in order to take possession of the bag directly and freely from the captain or to deliver the bag directly and freely to him.

Part III. Status of the diplomatic bag

Article 24. Identification of the diplomatic bag

1. The packages constituting the diplomatic bag shall bear visible external marks of their character.

2. The packages constituting the diplomatic bag, if not accompanied by a diplomatic courier, shall also bear visible indications of their destination and consignee.

Article 25. Contents of the diplomatic bag

1. The diplomatic bag may contain only official correspondence, and documents or articles intended exclusively for official use.

2. The sending State shall take appropriate measures to prevent the dispatch through its diplomatic bag of items other than those referred to in paragraph 1.

Article 26. Transmission of the diplomatic bag by postal service  
or any mode of transport

The conditions governing the use of the postal service or of any mode of transport, established by the relevant international or national rules, shall apply to the transmission of the packages constituting the diplomatic bag in such a manner as to ensure the best possible facilities for the dispatch of the bag.

Article 27. Safe and rapid dispatch of the diplomatic bag

The receiving State or the transit State shall facilitate the safe and rapid dispatch of the diplomatic bag and shall, in particular, ensure that such dispatch is not unduly delayed or impeded by formal or technical requirements.

Article 28. Protection of the diplomatic bag

1. The diplomatic bag shall be inviolable wherever it may be; it shall not be opened or detained and shall be exempt from examination directly or through electronic or other technical devices.

2. Nevertheless, if the competent authorities of the receiving State or the transit State have serious reason to believe that the consular bag contains something other than the correspondence, documents or articles referred to in paragraph 1 of article 25, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.

Article 29. Exemption from customs duties and taxes

The receiving State or the transit State shall, in accordance with such laws and regulations as it may adopt, permit the entry, transit and departure of the diplomatic bag and grant exemption from customs duties, taxes and related charges other than charges for storage, cartage and similar services rendered.

Part IV. Miscellaneous provisions

Article 30. Protective measures in case of force majeure  
or other exceptional circumstances

1. Where, because of reasons of force majeure or other exceptional circumstances, the diplomatic courier, or the captain of a ship or aircraft in commercial service to whom the diplomatic bag has been entrusted, or any other member of the crew, is no longer able to maintain custody of the bag, the receiving State or the transit State shall inform the sending State of the situation and take appropriate measures with a view to ensuring the integrity and safety of the bag until the authorities of the sending State recover possession of it.

2. Where, because of reasons of force majeure or other exceptional circumstances, the diplomatic courier or the unaccompanied diplomatic bag is present in the territory of a State not initially foreseen as a transit State, that State, where aware of the situation, shall accord to the courier and the bag the protection provided for under the present articles and, in particular, extend facilities for their prompt and safe departure from its territory.

Article 31. Non-recognition of States or Governments or absence  
of diplomatic or consular relations

The State on whose territory an international organization has its seat or an office or a meeting of an international organ or a conference is held shall grant the facilities, privileges and immunities accorded under the present articles to the diplomatic courier and the diplomatic bag of a sending State directed to or from its mission or delegation, notwithstanding the non-recognition of one of those States or its Government by the other State or the non-existence of diplomatic or consular relations between them.

Article 32. Relationship between the present articles and other  
conventions and agreements

1. The present articles shall, as between Parties to them and to the conventions listed in subparagraph (1) of paragraph 1 of article 3, supplement the rules on the status of the diplomatic courier and the diplomatic bag contained in those conventions.

2. The provisions of the present articles are without prejudice to other international agreements in force as between Parties to them.

3. Nothing in the present articles shall preclude the Parties thereto from concluding international agreements relating to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, provided that such new agreements are not incompatible with the object and purpose of the present articles and do not affect the enjoyment by the other Parties to the present articles of their rights or the performance of their obligations under the present articles.

(b) Draft Optional Protocol One on the Status of the  
Courier and the Bag of Special Missions

The States Parties to the present Protocol and to the articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, hereinafter referred to as “the articles,”

Have agreed as follows:

Article I

The articles also apply to a courier and a bag employed for the official communications of a State with its special missions within the meaning of the Convention on Special Missions of 8 December 1969, wherever situated, and for the official communications of those missions with the sending State or with its other missions, consular posts or delegations.

Article II

For the purposes of the articles:

(a) “mission” also means a special mission within the meaning of the Convention on Special Missions of 8 December 1969;

(b) “diplomatic courier” also means a person duly authorized by the sending State as a courier of a special mission within the meaning of the Convention on Special Missions of 8 December 1969 who is entrusted with the custody, transportation and delivery of a diplomatic bag and is employed for the official communications referred to in article I of the present Protocol;

(c) “diplomatic bag” also means the packages containing official correspondence, and documents or articles intended exclusively for official use, whether accompanied by a courier or not, which are used for the official communications referred to in article I of the present Protocol and which bear visible external marks of their character as a bag of a special mission within the meaning of the Convention on Special Missions of 8 December 1969.

Article III

1. The present Protocol shall, as between Parties to it and to the Convention on Special Missions of 8 December 1969, supplement the rules on the status of the diplomatic courier and the diplomatic bag contained in that Convention.

2. The provisions of the present Protocol are without prejudice to other international agreements in force as between parties to them.

3. Nothing in the present Protocol shall preclude the Parties thereto from concluding international agreements relating to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, provided that such new agreements are not incompatible with the object and purpose of the articles and do not affect the enjoyment by the other Parties to the articles of their rights or the performance of their obligations under the articles.

(c) Draft Optional Protocol Two on the Status of the  
Courier and the Bag of International  
Organizations of a Universal Character

The States Parties to the present Protocol and to the articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, hereinafter referred to as “the articles,”

Have agreed as follows:

Article I

The articles also apply to a courier and a bag employed for the official communications of an international organization of a universal character:

(a) with its missions and offices, wherever situated, and for the official communications of those missions and offices with each other;

(b) with other international organizations of a universal character.

Article II

For the purposes of the articles:

(a) “diplomatic courier” also means a person duly authorized by the international organization as a courier who is entrusted with the custody, transportation and delivery of the bag and is employed for the official communications referred to in article I of the present Protocol;

(b) “diplomatic bag” also means the packages containing official correspondence, and documents or articles intended exclusively for official use, whether accompanied by a courier or not, which are used for the official communications referred to in article I of the present Protocol and which bear visible external marks of their character as a bag of an international organization.

Article III

1. The present Protocol shall, as between Parties to it and to the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 or the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947, supplement the rules on the status of the diplomatic courier and the diplomatic bag contained in those Conventions.

2. The provisions of the present Protocol are without prejudice to other international agreements in force as between parties to them.

3. Nothing in the present Protocol shall preclude the Parties thereto from concluding international agreements relating to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, provided that such new agreements are not incompatible with the object and purpose of the articles and do not affect the enjoyment by the other Parties to the articles of their rights or the performance of their obligations under the articles.

8. Draft Statute for an International Criminal Court,  
Annex and Appendices I to III\*

(a) Draft Statute for an International Criminal Court

The States Parties to this Statute,

Desiring to further international cooperation to enhance the effective prosecution and suppression of crimes of international concern, and for that purpose to establish an international criminal court;

Emphasizing that such a court is intended to exercise jurisdiction only over the most serious crimes of concern to the international community as a whole;

Emphasizing further that such a court is intended to be complementary to national criminal justice systems in cases where such trial procedures may not be available or may be ineffective;

Have agreed as follows:

Part One. Establishment of the Court

Article 1. The Court

There is established an International Criminal Court (“the Court”), whose jurisdiction and functioning shall be governed by the provisions of this Statute.

Article 2. Relationship of the Court to the United Nations

The President, with the approval of the States Parties to this Statute (“States Parties”), may conclude an agreement establishing an appropriate relationship between the Court and the United Nations.

Article 3. Seat of the Court

1. The seat of the Court shall be established at . . . in . . . (“the host State”).

2. The President, with the approval of the States Parties, may conclude an agreement with the host State establishing the relationship between that State and the Court.

3. The Court may exercise its powers and functions on the territory of any State Party and, by special agreement, on the territory of any other State.

Article 4. Status and legal capacity

1. The Court is a permanent institution open to States Parties in accordance with this Statute. It shall act when required to consider a case submitted to it.

2. The Court shall enjoy in the territory of each State Party such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

Part Two. Composition and administration of the Court

Article 5. Organs of the Court

The Court consists of the following organs:

(a) A Presidency, as provided in article 8;

(b) An Appeals Chamber, Trial Chambers and other chambers, as provided in article 9;

(c) A Procuracy, as provided in article 12;

(d) A Registry, as provided in article 13.

Article 6. Qualification and election of judges

1. The judges of the Court shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices, and have, in addition:

(a) Criminal trial experience;

(b) Recognized competence in international law.

2. Each State Party may nominate for election not more than two persons, of different nationality, who possess the qualification referred to in paragraph 1 (a) or that referred to in paragraph 1 (b), and who are willing to serve as may be required on the Court.

3. Eighteen judges shall be elected by an absolute majority vote of the States Parties by secret ballot. Ten judges shall first be elected, from among the persons nominated as having the qualification referred to in paragraph 1 (a). Eight judges shall then be elected, from among the persons nominated as having the qualification referred to in paragraph 1 (b).

4. No two judges may be nationals of the same State.

5. States Parties should bear in mind in the election of the judges that the representation of the principal legal systems of the world should be assured.

6. Judges hold office for a term of nine years and, subject to paragraph 7 and article 7, paragraph 2, are not eligible for re-election. A judge shall, however, continue in office in order to complete any case the hearing of which has commenced.

7. At the first election, six judges chosen by lot shall serve for a term of three years and are eligible for re-election; six judges chosen by lot shall serve for a term of six years; and the remainder shall serve for a term of nine years.

8. Judges nominated as having the qualification referred to in paragraphs 1 (a) or 1 (b), as the case may be, shall be replaced by persons nominated as having the same qualification.

Article 7. Judicial vacancies

1. In the event of a vacancy, a replacement judge shall be elected in accordance with article 6.

2. A judge elected to fill a vacancy shall serve for the remainder of the predecessor’s term, and if that period is less than five years is eligible for re-election for a further term.

Article 8. The Presidency

1. The President, the first and second Vice-Presidents and two alternate Vice-Presidents shall be elected by an absolute majority of the judges. They shall serve for a term of three years or until the end of their term of office as judges, whichever is earlier.

2. The first or second Vice-President, as the case may be, may act in place of the President in the event that the President is unavailable or disqualified. An alternate Vice-President may act in place of either Vice-President as required.

3. The President and the Vice-Presidents shall constitute the Presidency which shall be responsible for:

(a) The due administration of the Court;

(b) The other functions conferred on it by this Statute.

4. Unless otherwise indicated, pre-trial and other procedural functions conferred under this Statute on the Court may be exercised by the Presidency in any case where a chamber of the Court is not seized of the matter.

5. The Presidency may, in accordance with the Rules, delegate to one or more judges the exercise of a power vested in it under article 26, paragraphs 3, 27, paragraphs 5, 28, 29 or 30, paragraph 3, in relation to a case, during the period before a trial chamber is established for that case.

Article 9. Chambers

1. As soon as possible after each election of judges to the Court, the Presidency shall in accordance with the Rules constitute an Appeals Chamber consisting of the President and six other judges, of whom at least three shall be judges elected from among the persons nominated as having the qualification referred to in article 6, paragraph 1 (b). The President shall preside over the Appeals Chamber.

2. The Appeals Chamber shall be constituted for a term of three years. Members of the Appeals Chamber shall, however, continue to sit on the Chamber in order to complete any case the hearing of which has commenced.

3. Judges may be renewed as members of the Appeals Chamber for a second or subsequent term.

4. Judges not members of the Appeals Chamber shall be available to serve on Trial Chambers and other chambers required by this Statute, and to act as substitute members of the Appeals Chamber in the event that a member of that Chamber is unavailable or disqualified.

5. The Presidency shall nominate in accordance with the Rules five such judges to be members of the Trial Chamber for a given case. A Trial Chamber shall include at least three judges elected from among the persons nominated as having the qualification referred to in article 6, paragraph 1 (a).

6. The Rules may provide for alternate judges to be nominated to attend a trial and to act as members of the Trial Chamber in the event that a judge dies or becomes unavailable during the course of the trial.

7. No judge who is a national of a complainant State or of a State of which the accused is a national shall be a member of a chamber dealing with the case.

Article 10. Independence of the judges

1. In performing their functions, the judges shall be independent.

2. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence. In particular, they shall not while holding the office of judge be a member of the legislative or executive branches of the Government of a State, or of a body responsible for the investigation or prosecution of crimes.

3. Any question as to the application of paragraph 2 shall be decided by the Presidency.

4. On the recommendation of the Presidency, the States Parties may by a two-thirds majority decide that the workload of the Court requires that the judges should serve on a full-time basis. In that case:

(a) Existing judges who elect to serve on a full-time basis shall not hold any other office or employment;

(b) Judges subsequently elected shall not hold any other office or employment.

Article 11. Excusing and disqualification of judges

1. The Presidency at the request of a judge may excuse that judge from the exercise of a function under this Statute.

2. Judges shall not participate in any case in which they have previously been involved in any capacity or in which their impartiality might reasonably be doubted on any ground, including an actual, apparent or potential conflict of interest.

3. The Prosecutor or the accused may request the disqualification of a judge under paragraph 2.

4. Any question as to the disqualification of a judge shall be decided by an absolute majority of the members of the Chamber concerned. The challenged judge shall not take part in the decision.

Article 12. The Procuracy

1. The Procuracy is an independent organ of the Court responsible for the investigation of complaints brought in accordance with this Statute and for the conduct of prosecutions. A member of the Procuracy shall not seek or act on instructions from any external source.

2. The Procuracy shall be headed by the Prosecutor, assisted by one or more Deputy Prosecutors, who may act in place of the Prosecutor in the event that the Prosecutor is unavailable. The Prosecutor and the Deputy Prosecutors shall be of different nationalities. The Prosecutor may appoint such other qualified staff as may be required.

3. The Prosecutor and Deputy Prosecutors shall be persons of high moral character and have high competence and experience in the prosecution of criminal cases. They shall be elected by secret ballot by an absolute majority of the States Parties, from among candidates nominated by States Parties. Unless a shorter term is otherwise decided on at the time of their election, they shall hold office for a term of five years and are eligible for re-election.

4. The States Parties may elect the Prosecutor and Deputy Prosecutors on the basis that they are willing to serve as required.

5. The Prosecutor and Deputy Prosecutors shall not act in relation to a complaint involving a person of their own nationality.

6. The Presidency may excuse the Prosecutor or a Deputy Prosecutor at their request from acting in a particular case, and shall decide any question raised in a particular case as to the disqualification of the Prosecutor or a Deputy Prosecutor.

7. The staff of the Procuracy shall be subject to Staff Regulations drawn up by the Prosecutor.

Article 13. The Registry

1. On the proposal of the Presidency, the judges by an absolute majority by secret ballot shall elect a Registrar, who shall be the principal administrative officer of the Court. They may in the same manner elect a Deputy Registrar.

2. The Registrar shall hold office for a term of five years, is eligible for re-election and shall be available on a full-time basis. The Deputy Registrar shall hold office for a term of five years or such shorter term as may be decided on, and may be elected on the basis that the Deputy Registrar is willing to serve as required.

3. The Presidency may appoint or authorize the Registrar to appoint such other staff of the Registry as may be necessary.

4. The staff of the Registry shall be subject to Staff Regulations drawn up by the Registrar.

Article 14. Solemn undertaking

Before first exercising their functions under this Statute, judges and other officers of the Court shall make a public and solemn undertaking to do so impartially and conscientiously.

Article 15. Loss of office

1. A judge, the Prosecutor or other officer of the Court who is found to have committed misconduct or a serious breach of this Statute, or to be unable to exercise the functions required by this Statute because of long-term illness or disability, shall cease to hold office.

2. A decision as to the loss of office under paragraph 1 shall be made by secret ballot:

(a) In the case of the Prosecutor or a Deputy Prosecutor, by an absolute majority of the States Parties;

(b) In any other case, by a two-thirds majority of the judges.

3. The judge, the Prosecutor or any other officer whose conduct or fitness for office is impugned shall have full opportunity to present evidence and to make submissions but shall not otherwise participate in the discussion of the question.

Article 16. Privileges and immunities

1. The judges, the Prosecutor, the Deputy Prosecutors and the staff of the Procuracy, the Registrar and the Deputy Registrar shall enjoy the privileges, immunities and facilities of a diplomatic agent within the meaning of the Vienna Convention on Diplomatic Relations of 16 April 1961.

2. The staff of the Registry shall enjoy the privileges, immunities and facilities necessary to the performance of their functions.

3. Counsel, experts and witnesses before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

4. The judges may by an absolute majority decide to revoke a privilege or waive an immunity conferred by this article, other than an immunity of a judge, the Prosecutor or Registrar as such. In the case of other officers and staff of the Procuracy or Registry, they may do so only on the recommendation of the Prosecutor or Registrar, as the case may be.

Article 17. Allowances and expenses

1. The President shall receive an annual allowance.

2. The Vice-Presidents shall receive a special allowance for each day they exercise the functions of the President.

3. Subject to paragraph 4, the judges shall receive a daily allowance during the period in which they exercise their functions. They may continue to receive a salary payable in respect of another position occupied by them consistently with article 10.

4. If it is decided under article 10, paragraph 4, that judges shall thereafter serve on a full-time basis, existing judges who elect to serve on a full-time basis, and all judges subsequently elected, shall be paid a salary.

Articl*e* 18. Working languages

The working languages of the Court shall be English and French.

Article 19. Rules of the Court

1. Subject to paragraphs 2 and 3, the judges may by an absolute majority make rules for the functioning of the Court in accordance with this Statute, including rules regulating:

(a) The conduct of investigations;

(b) The procedure to be followed and the rules of evidence to be applied;

(c) Any other matter which is necessary for the implementation of this Statute.

2. The initial Rules of the Court shall be drafted by the judges within six months of the first elections for the Court, and submitted to a conference of States Parties for approval. The judges may decide that a rule subsequently made under paragraph 1 should also be submitted to a conference of States Parties for approval.

3. In any case to which paragraph 2 does not apply, rules made under paragraph 1 shall be transmitted to States Parties and may be confirmed by the Presidency unless, within six months after transmission, a majority of States Parties have communicated in writing their objections.

4. A rule may provide for its provisional application in the period prior to its approval or confirmation. A rule not approved or confirmed shall lapse.

Part Three. Jurisdiction of the Court

Article 20. Crimes within the jurisdiction of the Court

The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

(a) The crime of genocide;

(b) The crime of aggression;

(c) Serious violations of the laws and customs applicable in armed conflict;

(d) Crimes against humanity;

(e) Crimes, established under or pursuant to the treaty provisions listed in the Annex, which, having regard to the conduct alleged, constitute exceptionally serious crimes of international concern.

Article 21. Preconditions to the exercise of jurisdiction

1. The Court may exercise its jurisdiction over a person with respect to a crime referred to in article 20 if:

(a) In a case of genocide, a complaint is brought under article 25, paragraph 1;

(b) In any other case, a complaint is brought under article 25, paragraph 2, and the jurisdiction of the Court with respect to the crime is accepted under article 22:

(i) By the State which has custody of the suspect with respect to the crime (“the custodial State”);

(ii) By the State on the territory of which the act or omission in question occurred.

2. If, with respect to a crime to which paragraph 1 (b) applies, the custodial State has received, under an international agreement, a request from another State to surrender a suspect for the purposes of prosecution, then, unless the request is rejected, the acceptance by the requesting State of the Court’s jurisdiction with respect to the crime is also required.

Article 22. Acceptance of the jurisdiction of the Court  
for the purposes of article 21

1. A State Party to this Statute may:

(a) At the time it expresses its consent to be bound by the Statute, by declaration lodged with the depositary; or

(b) At a later time, by declaration lodged with the Registrar;

accept the jurisdiction of the Court with respect to such of the crimes referred to in article 20 as it specifies in the declaration.

2. A declaration may be of general application, or may be limited to particular conduct or to conduct committed during a particular period of time.

3. A declaration may be made for a specified period, in which case it may not be withdrawn before the end of that period, or for an unspecified period, in which case it may be withdrawn only upon giving six months’ notice of withdrawal to the Registrar. Withdrawal does not affect proceedings already commenced under this Statute.

4. If under article 21 the acceptance of a State which is not a party to this Statute is required, that State may, by declaration lodged with the Registrar, consent to the Court exercising jurisdiction with respect to the crime.

Article 23. Action by the Security Council

1. Notwithstanding article 21, the Court has jurisdiction in accordance with this Statute with respect to crimes referred to in article 20 as a consequence of the referral of a matter to the Court by the Security Council acting under Chapter VII of the Charter of the United Nations.

2. A complaint of or directly related to an act of aggression may not be brought under this Statute unless the Security Council has first determined that a State has committed the act of aggression which is the subject of the complaint.

3. No prosecution may be commenced under this Statute arising from a situation which is being dealt with by the Security Council as a threat to or breach of the peace or an act of aggression under Chapter VII of the Charter, unless the Security Council otherwise decides.

Article 24. Duty of the Court as to jurisdiction

The Court shall satisfy itself that it has jurisdiction in any case brought before it.

Part Four. Investigation and prosecution

Article 25. Complaint

1. A State Party which is also a Contracting Party to the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 may lodge a complaint with the Prosecutor alleging that a crime of genocide appears to have been committed.

2. A State Party which accepts the jurisdiction of the Court under article 22 with respect to a crime may lodge a complaint with the Prosecutor alleging that such a crime appears to have been committed.

3. As far as possible a complaint shall specify the circumstances of the alleged crime and the identity and whereabouts of any suspect, and be accompanied by such supporting documentation as is available to the complainant State.

4. In a case to which article 23, paragraph 1, applies, a complaint is not required for the initiation of an investigation.

Article 26. Investigation of alleged crimes

1. On receiving a complaint or upon notification of a decision of the Security Council referred to in article 23, paragraph 1, the Prosecutor shall initiate an investigation unless the Prosecutor concludes that there is no possible basis for a prosecution under this Statute and decides not to initiate an investigation, in which case the Prosecutor shall so inform the Presidency.

2. The Prosecutor may:

(a) Request the presence of and question suspects, victims and witnesses;

(b) Collect documentary and other evidence;

(c) Conduct on-site investigations;

(d) Take necessary measures to ensure the confidentiality of information or the protection of any person;

(e) As appropriate, seek the cooperation of any State or of the United Nations.

3. The Presidency may, at the request of the Prosecutor, issue such subpoenas and warrants as may be required for the purposes of an investigation, including a warrant under article 28, paragraph 1, for the provisional arrest of a suspect.

4. If, upon investigation and having regard, inter alia, to the matters referred to in article 35, the Prosecutor concludes that there is no sufficient basis for a prosecution under this Statute and decides not to file an indictment, the Prosecutor shall so inform the Presidency giving details of the nature and basis of the complaint and of the reasons for not filing an indictment.

5. At the request of a complainant State or, in a case to which article 23, paragraph 1, applies, at the request of the Security Council, the Presidency shall review a decision of the Prosecutor not to initiate an investigation or not to file an indictment, and may request the Prosecutor to reconsider the decision.

6. A person suspected of a crime under this Statute shall:

(a) Prior to being questioned, be informed that the person is a suspect and of the rights:

(i) To remain silent, without such silence being a consideration in the determination of guilt or innocence;

(ii) To have the assistance of counsel of the suspect’s choice or, if the suspect lacks the means to retain counsel, to have legal assistance assigned by the Court;

(b) Not be compelled to testify or to confess guilt;

(c) If questioned in a language other than a language the suspect understands and speaks, be provided with competent interpretation services and with a translation of any document on which the suspect is to be questioned.

Article 27. Commencement of prosecution

1. If upon investigation the Prosecutor concludes that there is a prima facie case, the Prosecutor shall file with the Registrar an indictment containing a concise statement of the allegations of fact and of the crime or crimes with which the suspect is charged.

2. The Presidency shall examine the indictment and any supporting material and determine:

(a) Whether a prima facie case exists with respect to a crime within the jurisdiction of the Court; and

(b) Whether, having regard, inter alia, to the matters referred to in article 35, the case should on the information available be heard by the Court.

If so, it shall confirm the indictment and establish a trial chamber in accordance with article 9.

3. If, after any adjournment that may be necessary to allow additional material to be produced, the Presidency decides not to confirm the indictment, it shall so inform the complainant State or, in a case to which article 23, paragraph 1, applies, the Security Council.

4. The Presidency may at the request of the Prosecutor amend the indictment, in which case it shall make any necessary orders to ensure that the accused is notified of the amendment and has adequate time to prepare a defence.

5. The Presidency may make any further orders required for the conduct of the trial, including an order:

(a) Determining the language or languages to be used during the trial;

(b) Requiring the disclosure to the defence, within a sufficient time before the trial to enable the preparation of the defence, of documentary or other evidence available to the Prosecutor, whether or not the Prosecutor intends to rely on that evidence;

(c) Providing for the exchange of information between the Prosecutor and the defence, so that both parties are sufficiently aware of the issues to be decided at the trial;

(d) Providing for the protection of the accused, victims and witnesses and of confidential information.

Article 28. Arrest

1. At any time after an investigation has been initiated, the Presidency may at the request of the Prosecutor issue a warrant for the provisional arrest of a suspect if:

(a) There is probable cause to believe that the suspect may have committed a crime within the jurisdiction of the Court; and

(b) The suspect may not be available to stand trial unless provisionally arrested.

2. A suspect who has been provisionally arrested is entitled to release from arrest if the indictment has not been confirmed within 90 days of the arrest, or such longer time as the Presidency may allow.

3. As soon as practicable after the confirmation of the indictment, the Prosecutor shall seek from the Presidency a warrant for the arrest and transfer of the accused. The Presidency shall issue such a warrant unless it is satisfied that:

(a) The accused will voluntarily appear for trial; or

(b) There are special circumstances making it unnecessary for the time being to issue the warrant.

4. A person arrested shall be informed at the time of arrest of the reasons for the arrest and shall be promptly informed of any charges.

Article 29. Pre-trial detention or release

1. A person arrested shall be brought promptly before a judicial officer of the State where the arrest occurred. The judicial officer shall determine, in accordance with the procedures applicable in that State, that the warrant has been duly served and that the rights of the accused have been respected.

2. A person arrested may apply to the Presidency for release pending trial. The Presidency may release the person unconditionally or on bail if it is satisfied that the accused will appear at the trial.

3. A person arrested may apply to the Presidency for a determination of the lawfulness under this Statute of the arrest or detention. If the Presidency decides that the arrest or detention was unlawful, it shall order the release of the accused, and may award compensation.

4. A person arrested shall be held, pending trial or release on bail, in an appropriate place of detention in the arresting State, in the State in which the trial is to be held or if necessary, in the host State.

Article 30. Notification of the indictment

1. The Prosecutor shall ensure that a person who has been arrested is personally served, as soon as possible after being taken into custody, with certified copies of the following documents, in a language understood by that person:

(a) In the case of a suspect provisionally arrested, a statement of the grounds for the arrest;

(b) In any other case, the confirmed indictment;

(c) A statement of the accused’s rights under this Statute.

2. In any case to which paragraph 1 (a) applies, the indictment shall be served on the accused as soon as possible after it has been confirmed.

3. If, 60 days after the indictment has been confirmed, the accused is not in custody pursuant to a warrant issued under article 28, paragraph 3, or for some reason the requirements of paragraph 1 cannot be complied with, the Presidency may on the application of the Prosecutor prescribe some other manner of bringing the indictment to the attention of the accused.

Article 31. Persons made available to assist in a prosecution

1. The Prosecutor may request a State Party to make persons available to assist in a prosecution in accordance with paragraph 2.

2. Such persons should be available for the duration of the prosecution, unless otherwise agreed. They shall serve at the direction of the Prosecutor, and shall not seek or receive instructions from any Government or source other than the Prosecutor in relation to their exercise of functions under this article.

3. The terms and conditions on which persons may be made available under this article shall be approved by the Presidency on the recommendation of the Prosecutor.

Part Five. The trial

Article 32. Place of trial

Unless otherwise decided by the Presidency, the place of the trial will be the seat of the Court.

Article 33. Applicable law

The Court shall apply:

(a) This Statute;

(b) Applicable treaties and the principles and rules of general international law;

(c) To the extent applicable, any rule of national law.

Article 34. Challenges to jurisdiction

Challenges to the jurisdiction of the Court may be made, in accordance with the Rules:

(a) Prior to or at the commencement of the hearing, by an accused or any interested State; and

(b) At any later stage of the trial, by an accused.

Article 35. Issues of admissibility

The Court may, on application by the accused or at the request of an interested State at any time prior to the commencement of the trial, or of its own motion, decide, having regard to the purposes of this Statute set out in the preamble, that a case before it is inadmissible on the ground that the crime in question:

(a) Has been duly investigated by a State with jurisdiction over it, and the decision of that State not to proceed to a prosecution is apparently well-founded;

(b) Is under investigation by a State which has or may have jurisdiction over it, and there is no reason for the Court to take any further action for the time being with respect to the crime; or

(c) Is not of such gravity to justify further action by the Court.

Arti*c*le 36. Procedure under articles 34 and 35

1. In proceedings under articles 34 and 35, the accused and the complainant State have the right to be heard.

2. Proceedings under articles 34 and 35 shall be decided by the Trial Chamber, unless it considers, having regard to the importance of the issues involved, that the matter should be referred to the Appeals Chamber.

Article 37. Trial in the presence of the accused

1. As a general rule, the accused should be present during the trial.

2. The Trial Chamber may order that the trial proceed in the absence of the accused if:

(a) The accused is in custody, or has been released pending trial, and for reasons of security or the ill-health of the accused it is undesirable for the accused to be present;

(b) The accused is continuing to disrupt the trial; or

(c) The accused has escaped from lawful custody under this Statute or has broken bail.

3. The Chamber shall, if it makes an order under paragraph 2, ensure that the rights of the accused under this Statute are respected, and in particular:

(a) That all reasonable steps have been taken to inform the accused of the charge; and

(b) That the accused is legally represented, if necessary by a lawyer appointed by the Court.

4. In cases where a trial cannot be held because of the deliberate absence of an accused, the Court may establish, in accordance with the Rules, an Indictment Chamber for the purpose of:

(a) Recording the evidence;

(b) Considering whether the evidence establishes a prima facie case of a crime within the jurisdiction of the Court; and

(c) Issuing and publishing a warrant of arrest in respect of an accused against whom a prima facie case is established.

5. If the accused is subsequently tried under this Statute:

(a) The record of evidence before the Indictment Chamber shall be admissible;

(b) Any judge who was a member of the Indictment Chamber may not be a member of the Trial Chamber.

Article 38. Functions and powers of the Trial Chamber

1. At the commencement of the trial, the Trial Chamber shall:

(a) Have the indictment read;

(b) Ensure that articles 27, paragraph 5 (b), and 30 have been complied with sufficiently in advance of the trial to enable adequate preparation of the defence;

(c) Satisfy itself that the other rights of the accused under this Statute have been respected; and

(d) Allow the accused to enter a plea of guilty or not guilty.

2. The Chamber shall ensure that a trial is fair and expeditious and is conducted in accordance with this Statute and the Rules, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

3. The Chamber may, subject to the Rules, hear charges against more than one accused arising out of the same factual situation.

4. The trial shall be held in public, unless the Chamber determines that certain proceedings be in closed session in accordance with article 43, or for the purpose of protecting confidential or sensitive information which is to be given in evidence.

5. The Chamber shall, subject to this Statute and the Rules have, inter alia, the power on the application of a party or of its own motion, to:

(a) Issue a warrant for the arrest and transfer of an accused who is not already in the custody of the Court;

(b) Require the attendance and testimony of witnesses;

(c) Require the production of documentary and other evidentiary materials;

(d) Rule on the admissibility or relevance of evidence;

(e) Protect confidential information;

(f) Maintain order in the course of a hearing.

6. The Chamber shall ensure that a complete record of the trial, which accurately reflects the proceedings, is maintained and preserved by the Registrar.

Article 39. Principle of legality (nullum crimen sine lege)

An accused shall not be held guilty:

(a) In the case of a prosecution with respect to a crime referred to in article 20, subparagraphs (a) to (d), unless the act or omission in question constituted a crime under international law;

(b) In the case of a prosecution with respect to a crime referred to in article 20, subparagraph (e), unless the treaty in question was applicable to the conduct of the accused;

at the time the act or omission occurred.

Article 40. Presumption of innocence

An accused shall be presumed innocent until proved guilty in accordance with the law. The onus is on the Prosecutor to establish the guilt of the accused beyond reasonable doubt.

Article 41. Rights of the accused

1. In the determination of any charge under this Statute, the accused is entitled to a fair and public hearing, subject to article 43, and to the following minimum guarantees:

(a) To be informed promptly and in detail, in a language which the accused understands, of the nature and cause of the charge;

(b) To have adequate time and facilities for the preparation of the defence, and to communicate with counsel of the accused’s choosing;

(c) To be tried without undue delay;

(d) Subject to article 37, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused’s choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court, without payment if the accused lacks sufficient means to pay for such assistance;

(e) To examine, or have examined, the prosecution witnesses and to obtain the attendance and examination of witnesses for the defence under the same conditions as witnesses for the prosecution;

(f) If any of the proceedings of or documents presented to the Court are not in a language the accused understands and speaks, to have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness;

(g) Not to be compelled to testify or to confess guilt.

2. Exculpatory evidence that becomes available to the Procuracy prior to the conclusion of the trial shall be made available to the defence. In case of doubt as to the application of this paragraph or as to the admissibility of the evidence, the Trial Chamber shall decide.

Article 42. Non bis in idem

1. No person shall be tried before any other court for acts constituting a crime of the kind referred to in article 20 for which that person has already been tried by the Court.

2. A person who has been tried by another court for acts constituting a crime of the kind referred to in article 20 may be tried under this Statute only if:

(a) The acts in question were characterized by that court as an ordinary crime and not as a crime which is within the jurisdiction of the Court; or

(b) The proceedings in the other court were not impartial or independent or were designed to shield the accused from international criminal responsibility or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted under this Statute, the Court shall take into account the extent to which a penalty imposed by another court on the same person for the same act has already been served.

Article 43. Protection of the accused, victims and witnesses

The Court shall take necessary measures available to it to protect the accused, victims and witnesses and may to that end conduct closed proceedings or allow the presentation of evidence by electronic or other special means.

Article 44. Evidence

1. Before testifying, each witness shall, in accordance with the Rules, give an undertaking as to the truthfulness of the evidence to be given by that witness.

2. States Parties shall extend their laws of perjury to cover evidence given under this Statute by their nationals, and shall cooperate with the Court in investigating and where appropriate prosecuting any case of suspected perjury.

3. The Court may require to be informed of the nature of any evidence before it is offered so that it may rule on its relevance or admissibility.

4. The Court shall not require proof of facts of common knowledge but may take judicial notice of them.

5. Evidence obtained by means of a serious violation of this Statute or of other rules of international law shall not be admissible.

Article 45. Quorum and judgement

1. At least four members of the Trial Chamber must be present at each stage of the trial.

2. The decisions of the Trial Chamber shall be taken by a majority of the judges. At least three judges must concur in a decision as to conviction or acquittal and as to the sentence to be imposed.

3. If after sufficient time for deliberation a Chamber which has been reduced to four judges is unable to agree on a decision, it may order a new trial.

4. The deliberations of the Court shall be and remain secret.

5. The judgement shall be in writing and shall contain a full and reasoned statement of the findings and conclusions. It shall be the sole judgement issued, and shall be delivered in open court.

Article 46. Sentencing

1. In the event of a conviction, the Trial Chamber shall hold a further hearing to hear any evidence relevant to sentence, to allow the Prosecutor and the defence to make submissions and to consider the appropriate sentence to be imposed.

2. In imposing sentence, the Trial Chamber should take into account such factors as the gravity of the crime and the individual circumstances of the convicted person.

Article 47. Applicable penalties

1. The Court may impose on a person convicted of a crime under this Statute one or more of the following penalties:

(a) A term of life imprisonment, or of imprisonment for a specified number of years;

(b) A fine.

2. In determining the length of a term of imprisonment or the amount of a fine to be imposed, the Court may have regard to the penalties provided for by the law of:

(a) The State of which the convicted person is a national;

(b) The State where the crime was committed;

(c) The State which had custody of and jurisdiction over the accused.

3. Fines paid may be transferred, by order of the Court, to one or more of the following:

(a) The Registrar, to defray the costs of the trial;

(b) A State of which the nationals were the victims of the crime;

(c) A trust fund established by the Secretary-General of the United Nations for the benefit of victims of crime.

Part Six. Appeal and review

Article 48. Appeal against judgement or sentence

1. The Prosecutor and the convicted person may, in accordance with the Rules, appeal against a decision under articles 45 or 47 on grounds of procedural error, error of fact or of law, or disproportion between the crime and the sentence.

2. Unless the Trial Chamber otherwise orders, a convicted person shall remain in custody pending an appeal.

Article 49. Proceedings on appeal

1. The Appeals Chamber has all the powers of the Trial Chamber.

2. If the Appeals Chamber finds that the proceedings appealed from were unfair or that the decision is vitiated by error of fact or law, it may:

(a) If the appeal is brought by the convicted person, reverse or amend the decision, or, if necessary, order a new trial;

(b) If the appeal is brought by the Prosecutor against an acquittal, order a new trial.

3. If in an appeal against sentence the Chamber finds that the sentence is manifestly disproportionate to the crime, it may vary the sentence in accordance with article 47.

4. The decision of the Chamber shall be taken by a majority of the judges, and shall be delivered in open court. Six judges constitute a quorum.

5. Subject to article 50, the decision of the Chamber shall be final.

Article 50. Revision

1. The convicted person or the Prosecutor may, in accordance with the Rules, apply to the Presidency for revision of a conviction on the ground that evidence has been discovered which was not available to the applicant at the time the conviction was pronounced or affirmed and which could have been a decisive factor in the conviction.

2. The Presidency shall request the Prosecutor or the convicted person, as the case may be, to present written observations on whether the application should be accepted.

3. If the Presidency is of the view that the new evidence could lead to the revision of the conviction, it may:

(a) Reconvene the Trial Chamber;

(b) Constitute a new Trial Chamber; or

(c) Refer the matter to the Appeals Chamber;

with a view to the Chamber determining, after hearing the parties, whether the new evidence should lead to a revision of the conviction.

Part Seven. International cooperation and judicial assistance

Article 51. Cooperation and judicial assistance

1. States Parties shall cooperate with the Court in connection with criminal investigations and proceedings under this Statute.

2. The Registrar may transmit to any State a request for cooperation and judicial assistance with respect to a crime, including, but not limited to:

(a) The identification and location of persons;

(b) The taking of testimony and the production of evidence;

(c) The service of documents;

(d) The arrest or detention of persons;

(e) Any other request which may facilitate the administration of justice, including provisional measures as required.

3. Upon receipt of a request under paragraph 2:

(a) In a case covered by article 21, paragraph 1 (a), all States Parties;

(b) In any other case, States Parties which have accepted the jurisdiction of the Court with respect to the crime in question;

shall respond without undue delay to the request.

Article 52. Provisional measures

1. In case of need, the Court may request a State to take necessary provisional measures, including the following:

(a) To provisionally arrest a suspect;

(b) To seize documents or other evidence; or

(c) To prevent injury to or the intimidation of a witness or the destruction of evidence.

2. The Court shall follow up a request under paragraph 1 by providing, as soon as possible and in any case within 28 days, a formal request for assistance complying with article 57.

Article 53. Transfer of an accused to the Court

1. The Registrar shall transmit to any State on the territory of which the accused may be found a warrant for the arrest and transfer of an accused issued under article 28, and shall request the cooperation of that State in the arrest and transfer of the accused.

2. Upon receipt of a request under paragraph 1:

(a) All States Parties:

(i) In a case covered by article 21, paragraph 1 (a); or

(ii) Which have accepted the jurisdiction of the Court with respect to the crime in question;

shall, subject to paragraphs 5 and 6, take immediate steps to arrest and transfer the accused to the Court;

(b) In the case of a crime to which article 20, subparagraph (e), applies, a State Party which is a party to the treaty in question but which has not accepted the Court’s jurisdiction with respect to that crime shall, if it decides not to transfer the accused to the Court, forthwith take all necessary steps to extradite the accused to a requesting State or refer the case to its competent authorities for the purpose of prosecution;

(c) In any other case, a State Party shall consider whether it can, in accordance with its legal procedures, take steps to arrest and transfer the accused to the Court, or whether it should take steps to extradite the accused to a requesting State or refer the case to its competent authorities for the purpose of prosecution.

3. The transfer of an accused to the Court constitutes, as between States Parties which accept the jurisdiction of the Court with respect to the crime, sufficient compliance with a provision of any treaty requiring that a suspect be extradited or the case referred to the competent authorities of the requested State for the purpose of prosecution.

4. A State Party which accepts the jurisdiction of the Court with respect to the crime shall, as far as possible, give priority to a request under paragraph 1 over requests for extradition from other States.

5. A State Party may delay complying with paragraph 2 if the accused is in its custody or control and is being proceeded against for a serious crime, or serving a sentence imposed by a court for a crime.

It shall within 45 days of receiving the request inform the Registrar of the reasons for the delay. In such cases, the requested State:

(a) May agree to the temporary transfer of the accused for the purpose of standing trial under this Statute; or

(b) Shall comply with paragraph 2 after the prosecution has been completed or abandoned or the sentence has been served, as the case may be.

6. A State Party may, within 45 days of receiving a request under paragraph 1, file a written application with the Registrar requesting the Court to set aside the request on specified grounds. Pending a decision of the Court on the application, the State concerned may delay complying with paragraph 2 but shall take any provisional measures necessary to ensure that the accused remains in its custody or control.

Article 54. Obligation to extradite or prosecute

In a case of a crime referred to in article 20, subparagraph (e), a custodial State Party to this Statute which is a party to the treaty in question but which has not accepted the Court’s jurisdiction with respect to the crime for the purposes of article 21, paragraph 1 (b) (i), shall either take all necessary steps to extradite the suspect to a requesting State for the purpose of prosecution or refer the case to its competent authorities for that purpose.

Article 55. Rule of speciality

1. A person transferred to the Court under article 53 shall not be subject to prosecution or punishment for any crime other than that for which the person was transferred.

2. Evidence provided under this Part shall not, if the State when providing it so requests, be used as evidence for any purpose other than that for which it was provided, unless this is necessary to preserve the right of an accused under article 41, paragraph 2.

3. The Court may request the State concerned to waive the requirements of paragraphs 1 or 2, for the reasons and purposes specified in the request.

Article 56. Cooperation with States not parties to this Statute

States not parties to this Statute may assist in relation to the matters referred to in this Part on the basis of comity, a unilateral declaration, an ad hoc arrangement or other agreement with the Court.

Article 57. Communications and documentation

1. Requests under this Part shall be in writing, or be forthwith reduced to writing, and shall be between the competent national authority and the Registrar. States Parties shall inform the Registrar of the name and address of their national authority for this purpose.

2. When appropriate, communications may also be made through the International Criminal Police Organization.

3. A request under this Part shall include the following, as applicable:

(a) A brief statement of the purpose of the request and of the assistance sought, including the legal basis and grounds for the request;

(b) Information concerning the person who is the subject of the request on the evidence sought, in sufficient detail to enable identification;

(c) A brief description of the essential facts underlying the request; and

(d) Information concerning the complaint or charge to which the request relates and of the basis for the Court’s jurisdiction.

4. A requested State which considers the information provided insufficient to enable the request to be complied with may seek further particulars.

Part Eight. Enforcement

Article 58. Recognition of judgements

States Parties undertake to recognize the judgements of the Court.

Article 59*.*Enforcement of sentences

1. A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept convicted persons.

2. If no State is designated under paragraph 1, the sentence of imprisonment shall be served in a prison facility made available by the host State.

3. A sentence of imprisonment shall be subject to the supervision of the Court in accordance with the Rules.

Article 60. Pardon, parole and commutation of sentences

1. If, under a generally applicable law of the State of imprisonment, a person in the same circumstances who had been convicted for the same conduct by a court of that State would be eligible for pardon, parole or commutation of sentence, the State shall so notify the Court.

2. If a notification has been given under paragraph 1, the prisoner may apply to the Court in accordance with the Rules, seeking an order for pardon, parole or commutation of the sentence.

3. If the Presidency decides that an application under paragraph 2 is apparently well-founded, it shall convene a Chamber of five judges to consider and decide whether in the interests of justice the person convicted should be pardoned or paroled or the sentence commuted, and on what basis.

4. When imposing a sentence of imprisonment, a Chamber may stipulate that the sentence is to be served in accordance with specified laws as to pardon, parole or commutation of sentence of the State of imprisonment. The consent of the Court is not required to subsequent action by that State in conformity with those laws, but the Court shall be given at least 45 days’ notice of any decision which might materially affect the terms or extent of the imprisonment.

5. Except as provided in paragraphs 3 and 4, a person serving a sentence imposed by the Court is not to be released before the expiry of the sentence.

(b) Annex. Crimes pursuant to treaties   
(see art. 20, subpara. (e))

1. Grave breaches of:

(a) The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, as defined by article 50 of that Convention;

(b) The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, as defined by article 51 of that Convention;

(c) The Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, as defined by article 130 of that Convention;

(d) The Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, as defined by article 147 of that Convention;

(e) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) of 8 June 1977, as defined by article 85 of that Protocol.

2. The unlawful seizure of aircraft as defined by article 1 of the Convention for the Suppression of Unlawful Seizure of Aircraft of 16 December 1970.

3. The crimes defined by article 1 of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 23 September 1971.

4. Apartheid and related crimes as defined by article II of the International Convention on the Suppression and Punishment of the Crime of Apartheid of 30 November 1973.

5. The crimes defined by article 2 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents of 14 December 1973.

6. Hostage-taking and related crimes as defined by article 1 of the International Convention against the Taking of Hostages of 17 December 1979.

7. The crime of torture made punishable pursuant to article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984.

8. The crimes defined by article 3 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and by article 2 of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, both of 10 March 1988.

9. Crimes involving illicit traffic in narcotic drugs and psychotropic substances as envisaged by article 3, paragraph 1, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988 which, having regard to article 2 of the Convention, are crimes with an international dimension.

(c) Appendix I. Possible Clauses of a Treaty to Accompany  
 the Draft Statute

1. The Commission envisages that the statute will be attached to a treaty between States Parties. That treaty would provide for the establishment of the court, and for the supervision of its administration by the States Parties. It would also deal with such matters as financing, entry into force, etc., as is required for any new instrument creating an entity such as the court.

2. The standard practice of the Commission is not to draft final clauses for its draft articles, and for that reason it has not sought to draft a set of clauses for a covering treaty which would contain clauses of that kind. However, in discussions in the Sixth Committee of the General Assembly, a number of the matters which it will be necessary to resolve in concluding such a treaty were discussed, and the Commission felt that it may be useful to outline some possible options for dealing with them.

3. Issues that will need to be dealt with include the following:

(a) Entry into force: The statute of the court is intended to reflect and represent the interests of the international community as a whole in relation to the prosecution of certain most serious crimes of international concern. In consequence, the statute and its covering treaty should require a substantial number of States Parties before it enters into force.

(b) Administration: The administration of the court as an entity is entrusted to the Presidency (see art. 8). However States Parties will need to meet from time to time to deal with such matters as the finances and administration of the court, and to consider periodic reports from the court, etc. The means by which States Parties will act together will need to be established.

(c) Financing: Detailed consideration must be given to financial issues at an early stage of any discussion of the proposed court. There are essentially two possibilities: direct financing by the States Parties or total or partial financing by the United Nations. United Nations financing is not necessarily excluded in the case of a separate entity in relationship with the United Nations (such as the Human Rights Committee). The statute is drafted in such a way as to minimize the costs of establishment of the court itself. On the other hand, a number of members stressed that investigations and prosecutions under the statute could be expensive. Arrangements will also have to be made to cover the costs of imprisonment of persons convicted under the statute.

(d) Amendment and review of the statute: The covering treaty must of course provide for amendment of the statute. It should, in the Commission’s view, provide for a review of the statute, at the request of a specified number of States Parties after, say, five years. One issue that will arise in considering amendment or review will be the question whether the list of crimes contained in the annex should be revised so as to incorporate new conventions establishing crimes. This may include such instruments in the course of preparation as the draft Code of Crimes against the Peace and Security of Mankind, and the proposed convention on the protection of United Nations peacekeepers.

(e) Reservations: Whether or not the statute would be considered to be “a constituent instrument of an international organization” within the meaning of article 20, paragraph 3, of the Vienna Convention of the Law of Treaties, it is certainly closely analogous to a constituent instrument, and the considerations which led the drafters to require the consent of the “competent organ of that organization” under article 20, paragraph 3, apply in rather similar fashion to it. The draft statute has been constructed as an overall scheme, incorporating important balances and qualifications in relation to the working of the court: it is intended to operate as a whole. These considerations tend to support the view that reservations to the statute and its accompanying treaty should either not be permitted, or should be limited in scope. This is of course a matter for States Parties to consider in the context of negotiations for the conclusion of the statute and its accompanying treaty.

(f) Settlement of disputes: The court will of course have to determine its own jurisdiction (see arts. 24 and 34), and will accordingly have to deal with any issues of interpretation and application of the statute which arise in the exercise of that jurisdiction. Consideration will need to be given to ways in which other disputes, with regard to the interpretation and implementation of the treaty embodying the statute, arising between States Parties, should be resolved.

(d) Appendix II. Relevant Treaty Provisions  
Mentioned in the Annex  
 (see art. 20, subpara. (e))

1. Geneva Convention for the amelioration of the  
condition of the wounded and sick in armed  
forces in the field of 12 August 1949

Article 50

Grave breaches to which the preceding article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

2. Geneva Convention for the amelioration of the  
conditions of wounded, sick and shipwrecked  
members of armed forces at sea of 12 August 1949

Article 51

Grave breaches to which the preceding article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

3. Geneva Convention Relative to the Treatment of  
Prisoners of War of 12 August 1949

Article 130

Grave breaches to which the preceding article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.

4. Geneva Convention Relative to the Protection  
of Civilian Persons in Time of War, 12 August 1949

Article 147

Grave breaches to which the preceding article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

5. Protocol Additional to the Geneva Conventions of  
12 August 1949, and relating to the protection of  
victims of international armed conflicts (Protocol I)

Article 85. Repression of breaches of this Protocol

1. The provisions of the Conventions relating to the repression of breaches and grave breaches, supplemented by this Section, shall apply to the repression of breaches and grave breaches of this Protocol.

2. Acts described as grave breaches in the Conventions are grave breaches of this Protocol if committed against persons in the power of an adverse party protected by articles 44, 45 and 73 of this Protocol, or against the wounded, sick and shipwrecked of the adverse party who are protected by this Protocol, or against those medical or religious personnel, medical units or medical transports which are under the control of the adverse party and are protected by this Protocol.

3. In addition to the grave breaches defined in Article 11, the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health:

(a) Making the civilian population or individual civilians the object of attack;

(b) Launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in article 57, paragraph 2 (a) (iii);

(c) Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in article 57, paragraph 2 (a) (iii);

(d) Making non-defended localities and demilitarized zones the object of attack;

(e) Making a person the object of attack in the knowledge that he is hors de combat;

(f) The perfidious use, in violation of article 37, of the distinctive emblem of the red cross, red crescent or red lion and sun or of other protective signs recognized by the Conventions or this Protocol.

4. In addition to the grave breaches defined in the preceding paragraphs and in the Conventions, the following shall be regarded as grave breaches of this Protocol, when committed wilfully and in violation of the Conventions or the Protocol:

(a) The transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention;

(b) Unjustifiable delay in the repatriation of prisoners of war or civilians;

(c) Practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;

(d) Making the clearly-recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result, extensive destruction thereof, where there is no evidence of the violation by the adverse Party of Article 53, subparagraph (b), and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives;

(e) Depriving a person protected by the Conventions or referred to in paragraph 2 of this article of the rights of fair and regular trial.

5. Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes.

6. Convention for the Suppression of  
Unlawful Seizure of Aircraft

Article 1

Any person who on board an aircraft in flight:

(a) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act; or

(b) is an accomplice of a person who performs or attempts to perform any such act; or

commits an offence (hereinafter referred to as “the offence”).

7. Convention for the Suppression of Unlawful Acts  
against the Safety of Civil Aviation

Article 1

1. Any person commits an offence if he unlawfully and intentionally:

(a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or

(b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or

(c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or

(d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or

(e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight.

2. Any person also commits an offence if he:

(a) attempts to commit any of the offences mentioned in paragraph 1 of this article; or

(b) is an accomplice of a person who commits or attempts to commit any such offence.

8. International Convention on the Suppression and  
Punishment of the Crime of apartheid

Article II

For the purpose of the present Convention, the term “the crime of apartheid,” which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

(a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:

(i) By murder of members of a racial group or groups;

(ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;

(iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

(b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

(c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

(d) Any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

(e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;

(f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

9. Convention on the Prevention and Punishment  
of Crimes against internationally protected  
persons, including diplomatic agents

Article 2

1. The intentional commission of:

(a) A murder, kidnapping or other attack upon the person or liberty of an internationally protected person;

(b) A violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty; and

(c) A threat to commit any such attack;

(d) An attempt to commit any such attack;

(e) An act constituting participation as an accomplice in any such attack;

shall be made by each State Party a crime under its internal law.

2. Each State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature.

3. Paragraphs 1 and 2 of this article in no way derogate from the obligations of States Parties under international law to take all appropriate measures to prevent other attacks on the person, freedom or dignity of an internationally protected person.

10. International Convention against the Taking of Hostages

Article 1

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the “hostage”) in order to compel a third patty, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages (“hostage-taking”) within the meaning of this Convention.

2. Any person who:

(a) Attempts to commit an act of hostage-taking; or

(b) Participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking;

likewise commits an offence for the purposes of this Convention.

11. Convention against Torture and Other Cruel, Inhuman  
or Degrading Treatment or Punishment

Article 1

1. For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is infected by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

. . .

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

12. Convention for the Suppression of Unlawful Acts  
against the Safety of Maritime Navigation

Article 3

1. Any person commits an offence if that person unlawfully and intentionally:

(a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or

(b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or

(c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or

(d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or

(e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or

(f) communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or

(g) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).

2. Any person also commits an offence if that person:

(a) attempts to commit any of the offences set forth in paragraph 1; or

(b) abets the commission of any of the offences set forth in paragraph 1 perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or

(c) threatens with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question.

13. Protocol for the Suppression of Unlawful Acts against  
the Safety of Fixed Platforms Located on the Continental Shelf

Article 2

1. Any person commits an offence if that person unlawfully and intentionally:

(a) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or

(b) performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; or

(c) destroys a fixed platform or causes damage to it which is likely to endanger its safety; or

(d) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety; or

(e) injures or kills any person in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (d).

2. Any person also commits an offence if that person:

(a) attempts to commit any of the offences set forth in paragraph 1; or

(b) abets the commission of any such offences perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or

(c) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b) and (c), if that threat is likely to endanger the safety of the fixed platform.

14. United Nations Convention against Illicit Traffic in  
Narcotic Drugs and Psychotropic Substances

Article 2. Scope of the Convention

1. The purpose of this Convention is to promote cooperation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.

2. The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

3. A Party shall not undertake in the territory of another Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Party by its domestic law.

Article 3. Offences and sanctions

1. Each party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:

(a) (i) The production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;

(ii) The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;

(iii) The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (i) above;

(iv) The manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;

(v) The organization, management or financing of any of the offences enumerated in (i), (ii), (iii) or (iv) above;

(b) (i) The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph (a) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such an offence or offences;

(c) Subject to its constitutional principles and the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such offence or offences;

(ii) The possession of equipment or materials or substances listed in Table I and Table II, knowing that they are being or are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;

(iii) Publicly inciting or inducing others, by any means, to commit any of the offences established in accordance with this article or to use narcotic drugs or psychotropic substances illicitly;

(iv) Participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

(e) Appendix III  
Outline of Possible Ways whereby a Permanent  
International Criminal Court may Enter into  
Relationship with the United Nations

1. The way in which a permanent international criminal court may enter into relationship with the United Nations must necessarily be considered in connection with the method adopted for its creation.

2. In this respect, two hypotheses may be envisaged: (a) the court becomes part of the organic structure of the United Nations; (b) the court does not become part of the organic structure of the United Nations.

A. The court becomes part of the organic  
 structure of the United Nations

3. Under this hypothesis the court, as a result of the very act of its creation, is already in relationship with the United Nations. This may be achieved in two ways.

1. The Court as a principal organ of the United Nations

4. This solution would attach the maximum weight to the creation of the court by placing it on the same level with the other principal organs of the United Nations and, in particular, ICJ. It would also facilitate the ipso jure jurisdiction of the court over certain international crimes. Under this solution, the financing of the court would be provided for under the regular budget of the Organization.

5. On the other hand, this solution could give rise to potential obstacles in that it would require an amendment to the Charter of the United Nations under Chapter XVIII (Arts. 108–109). It should be noted, in this connection, that there is no precedent for the creation of any additional principal organ in the history of the Organization.

2. The Court as a subsidiary organ of the United Nations

6. By contrast, there is a well-developed practice whereby United Nations principal organs create subsidiary organs under the relevant provisions of the Charter of the United Nations (in particular, Arts. 22 and 29), for the performance of functions conferred upon them or upon the Organization as a whole by the Charter. There is practice along these lines even in the jurisdictional field. An early example is the establishment of the Administrative Tribunal of the United Nations. a [[868]](#footnote-868)A more recent example is the creation of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter referred to as the “International Tribunal”).b[[869]](#footnote-869)

7. Normally and as concerns most fields of competence, the establishment of a subsidiary organ is essentially auxiliary in nature. The subsidiary organ’s decisions will usually be in the nature of recommendations which the relevant principal organ is free to accept or reject.

8. In the judicial field, however, the subsidiary nature of an organ reflects itself mainly in the fact that its very existence, as well as the cessation of its functions, depends upon the relevant principal organ of the Organization. As regards the exercise of its functions, however, the very nature of the latter (judicial) makes them incompatible with the existence of hierarchical powers on the part of the principal organ which established the court or tribunal. Therefore, the principal organ has no power to reject or amend the decisions of the tribunal or court established. This was clearly ruled by ICJ as regards the Administrative Tribunal of the United Nations c [[870]](#footnote-870)and also arises from certain articles of the statute of the International Tribunal (arts. 13, 15, 25, 26, etc.). d [[871]](#footnote-871)

9. As regards financing, the activities of a subsidiary organ of the Organization are financed from United Nations sources, whether budgetary allocations, assessed contributions or voluntary contributions. e [[872]](#footnote-872)

10. It should also be noted that, occasionally, the General Assembly has set up tribunals as subsidiary organs, on the basis of provisions contained in treaties concluded outside the United Nations. This was the case of the United Nations Tribunal for Libya and the United Nations Tribunal for Eritrea.f [[873]](#footnote-873)Although the matters dealt with by these tribunals were, broadly speaking, part of the generic competence of the General Assembly under Article 10 of the Charter of the United Nations, the provision which led to their creation was contained in annex XI, paragraph 3, of the Treaty of Peace with Italy.

11. The cases referred to in the preceding paragraph should be distinguished from those referred to in paragraphs 15 to 17 below in which the General Assembly undertakes certain functions with respect to organs established by the parties to a multilateral treaty.

B. The Court does not become part of the organic  
structure of the United Nations and is set up by a treaty

12. Under this hypothesis the court would be created by a treaty binding on States Parties thereto. There are two possible ways whereby such a court could be brought into relationship with the United Nations: by means of an agreement between the court and the United Nations; or by means of a resolution of a United Nations organ (such as the General Assembly).

1. The Court comes into relationship with the United Nations by means of an agreement between the Court and the United Nations

13. Cooperation agreements are the typical way whereby specialized agencies and analogous bodies enter into relationship with the United Nations under Articles 57 and 63 of the Charter of the United Nations. Agreements are concluded between the specialized agency concerned and the Economic and Social Council and are subject to the approval of the General Assembly. The agreements regulate, inter alia, matters of cooperation with the United Nations in the respective fields of action of each specialized agency and questions related to a common system as regards personnel policies. Each specialized agency constitutes an autonomous international organization with its own budget and financial resources.

14. A case in point is article XVI of the statute of IAEA, g [[874]](#footnote-874)dealing with “Relationship with other organizations” which provides that the Board of Governors, with the approval of the General Conference, is authorized to enter into an agreement or agreements establishing an appropriate relationship between IAEA and the United Nations and any other organizations the work of which is related to that of IAEA. The Agreement governing the relationship between the United Nations and IAEA was approved by the General Assembly.h [[875]](#footnote-875)The Agreement, inter alia, regulates the submission of reports by IAEA to the United Nations, the exchange of information and documents, matters of reciprocal representation, consideration of items in the respective agendas, cooperation with the Security Council and ICJ, coordination and cooperation matters, budgetary and financial arrangements and personnel arrangements.

15. The conclusion of an international agreement with the United Nations is also the way being envisaged by the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea to bring the projected tribunal into relationship with the United Nations. The final draft of that agreementi[[876]](#footnote-876)contemplates, inter alia, matters of legal relationship and mutual recognition, cooperation and coordination, relations with ICJ, relations with the Security Council, reciprocal representation, exchange of information and documents, reports to the United Nations, administrative cooperation and personnel arrangements. The draft agreement would also recognize “the desirability of establishing close budgetary and financial relationships with the United Nations in order that the administrative operations of the United Nations and the International Tribunal shall be carried out in the most efficient and economical manner possible, and that the maximum measure of coordination and uniformity with respect to these operations shall be secured.”

2. The Court comes into relationship with the United Nations by means of a resolution of a United Nations organ

16. Finally, a court created by a multilateral treaty could also be brought into relationship with the United Nations by means of a resolution of a United Nations organ. In the case of a permanent international criminal court such a resolution could be adopted by the General Assembly, perhaps with the concurrent involvement of the Security Council.

17. It is in the field of the protection of human rights that international practice offers the most relevant examples of treaty organs coming into relationship with the United Nations by means of a General Assembly resolution. Typically, the treaty creating the organ already contains some provisions resorting to the United Nations for the performance of certain functions under the treaty, for example, the role of the Secretary-General in circulating invitations to States Parties for the election of the treaty organ, requests to the Secretary-General to provide the necessary staff and facilities for the effective performance of the functions of the treaty organ, and so forth. The United Nations, in its turn, takes such functions upon itself, by a resolution of the General Assembly which “adopts and opens for signature and ratification” the multilateral convention in question. Such a procedure has been followed, for instance, in the case of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

18. The adoption of such resolutions will usually have financial implications for the United Nations, making necessary the intervention of the Fifth Committee in the decision-making process. For instance, in the case of the Human Rights Committee, article 36 of the International Covenant on Civil and Political Rights provides that

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant,

and also article 35 provides that

The Members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee’s responsibilities.

19. The International Convention on the Elimination of All Forms of Racial Discrimination establishing the Committee on the Elimination of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment establishing the Committee against Torture both provide that the secretariat of the Committees (staff and facilities) shall be provided by the Secretary-General of the United Nations (see art. 10, paras. 3–4 and art. 18, para. 3, respectively), even though the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides in article 18, paragraph 5, that

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations. . . .

Unlike the International Covenant on Civil and Political Rights, however, these two conventions place upon the States Parties and not upon the United Nations the expenses of the members of the committee while they are in the performance of their duties (see art. 8, para. 6 and art. 17, para. 7, respectively).

20. In practice the General Assembly may accept, with regard to such committees created by treaty, additional obligations to those already contained in the treaties concerned. Thus, by resolution 47/111, the General Assembly

9. Endorses the amendments to the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and requests the Secretary-General:

(a) To take the appropriate measures to provide for the financing of the committees established under the conventions from the regular budget of the United Nations, beginning with the budget for the biennium 1994–1995;

9. Nationality of Natural Persons in relation  
to the Succession of States\*[[877]](#footnote-877)

Preamble

Considering that problems of nationality arising from succession of States concern the international community,

Emphasizing that nationality is essentially governed by internal law within the limits set by international law,

Recognizing that in matters concerning nationality, due account should be taken both of the legitimate interests of States and those of individuals,

Recalling that the Universal Declaration of Human Rights of 1948a proclaimed the right of every person to a nationality,

Recalling also that the International Covenant on Civil and Political Rights of 1966b and the Convention on the Rights of the Child of 1989c recognize the right of every child to acquire a nationality,

Emphasizing that the human rights and fundamental freedoms of persons whose nationality may be affected by a succession of States must be fully respected,

Bearing in mind the provisions of the Convention on the reduction of statelessness of 1961,d the Vienna Convention on Succession of States in Respect of Treaties of 1978eand the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts of 1983,f

Convinced of the need for the codification and progressive development of the rules of international law concerning nationality in relation to the succession of States as a means for ensuring greater juridical security for States and for individuals,

Part I. General Provisions

Article 1*.*Right to a nationality

Every individual who, on the date of the succession of States, had the nationality of the predecessor State, irrespective of the mode of acquisition of that nationality, has the right to the nationality of at least one of the States concerned, in accordance with the present articles.

Article 2. Use of terms

For the purposes of the present articles:

(a) “Succession of States” means the replacement of one State by another in the responsibility for the international relations of territory;

(b) “Predecessor State” means the State which has been replaced by another State on the occurrence of a succession of States;

(c) “Successor State” means the State which has replaced another State on the occurrence of a succession of States;

(d) “State concerned” means the predecessor State or the successor State, as the case may be;

(e) “Third State” means any State other than the predecessor State or the successor State;

(f) “Person concerned” means every individual who, on the date of the succession of States, had the nationality of the predecessor State and whose nationality may be affected by such succession;

(g) “Date of the succession of States” means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates.

Article 3. Cases of succession of States covered   
by the present articles

The present articles apply only to the effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations.

Article 4. Prevention of statelessness

States concerned shall take all appropriate measures to prevent persons who, on the date of the succession of States, had the nationality of the predecessor State from becoming stateless as a result of such succession.

Article 5. Presumption of nationality

Subject to the provisions of the present articles, persons concerned having their habitual residence in the territory affected by the succession of States are presumed to acquire the nationality of the successor State on the date of such succession

Article 6. Legislation on nationality and other connected issues

Each State concerned should, without undue delay, enact legislation on nationality and other connected issues arising in relation to the succession of States consistent with the provisions of the present articles. It should take all appropriate measures to ensure that persons concerned will be apprised, within a reasonable time period, of the effect of its legislation on their nationality, of any choices they may have thereunder, as well as of the consequences that the exercise of such choices will have on their status.

Article 7. Effective date

The attribution of nationality in relation to the succession of States, as well as the acquisition of nationality following the exercise of an option, shall take effect on the date of such succession, if persons concerned would otherwise be stateless during the period between the date of the succession of States and such attribution or acquisition of nationality.

Article 8. Persons concerned having their habitual residence  
in another State

1. A successor State does not have the obligation to attribute its nationality to persons concerned who have their habitual residence in another State and also have the nationality of that or any other State.

2. A successor State shall not attribute its nationality to persons concerned who have their habitual residence in another State against the will of the persons concerned unless they would otherwise become stateless.

Article 9. Renunciation of the nationality of another State as a  
condition for attribution of nationality

When a person concerned who is qualified to acquire the nationality of a successor State has the nationality of another State concerned, the former State may make the attribution of its nationality dependent on the renunciation by such person of the nationality of the latter State. However, such requirement shall not be applied in a manner which would result in rendering the person concerned stateless, even if only temporarily.

Article 10. Loss of nationality upon the voluntary acquisition  
of the nationality of another State

1. A predecessor State may provide that persons concerned who, in relation to the succession of States, voluntarily acquire the nationality of a successor State shall lose its nationality.

2. A successor State may provide that person concerned who, in relation to the succession of States, voluntarily acquire the nationality of another successor State or, as the case may be, retain the nationality of the predecessor State shall lose its nationality acquired in relation to such succession.

Article 11. Respect for the will of persons concerned

1. States concerned shall give consideration to the will of persons concerned whenever those persons are qualified to acquire the nationality of two or more States concerned.

2. Each State concerned shall grant a right to opt for its nationality to persons concerned who have appropriate connection with that State if those persons would otherwise become stateless as a result of the succession of States.

3. When persons entitled to the right of option have exercised such right, the State whose nationality they have opted for shall attribute its nationality to such persons.

4. When persons entitled to the right of option have exercised such right, the State whose nationality they have renounced shall withdraw its nationality from such persons, unless they would thereby become stateless.

5. States concerned should provide a reasonable time limit for the exercise of the right of option.

Article 12. Unity of a family

Where the acquisition or loss of nationality in relation to the succession of States would impair the unity of a family, States concerned shall take all appropriate measures to allow that family to remain together or to be reunited.

Article 13. Child born after the succession of States

A child of a person concerned, born after the date of the succession of States, who has not acquired any nationality, has the right to the nationality of the State concerned on whose territory that child was born.

Article 14. Status of habitual residents

1. The status of persons concerned as habitual residents shall not be affected by the succession of States.

2. A State concerned shall take all necessary measures to allow persons concerned who, because of events connected with the succession of States, were forced to leave their habitual residence on its territory to return thereto.

Article 15. Non-discrimination

States concerned shall not deny persons concerned the right to retain or acquire a nationality or the right of option upon the succession of States by discriminating on any ground.

Article 16. Prohibition of arbitrary decisions   
concerning nationality issues

Persons concerned shall not be arbitrarily deprived of the nationality of the predecessor State, or arbitrarily denied the right to acquire the nationality of the successor State or any right of option, to which they are entitled in relation to the succession of States.

Article 17. Procedures relating to nationality issues

Applications relating to the acquisition, retention or renunciation of nationality or to the exercise of the right of option, in relation to the succession of States, shall be processed without undue delay. Relevant decisions shall be issued in writing and shall be open to effective administrative or judicial review.

Article 18. Exchange of information, consultation and negotiation

1. States concerned shall exchange information and consult in order to identify any detrimental effects on persons concerned with respect to their nationality and other connected issues regarding their status as a result of the succession of States.

2. States concerned shall, when necessary, seek a solution to eliminate or mitigate such detrimental effects by negotiation and, as appropriate, through agreement.

Article 19. Other States

1. Nothing in the present articles requires States to treat persons concerned having no effective link with a State concerned as nationals of that State, unless this would result in treating those persons as if they were stateless.

2. Nothing in the present articles precludes States from treating persons concerned, who have become stateless as a result of the succession of States, as nationals of the State concerned whose nationality they would be entitled to acquire or retain, if such treatment is beneficial to those persons.

Part II. Provisions relating to specific categories  
of succession of States

Section 1. Transfer of part of the territory

Article 20*.*Attribution of the nationality of the successor State and  
withdrawal of the nationality of the predecessor State

When part of the territory of a State is transferred by that State to another State, the successor State shall attribute its nationality to the persons concerned who have their habitual residence in the transferred territory and the predecessor State shall withdraw its nationality from such persons, unless otherwise indicated by the exercise of the right of option which such persons shall be granted. The predecessor State shall not, however, withdraw its nationality before such persons acquire the nationality of the successor State.

Section 2. Unification of States

Article 21. Attribution of the nationality of the successor State

Subject to the provisions of article 8, when two or more States unite and so form one successor State, irrespective of whether the successor State is a new State or whether its personality is identical to that of one of the States which have united, the successor State shall attribute its nationality to all persons who, on the date of the succession of States, had the nationality of a predecessor State.

Section 3. Dissolution of a State

Article 22. Attribution of the nationality   
of the successor States

When a State dissolves and ceases to exist and the various parts of the territory of the predecessor State form two or more successor States, each successor State shall, unless otherwise indicated by the exercise of a right of option, attribute its nationality to:

(a) Persons concerned having their habitual residence in its territory; and

(b) Subject to the provisions of article 8:

(i) Persons concerned not covered by subparagraph (a) having an appropriate legal connection with a constituent unit of the predecessor State that has become part of that successor State;

(ii) Persons concerned not entitled to a nationality of any State concerned under subparagraphs (a) and (b) (i) having their habitual residence in a third State, who were born in or, before leaving the predecessor State, had their last habitual residence in what has become the territory of that successor State or having any other appropriate connection with that successor State.

Article 23. Granting of the right of option   
by the successor States

1. Successor States shall grant a right of option to persons concerned covered by the provisions of article 22 who are qualified to acquire the nationality of two or more successor States.

2. Each successor State shall grant a right to opt for its nationality to persons concerned who are not covered by the provisions of article 22.

Section 4. Separation of part or parts of the territory

Article 24. Attribution of the nationality of the successor State

When part or parts of the territory of a State separate from that State and form one or more successor States while the predecessor State continues to exist, a successor State shall, unless otherwise indicated by the exercise of a right of option, attribute its nationality to:

(a) Persons concerned having their habitual residence in its territory; and

(b) Subject to the provisions of article 8:

(i) Persons concerned not covered by subparagraph (a) having an appropriate legal connection with a constituent unit of the predecessor State that has become part of that successor State;

(ii) Persons concerned not entitled to a nationality of any State concerned under subparagraphs (a) and (b) (i) having their habitual residence in a third State, who were born in or, before leaving the predecessor State, had their last habitual residence in what has become the territory of that successor State or having any other appropriate connection with that successor State.

Article 25. Withdrawal of the nationality of the predecessor State

1. The predecessor State shall withdraw its nationality from persons concerned qualified to acquire the nationality of the successor State in accordance with article 24. It shall not, however, withdraw its nationality before such persons acquire the nationality of the successor State.

2. Unless otherwise indicated by the exercise of a right of option, the predecessor State shall not, however, withdraw its nationality from persons referred to in paragraph 1 who:

(a) Have their habitual residence in its territory;

(b) Are not covered by subparagraph (a) and have an appropriate legal connection with a constituent unit of the predecessor State that has remained part of the predecessor State;

(c) Have their habitual residence in a third State, and were born in or, before leaving the predecessor State, had their last habitual residence in what has remained part of the territory of the predecessor State or have any other appropriate connection with that State.

Article 26. Granting of the right of option by the predecessor  
and the successor States

Predecessor and successor States shall grant a right of option to all persons concerned covered by the provisions of article 24 and paragraph 2 of article 25 who are qualified to have the nationality of both the predecessor and successor States or of two or more successor States.

10. Responsibility of States for Internationally   
Wrongful Acts\*

Part One. The internationally wrongful act of a state

Chapter I. General principles

Article 1*.*Responsibility of a State for its internationally   
wrongful acts

Every internationally wrongful act of a State entails the international responsibility of that State.

Article 2. Elements of an internationally wrongful act of a State

There is an internationally wrongful act of a State when conduct consisting of an action or omission:

(a) Is attributable to the State under international law; and

(b) Constitutes a breach of an international obligation of the State.

Article 3. Characterization of an act of a State   
as internationally wrongful

The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.

Chapter II. Attribution of conduct to a State

Article 4. Conduct of organs of a State

1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.

2. An organ includes any person or entity which has that status in accordance with the internal law of the State.

Article 5. Conduct of persons or entities exercising elements  
of governmental authority

The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.

Article 6. Conduct of organs placed at the disposal of a State  
by another State

The conduct of an organ placed at the disposal of a State by another State shall be considered an act of the former State under international law if the organ is acting in the exercise of elements of the governmental authority of the State at whose disposal it is placed.

Article 7. Excess of authority or contravention of instructions

The conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions.

Articl*e* 8. Conduct directed or controlled by a State

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.

Article 9. Conduct carried out in the absence or default  
of the official authorities

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority.

Article 10. Conduct of an insurrectional or other movement

1. The conduct of an insurrectional movement which becomes the new Government of a State shall be considered an act of that State under international law.

2. The conduct of a movement, insurrectional or other, which succeeds in establishing a new State in part of the territory of a pre-existing State or in a territory under its administration shall be considered an act of the new State under international law.

3. This article is without prejudice to the attribution to a State of any conduct, however related to that of the movement concerned, which is to be considered an act of that State by virtue of articles 4  
to 9.

Article 11. Conduct acknowledged and adopted   
by a State as its own

Conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.

Chapter III. Breach of an international obligation

Article 12. Existence of a breach of an international obligation

There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.

Article 13. International obligation in force for a State

An act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs.

Article 14. Extension in time of the breach   
of an international obligation

1. The breach of an international obligation by an act of a State not having a continuing character occurs at the moment when the act is performed, even if its effects continue.

2. The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.

3. The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.

Article 15. Breach consisting of a composite act

1. The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.

2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.

Chapter IV. Responsibility of a State in connection with the  
act of another State

Article 16. Aid or assistance in the commission of an  
internationally wrongful act

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(a) That State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) The act would be internationally wrongful if committed by that State.

Article 17. Direction and control exercised over the commission  
of an internationally wrongful act

A State which directs and controls another State in the commission of an internationally wrongful act by the latter is internationally responsible for that act if:

(a) That State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) The act would be internationally wrongful if committed by that State.

Article 18. Coercion of another State

A State which coerces another State to commit an act is internationally responsible for that act if:

(a) The act would, but for the coercion, be an internationally wrongful act of the coerced State; and

(b) The coercing State does so with knowledge of the circumstances of the act.

Article 19. Effect of this chapter

This chapter is without prejudice to the international responsibility, under other provisions of these articles, of the State which commits the act in question, or of any other State.

Chapter V. Circumstances precluding wrongfulness

Article 20. Consent

Valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent.

Article 21*.*Self-defence

The wrongfulness of an act of a State is precluded if the act constitutes a lawful measure of self-defence taken in conformity with the Charter of the United Nations.

Article 22. Countermeasures in respect of an   
internationally wrongful act

The wrongfulness of an act of a State not in conformity with an international obligation towards another State is precluded if and to the extent that the act constitutes a countermeasure taken against the latter State in accordance with chapter II of part three.

Article 23. Force majeure

1. The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the act is due to force majeure, that is the occurrence of an irresistible force or of an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation.

2. Paragraph 1 does not apply if:

(a) The situation of force majeure is due, either alone or in combination with other factors, to the conduct of the State invoking it; or

(b) The State has assumed the risk of that situation occurring.

Article 24. Distress

1. The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the author of the act in question has no other reasonable way, in a situation of distress, of saving the author’s life or the lives of other persons entrusted to the author’s care.

2. Paragraph 1 does not apply if:

(a) The situation of distress is due, either alone or in combination with other factors, to the conduct of the State invoking it; or

(b) The act in question is likely to create a comparable or greater peril.

Article 25. Necessity

1. Necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that State unless the act:

(a) Is the only way for the State to safeguard an essential interest against a grave and imminent peril; and

(b) Does not seriously impair an essential interest of the State or States towards which the obligation exists, or of the international community as a whole.

2. In any case, necessity may not be invoked by a State as a ground for precluding wrongfulness if:

(a) The international obligation in question excludes the possibility of invoking necessity; or

(b) The State has contributed to the situation of necessity.

Article 26. Compliance with peremptory norms

Nothing in this chapter precludes the wrongfulness of any act of a State which is not in conformity with an obligation arising under a peremptory norm of general international law.

Article 27. Consequences of invoking a circumstance  
precluding wrongfulness

The invocation of a circumstance precluding wrongfulness in accordance with this chapter is without prejudice to:

(a) Compliance with the obligation in question, if and to the extent that the circumstance precluding wrongfulness no longer exists;

(b) The question of compensation for any material loss caused by the act in question.

Part Two. Content of the international  
responsibility of a State

Chapter I. General principles

Article 28. Legal consequences of an internationally wrongful act

The international responsibility of a State which is entailed by an internationally wrongful act in accordance with the provisions of part one involves legal consequences as set out in this part.

Article 29. Continued duty of performance

The legal consequences of an internationally wrongful act under this part do not affect the continued duty of the responsible State to perform the obligation breached.

Article 30. Cessation and non-repetition

The State responsible for the internationally wrongful act is under an obligation:

(a) To cease that act, if it is continuing;

(b) To offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

Article 31*.*Reparation

1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.

2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.

Article 32. Irrelevance of internal law

The responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under this part.

Article 33. Scope of international obligations set out in this part

1. The obligations of the responsible State set out in this part may be owed to another State, to several States, or to the international community as a whole, depending in particular on the character and content of the international obligation and on the circumstances of the breach.

2. This part is without prejudice to any right, arising from the international responsibility of a State, which may accrue directly to any person or entity other than a State.

Chapter II. Reparation for injury

Article 34*.*Forms of reparation

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter.

Article 35. Restitution

A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

(a) Is not materially impossible;

(b) Does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

Article 36. Compensation

1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.

2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.

Article 37. Satisfaction

1. The State responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.

2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.

3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible State.

Article 38. Interest

1. Interest on any principal sum due under this chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.

2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.

Article 39. Contribution to the injury

In the determination of reparation, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State or any person or entity in relation to whom reparation is sought.

Chapter III. Serious breaches of obligations under peremptory  
norms of general international law

Article 40. Application of this chapter

1. This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law.

2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation.

Article 41. Particular consequences of a serious breach  
of an obligation under this chapter

1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.

2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation.

3. This article is without prejudice to the other consequences referred to in this part and to such further consequences that a breach to which this chapter applies may entail under international law.

Part three. The implementation of the international  
responsibility of a state

Chapter I. Invocation of the responsibility of a State

Article 42. Invocation of responsibility by an injured State

A State is entitled as an injured State to invoke the responsibility of another State if the obligation breached is owed to:

(a) That State individually; or

(b) A group of States including that State, or the international community as a whole, and the breach of the obligation:

(i) Specifically affects that State; or

(ii) Is of such a character as radically to change the position of all the other States to which the obligation is owed with respect to the further performance of the obligation.

Article 43. Notice of claim by an injured State

1. An injured State which invokes the responsibility of another State shall give notice of its claim to that State.

2. The injured State may specify in particular:

(a) The conduct that the responsible State should take in order to cease the wrongful act, if it is continuing;

(b) What form reparation should take in accordance with the provisions of part two.

Article 44. Admissibility of claims

The responsibility of a State may not be invoked if:

(a) The claim is not brought in accordance with any applicable rule relating to the nationality of claims;

(b) The claim is one to which the rule of exhaustion of local remedies applies and any available and effective local remedy has not been exhausted.

Article 45. Loss of the right to invoke responsibility

The responsibility of a State may not be invoked if:

(a) The injured State has validly waived the claim;

(b) The injured State is to be considered as having, by reason of its conduct, validly acquiesced in the lapse of the claim.

Article 46. Plurality of injured States

Where several States are injured by the same internationally wrongful act, each injured State may separately invoke the responsibility of the State which has committed the internationally wrongful act.

Article 47. Plurality of responsible States

1. Where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act.

2. Paragraph 1:

(a) Does not permit any injured State to recover, by way of compensation, more than the damage it has suffered;

(b) Is without prejudice to any right of recourse against the other responsible States.

Article 48. Invocation of responsibility by a State other  
than an injured State

1. Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 if:

(a) The obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or

(b) The obligation breached is owed to the international community as a whole.

2. Any State entitled to invoke responsibility under paragraph 1 may claim from the responsible State:

(a) Cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 30; and

(b) Performance of the obligation of reparation in accordance with the preceding articles, in the interest of the injured State or of the beneficiaries of the obligation breached.

3. The requirements for the invocation of responsibility by an injured State under articles 43, 44 and 45 apply to an invocation of responsibility by a State entitled to do so under paragraph 1.

Chapter II. Countermeasures

Article 49. Object and limits of countermeasures

1. An injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations under part two.

2. Countermeasures are limited to the non-performance for the time being of international obligations of the State taking the measures towards the responsible State.

3. Countermeasures shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question.

Article 50. Obligations not affected by countermeasures

1. Countermeasures shall not affect:

(a) The obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations;

(b) Obligations for the protection of fundamental human rights;

(c) Obligations of a humanitarian character prohibiting reprisals;

(d) Other obligations under peremptory norms of general international law.

2. A State taking countermeasures is not relieved from fulfilling its obligations:

(a) Under any dispute settlement procedure applicable between it and the responsible State;

(b) To respect the inviolability of diplomatic or consular agents, premises, archives and documents.

Article 51. Proportionality

Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question.

Article 52. Conditions relating to resort to countermeasures

1. Before taking countermeasures, an injured State shall:

(a) Call upon the responsible State, in accordance with article 43, to fulfil its obligations under part two;

(b) Notify the responsible State of any decision to take countermeasures and offer to negotiate with that State.

2. Notwithstanding paragraph 1 (b), the injured State may take such urgent countermeasures as are necessary to preserve its rights.

3. Countermeasures may not be taken, and if already taken must be suspended without undue delay if:

(a) The internationally wrongful act has ceased; and

(b) The dispute is pending before a court or tribunal which has the authority to make decisions binding on the parties.

4. Paragraph 3 does not apply if the responsible State fails to implement the dispute settlement procedures in good faith.

Article 53*.*Termination of countermeasures

Countermeasures shall be terminated as soon as the responsible State has complied with its obligations under part two in relation to the internationally wrongful act.

Article 54. Measures taken by States other than an injured State

This chapter does not prejudice the right of any State, entitled under article 48, paragraph 1, to invoke the responsibility of another State, to take lawful measures against that State to ensure cessation of the breach and reparation in the interest of the injured State or of the beneficiaries of the obligation breached.

Part four. General provisions

Article 55. Lex specialis

These articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of a State are governed by special rules of international law.

Article 56. Questions of State responsibility not regulated  
by these articles

The applicable rules of international law continue to govern questions concerning the responsibility of a State for an internationally wrongful act to the extent that they are not regulated by these articles.

Artic*l*e 57. Responsibility of an international organization

These articles are without prejudice to any question of the responsibility under international law of an international organization, or of any State for the conduct of an international organization.

Article 58. Individual responsibility

These articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State.

Article 59. Charter of the United Nations

These articles are without prejudice to the Charter of the United Nations.

11. Prevention of Transboundary Harm  
from Hazardous Activities\*

The States Parties,

Having in mind Article 13, paragraph 1 (a), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Bearing in mind the principle of permanent sovereignty of States over the natural resources within their territory or otherwise under their jurisdiction or control,

Bearing also in mind that the freedom of States to carry on or permit activities in their territory or otherwise under their jurisdiction or control is not unlimited,

Recalling the Rio Declaration on Environment and Development of 13 June 1992,

Recognizing the importance of promoting international cooperation,

Have agreed as follows:

Article 1. Scope

The present articles apply to activities not prohibited by international law which involve a risk of causing significant transboundary harm through their physical consequences.

Article 2. Use of terms

For the purposes of the present articles:

(a) “Risk of causing significant transboundary harm” includes risks taking the form of a high probability of causing significant transboundary harm and a low probability of causing disastrous transboundary harm;

(b) “Harm” means harm caused to persons, property or the environment;

(c) “Transboundary harm” means harm caused in the territory of or in other places under the jurisdiction or control of a State other than the State of origin, whether or not the States concerned share a common border;

(d) “State of origin” means the State in the territory or otherwise under the jurisdiction or control of which the activities referred to in article 1 are planned or are carried out;

(e) “State likely to be affected” means the State or States in the territory of which there is the risk of significant transboundary harm or which have jurisdiction or control over any other place where there is such a risk;

(f) “States concerned” means the State of origin and the State likely to be affected.

Article 3. Prevention

The State of origin shall take all appropriate measures to prevent significant transboundary harm or at any event to minimize the risk thereof.

Article 4. Cooperation

States concerned shall cooperate in good faith and, as necessary, seek the assistance of one or more competent international organizations in preventing significant transboundary harm or at any event in minimizing the risk thereof.

Article 5. Implementation

States concerned shall take the necessary legislative, administrative or other action, including the establishment of suitable monitoring mechanisms to implement the provisions of the present articles.

Article 6. Authorization

1. The State of origin shall require its prior authorization for:

(a) Any activity within the scope of the present articles carried out in its territory or otherwise under its jurisdiction or control;

(b) Any major change in an activity referred to in subparagraph (a);

(c) Any plan to change an activity which may transform it into one falling within the scope of the present articles.

2. The requirement of authorization established by a State shall be made applicable in respect of all pre-existing activities within the scope of the present articles. Authorizations already issued by the State for pre-existing activities shall be reviewed in order to comply with the present articles.

3. In case of a failure to conform to the terms of the authorization, the State of origin shall take such actions as appropriate, including where necessary terminating the authorization.

Article 7. Assessment of risk

Any decision in respect of the authorization of an activity within the scope of the present articles shall, in particular, be based on an assessment of the possible transboundary harm caused by that activity, including any environmental impact assessment.

Article 8. Notification and information

1. If the assessment referred to in article 7 indicates a risk of causing significant transboundary harm, the State of origin shall provide the State likely to be affected with timely notification of the risk and the assessment and shall transmit to it the available technical and all other relevant information on which the assessment is based.

2. The State of origin shall not take any decision on authorization of the activity pending the receipt, within a period not exceeding six months, of the response from the State likely to be affected.

Article 9. Consultations on preventive measures

1. The States concerned shall enter into consultations, at the request of any of them, with a view to achieving acceptable solutions regarding measures to be adopted in order to prevent significant transboundary harm or at any event to minimize the risk thereof. The States concerned shall agree, at the commencement of such consultations, on a reasonable time frame for the consultations.

2. The States concerned shall seek solutions based on an equitable balance of interests in the light of article 10.

3. If the consultations referred to in paragraph 1 fail to produce an agreed solution, the State of origin shall nevertheless take into account the interests of the State likely to be affected in case it decides to authorize the activity to be pursued, without prejudice to the rights of any State likely to be affected.

Article 10. Factors involved in an equitable balance of interests

In order to achieve an equitable balance of interests as referred to in paragraph 2 of article 9, the States concerned shall take into account all relevant factors and circumstances, including:

(a) The degree of risk of significant transboundary harm and of the availability of means of preventing such harm, or minimizing the risk thereof or repairing the harm;

(b) The importance of the activity, taking into account its overall advantages of a social, economic and technical character for the State of origin in relation to the potential harm for the State likely to be affected;

(c) The risk of significant harm to the environment and the availability of means of preventing such harm, or minimizing the risk thereof or restoring the environment;

(d) The degree to which the State of origin and, as appropriate, the State likely to be affected are prepared to contribute to the costs of prevention;

(e) The economic viability of the activity in relation to the costs of prevention and to the possibility of carrying out the activity elsewhere or by other means or replacing it with an alternative activity;

(f) The standards of prevention which the State likely to be affected applies to the same or comparable activities and the standards applied in comparable regional or international practice.

Article 11. Procedures in the absence of notification

1. If a State has reasonable grounds to believe that an activity planned or carried out in the State of origin may involve a risk of causing significant transboundary harm to it, it may request the State of origin to apply the provision of article 8. The request shall be accompanied by a documented explanation setting forth its grounds.

2. In the event that the State of origin nevertheless finds that it is not under an obligation to provide a notification under article 8, it shall so inform the requesting State within a reasonable time, providing a documented explanation setting forth the reasons for such finding. If this finding does not satisfy that State, at its request, the two States shall promptly enter into consultations in the manner indicated in article 9.

3. During the course of the consultations, the State of origin shall, if so requested by the other State, arrange to introduce appropriate and feasible measures to minimize the risk and, where appropriate, to suspend the activity in question for a reasonable period.

Article 12. Exchange of information

While the activity is being carried out, the States concerned shall exchange in a timely manner all available information concerning that activity relevant to preventing significant transboundary harm or at any event minimizing the risk thereof. Such an exchange of information shall continue until such time as the States concerned consider it appropriate even after the activity is terminated.

Article 13. Information to the public

States concerned shall, by such means as are appropriate, provide the public likely to be affected by an activity within the scope of the present articles with relevant information relating to that activity, the risk involved and the harm which might result and ascertain their views.

Article 14. National security and industrial secrets

Data and information vital to the national security of the State of origin or to the protection of industrial secrets or concerning intellectual property may be withheld, but the State of origin shall cooperate in good faith with the State likely to be affected in providing as much information as possible under the circumstances.

Article 15. Non-discrimination

Unless the States concerned have agreed otherwise for the protection of the interests of persons, natural or juridical, who may be or are exposed to the risk of significant transboundary harm as a result of an activity within the scope of the present articles, a State shall not discriminate on the basis of nationality or residence or place where the injury might occur, in granting to such persons, in accordance with its legal system, access to judicial or other procedures to seek protection or other appropriate redress.

Article *1*6. Emergency preparedness

The State of origin shall develop contingency plans for responding to emergencies, in cooperation, where appropriate, with the State likely to be affected and competent international organizations.

Article 17. Notification of an emergency

The State of origin shall, without delay and by the most expeditious means, at its disposal, notify the State likely to be affected of an emergency concerning an activity within the scope of the present articles and provide it with all relevant and available information.

Article 18. Relationship to other rules of international law

The present articles are without prejudice to any obligation incurred by States under relevant treaties or rules of customary international law.

Article 19. Settlement of disputes

1. Any dispute concerning the interpretation or application of the present articles shall be settled expeditiously through peaceful means of settlement chosen by mutual agreement of the parties to the dispute, including negotiations, mediation, conciliation, arbitration or judicial settlement.

2. Failing an agreement on the means for the peaceful settlement of the dispute within a period of six months, the parties to the dispute shall, at the request of any of them, have recourse to the establishment of an impartial fact-finding commission.

3. The Fact-finding Commission shall be composed of one member nominated by each party to the dispute and, in addition, a member not having the nationality of any of the parties to the dispute chosen by the nominated members who shall serve as Chairperson.

4. If more than one State is involved on one side of the dispute and those States do not agree on a common member of the Commission and each of them nominates a member, the other party to the dispute has the right to nominate an equal number of members of the Commission.

5. If the members nominated by the parties to the dispute are unable to agree on a Chairperson within three months of the request for the establishment of the Commission, any party to the dispute may request the Secretary-General of the United Nations to appoint the Chairperson who shall not have the nationality of any of the parties to the dispute. If one of the parties to the dispute fails to nominate a member within three months of the initial request pursuant to paragraph 2, any other party to the dispute may request the Secretary-General of the United Nations to appoint a person who shall not have the nationality of any of the parties to the dispute. The person so appointed shall constitute a single-member Commission.

6. The Commission shall adopt its report by a majority vote, unless it is a single-member Commission, and shall submit that report to the parties to the dispute setting forth its findings and recommendations, which the parties to the dispute shall consider in good faith.

12. Draft principles on the allocation of loss  
in the case of transboundary harm   
arising out of hazardous activities\*

The General Assembly,

Reaffirming Principles 13 and 16 of the Rio Declaration on Environment and Development,

Recalling the Draft articles on the Prevention of Transboundary Harm from Hazardous Activities,

Aware that incidents involving hazardous activities may occur despite compliance by the relevant State with its obligations concerning prevention of transboundary harm from hazardous activities,

Noting that as a result of such incidents other States and/or their nationals may suffer harm and serious loss,

Emphasizing that appropriate and effective measures should be in place to ensure that those natural and legal persons, including States, that incur harm and loss as a result of such incidents are able to obtain prompt and adequate compensation,

Concerned that prompt and effective response measures should be taken to minimize the harm and loss which may result from such incidents,

Noting that States are responsible for infringements of their obligations of prevention under international law,

Recalling the significance of existing international agreements covering specific categories of hazardous activities and stressing the importance of the conclusion of further such agreements,

Desiring to contribute to the development of international law in this field,

Principle 1. Scope of application

The present draft principles apply to transboundary damage caused by hazardous activities not prohibited by international law.

Principle 2 Use of terms

For the purposes of the present draft principles:

(a) “damage” means significant damage caused to persons, property or the environment; and includes:

(i) loss of life or personal injury;

(ii) loss of, or damage to, property, including property which forms part of the cultural heritage;

(iii) loss or damage by impairment of the environment;

(iv) the costs of reasonable measures of reinstatement of the property, or environment, including natural resources;

(v) the costs of reasonable response measures;

(b) “environment” includes natural resources, both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors, and the characteristic aspects of the landscape;

(c) “hazardous activity” means an activity which involves a risk of causing significant harm;

(d) “State of origin” means the State in the territory or otherwise under the jurisdiction or control of which the hazardous activity is carried out;

(e) “transboundary damage” means damage caused to persons, property or the environment in the territory or in other places under the jurisdiction or control of a State other than the State of origin;

(f) “victim” means any natural or legal person or State that suffers damage;

(g) “operator” means any person in command or control of the activity at the time the incident causing transboundary damage occurs.

Principle 3. Purposes

The purposes of the present draft principles are:

(a) to ensure prompt and adequate compensation to victims of transboundary damage; and

(b) to preserve and protect the environment in the event of transboundary damage, especially with respect to mitigation of damage to the environment and its restoration or reinstatement.

Principle 4. Prompt and adequate compensation

1. Each State should take all necessary measures to ensure that prompt and adequate compensation is available for victims of transboundary damage caused by hazardous activities located within its territory or otherwise under its jurisdiction or control.

2. These measures should include the imposition of liability on the operator or, where appropriate, other person or entity. Such liability should not require proof of fault. Any conditions, limitations or exceptions to such liability shall be consistent with draft principle 3.

3. These measures should also include the requirement on the operator or, where appropriate, other person or entity, to establish and maintain financial security such as insurance, bonds or other financial guarantees to cover claims of compensation.

4. In appropriate cases, these measures should include the requirement for the establishment of industry-wide funds at the national level.

5. In the event that the measures under the preceding paragraphs are insufficient to provide adequate compensation, the State of origin should also ensure that additional financial resources are made available.

Principle 5. Response measures

Upon the occurrence of an incident involving a hazardous activity which results or is likely to result in transboundary damage:

(a) the State of origin shall promptly notify all States affected or likely to be affected of the incident and the possible effects of the transboundary damage;

(b) the State of origin, with the appropriate involvement of the operator, shall ensure that appropriate response measures are taken and should, for this purpose, rely upon the best available scientific data and technology;

(c) the State of origin, as appropriate, should also consult with and seek the cooperation of all States affected or likely to be affected to mitigate the effects of transboundary damage and if possible eliminate them;

(d) the States affected or likely to be affected by the transboundary damage shall take all feasible measures to mitigate and if possible to eliminate the effects of such damage;

(e) the States concerned should, where appropriate, seek the assistance of competent international organizations and other States on mutually acceptable terms and conditions.

Principle 6. International and domestic remedies

1. States shall provide their domestic judicial and administrative bodies with the necessary jurisdiction and competence and ensure that these bodies have prompt, adequate and effective remedies available in the event of transboundary damage caused by hazardous activities located within their territory or otherwise under their jurisdiction or control.

2. Victims of transboundary damage should have access to remedies in the State of origin that are no less prompt, adequate and effective than those available to victims that suffer damage, from the same incident, within the territory of that State.

3. Paragraphs 1 and 2 are without prejudice to the right of the victims to seek remedies other than those available in the State of origin.

4. States may provide for recourse to international claims settlement procedures that are expeditious and involve minimal expenses.

5. States should guarantee appropriate access to information relevant for the pursuance of remedies, including claims for compensation.

Principle 7. Development of specific international regimes

1. Where, in respect of particular categories of hazardous activities, specific global, regional or bilateral agreements would provide effective arrangements concerning compensation, response measures and international and domestic remedies, all efforts should be made to conclude such specific agreements.

2. Such agreements should, as appropriate, include arrangements for industry and/or State funds to provide supplementary compensation in the event that the financial resources of the operator, including financial security measures, are insufficient to cover the damage suffered as a result of an incident. Any such funds may be designed to supplement or replace national industry-based funds.

Principle 8. Implementation

1. Each State should adopt the necessary legislative, regulatory and administrative measures to implement the present draft principles.

2. The present draft principles and the measures adopted to implement them shall be applied without any discrimination such as that based on nationality, domicile or residence.

3. States should cooperate with each other to implement the present draft principles.

13. Draft Articles on Diplomatic Protection\*

Part One. General Provisions

*Article 1. Definition and scope*

For the purposes of the present draft articles, diplomatic protection consists of the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility.

*Article 2. Right to exercise diplomatic protection*

A State has the right to exercise diplomatic protection in accordance with the present draft articles.

Part Two. Nationality

Chapter I. General Principles

*Article 3. Protection by the State of nationality*

1. The State entitled to exercise diplomatic protection is the State of nationality.

2. Notwithstanding paragraph 1, diplomatic protection may be exercised by a State in respect of a person that is not its national in accordance with draft article 8.

Chapter II. Natural Persons

Article 4. State of nationality of a natural person

For the purposes of the diplomatic protection of a natural person, a State of nationality means a State whose nationality that person has acquired, in accordance with the law of that State, by birth, descent, naturalization, succession of States or in any other manner, not inconsistent with international law.

Article 5. Continuous nationality of a natural person

1. A State is entitled to exercise diplomatic protection in respect of a person who was a national of that State continuously from the date of injury to the date of the official presentation of the claim. Continuity is presumed if that nationality existed at both these dates.

2. Notwithstanding paragraph 1, a State may exercise diplomatic protection in respect of a person who is its national at the date of the official presentation of the claim but was not a national at the date of injury, provided that the person had the nationality of a predecessor State or lost his or her previous nationality and acquired, for a reason unrelated to the bringing of the claim, the nationality of the former State in a manner not inconsistent with international law.

3. Diplomatic protection shall not be exercised by the present State of nationality in respect of a person against a former State of nationality of that person for an injury caused when that person was a national of the former State of nationality and not of the present State of nationality.

4. A State is no longer entitled to exercise diplomatic protection in respect of a person who acquires the nationality of the State against which the claim is brought after the date of the official presentation of the claim.

Article 6. Multiple nationality and claim against a third State

1. Any State of which a dual or multiple national is a national may exercise diplomatic protection in respect of that national against a State of which that person is not a national.

2. Two or more States of nationality may jointly exercise diplomatic protection in respect of a dual or multiple national.

Article 7.  Multiple nationality and claim against   
a State of nationality

A State of nationality may not exercise diplomatic protection in respect of a person against a State of which that person is also a national unless the nationality of the former State is predominant, both at the date of injury and at the date of the official presentation of the claim.

Article 8. Stateless persons and refugees

1. A State may exercise diplomatic protection in respect of a stateless person who, at the date of injury and at the date of the official presentation of the claim, is lawfully and habitually resident in that State.

2. A State may exercise diplomatic protection in respect of a person who is recognized as a refugee by that State, in accordance with internationally accepted standards, when that person, at the date of injury and at the date of the official presentation of the claim, is lawfully and habitually resident in that State.

3. Paragraph 2 does not apply in respect of an injury caused by an internationally wrongful act of the State of nationality of the refugee.

Chapter III. Legal Persons

Article 9. State of nationality of a corporation

For the purposes of the diplomatic protection of a corporation, the State of nationality means the State under whose law the corporation was incorporated. However, when the corporation is controlled by nationals of another State or States and has no substantial business activities in the State of incorporation, and the seat of management and the financial control of the corporation are both located in another State, that State shall be regarded as the State of nationality.

Article 10. Continuous nationality of a corporation

1. A State is entitled to exercise diplomatic protection in respect of a corporation that was a national of that State, or its predecessor State, continuously from the date of injury to the date of the official presentation of the claim. Continuity is presumed if that nationality existed at both these dates.

2. A State is no longer entitled to exercise diplomatic protection in respect of a corporation that acquires the nationality of the State against which the claim is brought after the presentation of the claim.

3. Notwithstanding paragraph 1, a State continues to be entitled to exercise diplomatic protection in respect of a corporation which was its national at the date of injury and which, as the result of the injury, has ceased to exist according to the law of the State of incorporation.

Article 11. Protection of shareholders

A State of nationality of shareholders in a corporation shall not be entitled to exercise diplomatic protection in respect of such shareholders in the case of an injury to the corporation unless:

(a) The corporation has ceased to exist according to the law of the State of incorporation for a reason unrelated to the injury; or

(b) The corporation had, at the date of injury, the nationality of the State alleged to be responsible for causing the injury, and incorporation in that State was required by it as a precondition for doing business there.

Article 12. Direct injury to shareholders

To the extent that an internationally wrongful act of a State causes direct injury to the rights of shareholders as such, as distinct from those of the corporation itself, the State of nationality of any such shareholders is entitled to exercise diplomatic protection in respect of its nationals.

Article 13. Other legal persons

The principles contained in this chapter shall be applicable, as appropriate, to the diplomatic protection of legal persons other than corporations.

Part Three. Local Remedies

Article 14. Exhaustion of local remedies

1. A State may not present an international claim in respect of an injury to a national or other person referred to in draft article 8 before the injured person has, subject to draft article 15, exhausted all local remedies.

2. “Local remedies” means legal remedies which are open to an injured person before the judicial or administrative courts or bodies, whether ordinary or special, of the State alleged to be responsible for causing the injury.

3. Local remedies shall be exhausted where an international claim, or request for a declaratory judgement related to the claim, is brought preponderantly on the basis of an injury to a national or other person referred to in draft article 8.

Article 15. Exceptions to the local remedies rule

Local remedies do not need to be exhausted where:

(a) There are no reasonably available local remedies to provide effective redress, or the local remedies provide no reasonable possibility of such redress;

(b) There is undue delay in the remedial process which is attributable to the State alleged to be responsible;

(c) There was no relevant connection between the injured person and the State alleged to be responsible at the date of injury;

(d) The injured person is manifestly precluded from pursuing local remedies; or

(e) The State alleged to be responsible has waived the requirement that local remedies be exhausted.

Part Four. Miscellaneous Provisions

Article 16. Actions or procedures other than diplomatic protection

The rights of States, natural persons, legal persons or other entities to resort under international law to actions or procedures other than diplomatic protection to secure redress for injury suffered as a result of an internationally wrongful act, are not affected by the present draft articles.

Article 17. Special rules of international law

The present draft articles do not apply to the extent that they are inconsistent with special rules of international law, such as treaty provisions for the protection of investments.

Article 18. Protection of ships’ crews

The right of the State of nationality of the members of the crew of a ship to exercise diplomatic protection is not affected by the right of the State of nationality of a ship to seek redress on behalf of such crew members, irrespective of their nationality, when they have been injured in connection with an injury to the vessel resulting from an internationally wrongful act.

Article 19. Recommended practice

A State entitled to exercise diplomatic protection according to the present draft articles, should:

(a) Give due consideration to the possibility of exercising diplomatic protection, especially when a significant injury has occurred;

(b) Take into account, wherever feasible, the views of injured persons with regard to resort to diplomatic protection and the reparation to be sought; and

(c) Transfer to the injured person any compensation obtained for the injury from the responsible State subject to any reasonable deductions.

14. Guiding Principles applicable to  
 unilateral declarations of States   
capable of creating legal obligations\*

The International Law Commission,

Noting that States may find themselves bound by their unilateral behaviour on the international plane,

Noting that behaviours capable of legally binding States may take the form of formal declarations or mere informal conduct including, in certain situations, silence, on which other States may reasonably rely,

Noting also that the question whether a unilateral behaviour by the State binds it in a given situation depends on the circumstances of the case,

Noting also that in practice, it is often difficult to establish whether the legal effects stemming from the unilateral behaviour of a State are the consequence of the intent that it has expressed or depend on the expectations that its conduct has raised among other subjects of international law,

Adopts the following Guiding Principles which relate only to unilateral acts stricto sensu, i.e. those taking the form of formal declarations formulated by a State with the intent to produce obligations under international law,

1. Declarations publicly made and manifesting the will to be bound may have the effect of creating legal obligations. When the conditions for this are met, the binding character of such declarations is based on good faith; States concerned may then take them into consideration and rely on them; such States are entitled to require that such obligations be respected;

2. Any State possesses capacity to undertake legal obligations through unilateral declarations;

3. To determine the legal effects of such declarations, it is necessary to take account of their content, of all the factual circumstances in which they were made, and of the reactions to which they gave rise;

4. A unilateral declaration binds the State internationally only if it is made by an authority vested with the power to do so. By virtue of their functions, heads of State, heads of Government and ministers for foreign affairs are competent to formulate such declarations. Other persons representing the State in specified areas may be authorized to bind it, through their declarations, in areas falling within their competence;

5. Unilateral declarations may be formulated orally or in writing;

6. Unilateral declarations may be addressed to the international community as a whole, to one or several States or to other entities;

7. A unilateral declaration entails obligations for the formulating State only if it is stated in clear and specific terms. In the case of doubt as to the scope of the obligations resulting from such a declaration, such obligations must be interpreted in a restrictive manner. In interpreting the content of such obligations, weight shall be given first and foremost to the text of the declaration, together with the context and the circumstances in which it was formulated;

8. A unilateral declaration which is in conflict with a peremptory norm of general international law is void;

9. No obligation may result for other States from the unilateral declaration of a State. However, the other State or States concerned may incur obligations in relation to such a unilateral declaration to the extent that they clearly accepted such a declaration;

10. A unilateral declaration that has created legal obligations for the State making the declaration cannot be revoked arbitrarily. In assessing whether a revocation would be arbitrary, consideration should be given to:

(i) Any specific terms of the declaration relating to revocation;

(ii) The extent to which those to whom the obligations are owed have relied on such obligations;

(iii) The extent to which there has been a fundamental change in the circumstances.

15. Conclusions of the work of the Study Group on the Fragmentation of International Law: Difficulties arising from the diversification and expansion   
of International law\*

*1. General*

(1) International law as a legal system. International law is a legal system. Its rules and principles (i.e. its norms) act in relation to and should be interpreted against the background of other rules and principles. As a legal system, international law is not a random collection of such norms. There are meaningful relationships between them. Norms may thus exist at higher and lower hierarchical levels, their formulation may involve greater or lesser generality and specificity and their validity may date back to earlier or later moments in time.

(2) In applying international law, it is often necessary to determine the precise relationship between two or more rules and principles that are both valid and applicable in respect of a situation.1For that purpose the relevant relationships fall into two general types:

– Relationships of interpretation. This is the case where one norm assists in the interpretation of another. A norm may assist in the interpretation of another norm for example as an application, clarification, updating, or modification of the latter. In such situation, both norms are applied in conjunction.

– Relationships of conflict. This is the case where two norms that are both valid and applicable point to incompatible decisions so that a choice must be made between them. The basic rules concerning the resolution of normative conflicts are to be found in the VCLT.

(3) The VCLT. When seeking to determine the relationship of two or more norms to each other, the norms should be interpreted in accordance with or analogously to the VCLT and especially the provisions in its articles 31–33 having to do with the interpretation of treaties.

(4) The principle of harmonization. It is a generally accepted principle that when several norms bear on a single issue they should, to the extent possible, be interpreted so as to give rise to a single set of compatible obligations.

2. The maxim lex specialis derogat legi generali

(5) General principle. The maxim lex specialis derogat legi generali is a generally accepted technique of interpretation and conflict resolution in international law. It suggests that whenever two or more norms deal with the same subject matter, priority should be given to the norm that is more specific. The principle may be applicable in several contexts: between provisions within a single treaty, between provisions within two or more treaties, between a treaty and a non-treaty standard, as well as between two non-treaty standards.2 The source of the norm (whether treaty, custom or general principle of law) is not decisive for the determination of the more specific standard. However, in practice treaties often act as lex specialis by reference to the relevant customary law and general principles.3

(6) Contextual appreciation. The relationship between the lex specialis maxim and other norms of interpretation or conflict solution cannot be determined in a general way. Which consideration should be predominant–i.e. whether it is the speciality or the time of emergence of the norm–should be decided contextually.

(7) Rationale of the principle. That special law has priority over general law is justified by the fact that such special law, being more concrete, often takes better account of the particular features of the context in which it is to be applied than any applicable general law. Its application may also often create a more equitable result and it may often better reflect the intent of the legal subjects.

(8) Functions of lex specialis. Most of international law is dispositive. This means that special law may be used to apply, clarify, update or modify as well as set aside general law.

(9) The effect of lex specialis on general law. The application of the special law does not normally extinguish the relevant general law.4That general law will remain valid and applicable and will, in accordance with the principle of harmonization under conclusion (4) above, continue to give direction for the interpretation and application of the relevant special law and will become fully applicable in situations not provided for by the latter.5

(10) Particular types of general law. Certain types of general law6 may not, however, be derogated from by special law. Jus cogens is expressly non-derogable as set out in conclusions (32), (33), (40) and (41), below.7 Moreover, there are other considerations that may provide a reason for concluding that a general law would   
prevail in which case the lex specialis presumption may not apply. These include the following:

– Whether such prevalence may be inferred from the form or the nature of the general law or intent of the parties, wherever applicable;

– Whether the application of the special law might frustrate the purpose of the general law;

– Whether third party beneficiaries may be negatively affected by the special law; and

– Whether the balance of rights and obligations, established in the general law would be negatively affected by the special law.

3. Special (self-contained) regimes

(11) Special (“self-contained”) regimes as lex specialis. A group of rules and principles concerned with a particular subject matter may form a special regime (“Self‑contained regime”) and be applicable as lex specialis. Such special regimes often have their own institutions to administer the relevant rules.

(12) Three types of special regime may be distinguished:

– Sometimes violation of a particular group of (primary) rules is accompanied by a special set of (secondary) rules concerning breach and reactions to breach. This is the main case provided for under article 55 of the articles on Responsibility of States for internationally wrongful acts.8

– Sometimes, however, a special regime is formed by a set of special rules, including rights and obligations, relating to a special subject matter. Such rules may concern a geographical area (e.g. a treaty on the protection of a particular river) or some substantive matter (e.g. a treaty on the regulation of the uses of a particular weapon). Such a special regime may emerge on the basis of a single treaty, several treaties, or treaty and treaties plus non-treaty developments (subsequent practice or customary law).9

– Finally, sometimes all the rules and principles that regulate a certain problem area are collected together so as to express a “special regime”. Expressions such as “law of the sea”, “humanitarian law”, “human rights law”, “environmental law” and “trade law”, etc. give expression to some such regimes. For interpretative purposes, such regimes may often be considered in their entirety.

(13) Effect of the “speciality” of a regime. The significance of a special regime often lies in the way its norms express a unified object and purpose. Thus, their interpretation and application should, to the extent possible, reflect that object and purpose.

(14) The relationship between special regimes and general international law. A special regime may prevail over general law under the same conditions as lex specialis generally (see conclusions (8) and (10) above).

(15) The role of general law in special regimes: Gap-filling. The scope of special laws is by definition narrower than that of general laws. It will thus frequently be the case that a matter not regulated by special law will arise in the institutions charged to administer it. In such cases, the relevant general law will apply.10

(16) The role of general law in special regimes: Failure of special regimes. Special regimes or the institutions set up by them may fail. Failure might be inferred when the special laws have no reasonable prospect of appropriately addressing the objectives for which they were enacted. It could be manifested, for example, by the failure of the regime’s institutions to fulfil the purposes allotted to them, persistent non-compliance by one or several of the parties, desuetude, withdrawal by parties instrumental for the regime, among other causes. Whether a regime has “failed” in this sense, however, would have to be assessed above all by an interpretation of its constitutional instruments. In the event of failure, the relevant general law becomes applicable.

4. Article 31 (3) (c) VCLT

(17) Systemic integration. Article 31 (3) (c) VCLT provides one means within the framework of the VCLT, through which relationships of interpretation (referred to in conclusion (2) above) may be applied. It requires the interpreter of a treaty to take into account “any relevant rules of international law applicable in relations between the parties”. The article gives expression to the objective of “systemic integration” according to which, whatever their subject matter, treaties are a creation of the international legal system and their operation is predicated upon that fact.

(18) Interpretation as integration in the system. Systemic integration governs all treaty interpretation, the other relevant aspects of which are set out in the other paragraphs of articles 31–32 VCLT. These paragraphs describe a process of legal reasoning, in which particular elements will have greater or less relevance depending upon the nature of the treaty provisions in the context of interpretation. In many cases, the issue of interpretation will be capable of resolution with the framework of the treaty itself. Article 31 (3) (c) deals with the case where material sources external to the treaty are relevant in its interpretation. These may include other treaties, customary rules or general principles of law.11

(19) Application of systemic integration. Where a treaty functions in the context of other agreements, the objective of systemic integration will apply as a presumption with both positive and negative aspects:

(a) The parties are taken to refer to customary international law and general principles of law for all questions which the treaty does not itself resolve in express terms;12

(b) In entering into treaty obligations, the parties do not intend to act inconsistently with generally recognized principles of international law.13

Of course, if any other result is indicated by ordinary methods of treaty interpretation that should be given effect, unless the relevant principle were part of jus cogens.

(20) Application of custom and general principles of law. Customary international law and general principles of law are of particular relevance to the interpretation of a treaty under article 31 (3) (c) especially where:

(a) The treaty rule is unclear or open-textured;

(b) The terms used in the treaty have a recognized meaning in customary international law or under general principles of law;

(c) The treaty is silent on the applicable law and it is necessary for the interpreter, applying the presumption in conclusion (19) (a) above, to look for rules developed in another part of international law to resolve the point.

(21) Application of other treaty rules. Article 31 (3) (c) also requires the interpreter to consider other treaty-based rules so as to arrive at a consistent meaning. Such other rules are of particular relevance where parties to the treaty under interpretation are also parties to the other treaty, where the treaty rule has passed into or expresses customary international law or where they provide evidence of the common understanding of the parties as to the object and purpose of the treaty under interpretation or as to the meaning of a particular term.

(22) Inter-temporality. International law is a dynamic legal system. A treaty may convey whether in applying article 31 (3) (c) the interpreter should refer only to rules of international law in force at the time of the conclusion of the treaty or may also take into account subsequent changes in the law. Moreover, the meaning of a treaty provision may also be affected by subsequent developments, especially where there are subsequent developments in customary law and general principles of law.14

(23) Open or evolving concepts. Rules of international law subsequent to the treaty to be interpreted may be taken into account especially where the concepts used in the treaty are open or evolving. This is the case, in particular, where: (a) the concept is one which implies taking into account subsequent technical, economic or legal developments;15 (b) the concept sets up an obligation for further progressive development for the parties; or (c) the concept has a very general nature or is expressed in such general terms that it must take into account changing circumstances.16

5. Conflicts between successive norms

(24) Lex posterior derogat legi priori. According to article 30 VCLT, when all the parties to a treaty are also parties to an earlier treaty on the same subject, and the earlier treaty is not suspended or terminated, then it applies only to the extent its provisions are compatible with those of the later treaty. This is an expression of the principle according to which “later law supersedes earlier law”.

(25) Limits of the “lex posterior” principle. The applicability of the lex posterior principle is, however, limited. It cannot, for example, be automatically extended to the case where the parties to the subsequent treaty are not identical to the parties of the earlier treaty. In such cases, as provided in article 30 (4) VCLT, the State that is party to two incompatible treaties is bound vis‑à-vis both of its treaty parties separately. In case it cannot fulfil its obligations under both treaties, it risks being responsible for the breach of one of them unless the concerned parties agree otherwise. In such case, also article 60 VCLT may become applicable. The question which of the incompatible treaties should be implemented and the breach of which should attract State responsibility cannot be answered by a general rule.17[[878]](#footnote-878) Conclusions (26)-(27) below lay out considerations that might then be taken into account.

(26) The distinction between treaty provisions that belong to the same “regime” and provisions in different “regimes”. The lex posterior principle is at its strongest in regard to conflicting or overlapping provisions that are part of treaties that are institutionally linked or otherwise intended to advance similar objectives (i.e. form part of the same regime). In case of conflicts or overlaps between treaties in different regimes, the question of which of them is later in time would not necessarily express any presumption of priority between them. Instead, States bound by the treaty obligations should try to implement them as far as possible with the view of mutual accommodation and in accordance with the principle of harmonization. However, the substantive rights of treaty parties or third party beneficiaries should not be undermined.

(27) Particular types of treaties or treaty provisions. The lex posterior presumption may not apply where the parties have intended otherwise, which may be inferred from the nature of the provisions or the relevant instruments, or from their object and purpose. The limitations that apply in respect of the lex specialis presumption in conclusion (10) may also be relevant with respect to the lex posterior.

(28) Settlement of disputes within and across regimes. Disputes between States involving conflicting treaty provisions should be normally resolved by negotiation between parties to the relevant treaties. However, when no negotiated solution is available, recourse ought to be had, where appropriate, to other available means of dispute settlement. When the conflict concerns provisions within a single regime (as defined in conclusion (26) above), then its resolution may be appropriate in the regime‑specific mechanism. However, when the conflict concerns provisions in treaties that are not part of the same regime, special attention should be given to the independence of the means of settlement chosen.

(29) Inter se agreements. The case of agreements to modify multilateral treaties by certain of the parties only (inter se agreements) is covered by article 41 VCLT. Such agreements are an often used technique for the more effective implementation of the original treaty between a limited number of treaty parties that are willing to take more effective or more far-reaching measures for the realization of the object and purpose of the original treaty. Inter se agreements may be concluded if this is provided for by the original treaty or it is not specifically prohibited and the agreement: “(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations; (ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole” (article 41 (1) (b) VCLT).

(30) Conflict clauses. When States enter into a treaty that might conflict with other treaties, they should aim to settle the relationship between such treaties by adopting appropriate conflict clauses. When adopting such clauses, it should be borne in mind that:

(a) They may not affect the rights of third parties;

(b) They should be as clear and specific as possible. In particular, they should be directed to specific provisions of the treaty and they should not undermine the object and purpose of the treaty;

(c) They should, as appropriate, be linked with means of dispute settlement.

6. Hierarchy in international law: Jus cogens*,* Obligations erga omnes*,* Article 103 of the Charter of the United Nations

(31) Hierarchical relations between norms of international law. The main sources of international law (treaties, custom, general principles of law as laid out in Article 38 of the Statute of the International Court of Justice) are not in a hierarchical relationship inter se.18Drawing analogies from the hierarchical nature of domestic legal system is not generally appropriate owing to the differences between the two systems. Nevertheless, some rules of international law are more important than other rules and for this reason enjoy a superior position or special status in the international legal system. This is sometimes expressed by the designation of some norms as “fundamental” or as expressive of “elementary considerations of humanity”19 “intransgressible principles of international law”.20 What effect such designations may have is usually determined by the relevant context or instrument in which that designation appears.

(32) Recognized hierarchical relations by the substance of the rules: Jus cogens. A rule of international law may be superior to other rules on account of the importance of its content as well as the universal acceptance of its superiority. This is the case of peremptory norms of international law (jus cogens, Article 53 VCLT), that is, norms “accepted and recognized by the international community of States as a whole from which no derogation is permitted”.21

(33) The content of jus cogens. The most frequently cited examples of jus cogens norms are the prohibition of aggression, slavery and the slave trade, genocide, racial discrimination, apartheid and torture, as well as basic rules of international humanitarian law applicable in armed conflict, and the right to self-determination.22 Also other rules may have a jus cogens character inasmuch as they are accepted and recognized by the international community of States as a whole as norms from which no derogation is permitted.

(34) Recognized hierarchical relations by virtue of a treaty provision: Article 103 of the Charter of the United Nations. A rule of international law may also be superior to other rules by virtue of a treaty provision. This is the case of Article 103 of the United Nations Charter by virtue of which “In the event of a conflict between the obligations of the Members of the United Nations under the . . . Charter and their obligations under any other international agreement, their obligations under the . . . Charter shall prevail.”

(35) The scope of Article 103 of the Charter. The scope of Article 103 extends not only to the Articles of the Charter but also to binding decisions made by United Nations organs such as the Security Council.23 Given the character of some Charter provisions, the constitutional character of the Charter and the established practice of States and United Nations organs, Charter obligations may also prevail over inconsistent customary international law.

(36) The status of the United Nations Charter. It is also recognized that the United Nations Charter itself enjoys special character owing to the fundamental nature of some of its norms, particularly its principles and purposes and its universal acceptance.24

(37) Rules specifying obligations owed to the international community as a whole: Obligations erga omnes. Some obligations enjoy a special status owing to the universal scope of their applicability. This is the case of obligations erga omnes, that is obligations of a State towards the international community as a whole. These rules concern all States and all States can be held to have a legal interest in the protection of the rights involved.25 Every State may invoke the responsibility of the State violating such obligations.26

(38) The relationship between jus cogens norms and obligations erga omnes. It is recognized that while all obligations established by jus cogens norms, as referred to in conclusion (33) above, also have the character of erga omnes obligations, the reverse is not necessarily true.27 Not all erga omnes obligations are established by peremptory norms of general international law. This is the case, for example, of certain obligations under “the principles and rules concerning the basic rights of the human person”,28 as well as of some obligations relating to the global commons.29

(39) Different approaches to the concept of obligations erga omnes. The concept of erga omnes obligations has also been used to refer to treaty obligations that a State owes to all other States parties (obligations erga omnes partes)30 or to non-party States as third party beneficiaries. In addition, issues of territorial status have frequently been addressed in erga omnes terms, referring to their opposability to all States.31 Thus, boundary and territorial treaties have been stated to “represent[] a legal reality which necessarily impinges upon third States, because they have effect erga omnes.”32

(40) The relationship between jus cogens and the obligations under the United Nations Charter. The United Nations Charter has been universally accepted by States and thus a conflict between jus cogens norms and Charter obligations is difficult to contemplate. In any case, according to Article 24 (2) of the Charter, the Security Council shall act in accordance with the Purposes and Principles of the United Nations which include norms that have been subsequently treated as jus cogens.

(41) The operation and effect of jus cogens norms and Article 103 of the Charter:

(a) A rule conflicting with a norm of jus cogens becomes thereby ipso facto void;

(b) A rule conflicting with Article 103 of the United Nations Charter becomes inapplicable as a result of such conflict and to the extent of such conflict.

(42) Hierarchy and the principle of harmonization. Conflicts between rules of international law should be resolved in accordance with the principle of harmonization, as laid out in conclusion (4) above. In the case of conflict between one of the hierarchically superior norms referred to in this section and another norm of international law, the latter should, to the extent possible, be interpreted in a manner consistent with the former. In case this is not possible, the superior norm will prevail.

ANNEX V

MULTILATERAL CONVENTIONS CONCLUDED  
UNDER THE AUSPICES OF THE UNITED NATIONS  
BASED ON DRAFTS PREPARED BY THE INTERNATIONAL LAW COMMISSION

A. Conventions on the Law of the Sea  
and Optional Protocol

1. Convention on the Territorial Sea and the Contiguous Zone. Done at Geneva, on 29 April 1958[[879]](#footnote-879)

The States Parties to this Convention

Have agreed as follows:

Part I. Territorial Sea

Section I. General

Article 1

1. The sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea.

2. This sovereignty is exercised subject to the provisions of these articles and to other rules of international law.

Article 2

The sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil.

Section II. Limits of the territorial sea

Article 3

Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

Article 4

1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

2. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.

3. Baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them.

4. Where the method of straight baselines is applicable under the provisions of paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage.

5. The system of straight baselines may not be applied by a State in such a manner as to cut off from the high seas the territorial sea of another State.

6. The coastal State must clearly indicate straight baselines on charts, to which due publicity must be given.

Article 5

1. Waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.

2. Where the establishment of a straight baseline in accordance with article 4 has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as provided in articles 14 to 23, shall exist in those waters.

Article 6

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

Article 7

1. This article relates only to bays the coasts of which belong to a single State.

2. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semicircle whose diameter is a line drawn across the mouth of that indentation.

3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semicircle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water areas of the indentation.

4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds twenty-four miles, a straight baseline of twenty-four miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

6. The foregoing provisions shall not apply to so-called “historic” bays, or in any case where the straight baseline system provided for in article 4 is applied.

Article 8

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.

Article 9

Roadsteads which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea. The coastal State must clearly demarcate such roadsteads and indicate them on charts together with their boundaries, to which due publicity must be given.

Article 10

1. An island is a naturally-formed area of land, surrounded by water, which is above water at high tide.

2. The territorial sea of an island is measured in accordance with the provisions of these articles.

Article 11

1. A low-tide elevation is a naturally-formed area of land which is surrounded by and above water at low tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.

2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

Article 12

1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

2. The line of delimitation between the territorial seas of two States lying opposite to each other or adjacent to each other shall be marked on large-scale charts officially recognized by the coastal States.

Article 13

If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks.

Section III. Right of innocent passage

Subsection A. Rules applicable to all ships

Article 14

1. Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.

2. Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering internal waters, or of proceeding to internal waters, or of making for the high seas from internal waters.

3. Passage includes stopping and anchoring, but only insofar as the same are incidental to ordinary navigation or are rendered necessary by force majeure or by distress.

4. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules of international law.

5. Passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal State may make and publish in order to prevent these vessels from fishing in the territorial sea.

6. Submarines are required to navigate on the surface and to show their flag.

Article 15

1. The coastal State must not hamper innocent passage through the territorial sea.

2. The coastal State is required to give appropriate publicity to any dangers to navigation, of which it has knowledge, within its territorial sea.

Article 16

1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

2. In the case of ships proceeding to internal waters, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to those waters is subject.

3. Subject to the provisions of paragraph 4, the coastal State may, without discrimination amongst foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published.

4. There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State.

Article 17

Foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the coastal State in conformity with these articles and other rules of international law and, in particular, with such laws and regulations relating to transport and navigation.

Subsection B. Rules applicable to merchant ships

*Arti*c*le 18*

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

2. Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

Article 19

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:

(a) If the consequences of the crime extend to the coastal State; or

(b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or

(c) If the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies; or

(d) If it is necessary for the suppression of illicit traffic in narcotic drugs.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

3. In the cases provided for in paragraphs 1 and 2 of this article, the coastal State shall, if the captain so requests, advise the consular authority of the flag State before taking any steps, and shall facilitate contact between such authority and the ship’s crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or how an arrest should be made, the local authorities shall pay due regard to the interests of navigation.

5. The coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

Article 20

1. The coastal State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.

2. The coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.

3. The provisions of the previous paragraph are without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.

Subsection C. Rules applicable to government ships  
other than warships

Article 21

The rules contained in subsections A and B shall also apply to government ships operated for commercial purposes.

Article 22

1. The rules contained in subsection A and in article 18 shall apply to government ships operated for non-commercial purposes.

2. With such exceptions as are contained in the provisions referred to in the preceding paragraph, nothing in these articles affects the immunities which such ships enjoy under these articles or other rules of international law.

Subsection D. Rules applicable to warships

Article 23

If any warship does not comply with the regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance which is made to it, the coastal State may require the warship to leave the territorial sea.

Part II. Contiguous Zone

Article 24

1. In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to:

(a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;

(b) Punish infringement of the above regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured.

3. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its contiguous zone beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the two States is measured.

Part III. Final Articles

Article 25

The provisions of this Convention shall not affect conventions or other international agreements already in force, as between States Parties to them.

Article 26

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.

Article 27

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 28

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 26. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 29

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 30

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

*Artic*l*e 31*

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 26:

(a) Of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 26, 27 and 28;

(b) Of the date on which this Convention will come into force, in accordance with article 29;

(c) Of requests for revision in accordance with article 30.

Article 32

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 26.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

Done at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

2. Convention on the High Seas. Done at Geneva,  
on 29 April 1958[[880]](#footnote-880)

The States Parties to this Convention,

Desiring to codify the rules of international law relating to the high seas,

Recognizing that the United Nations Conference on the Law of the Sea, held at Geneva from 24 February to 27 April 1958, adopted the following provisions as generally declaratory of established principles of international law,

Have agreed as follows:

Article 1

The term “high seas” means all parts of the sea that are not included in the territorial sea or in the internal waters of a State.

Article 2

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, inter alia, both for coastal and non-coastal States:

(1) Freedom of navigation;

(2) Freedom of fishing;

(3) Freedom to lay submarine cables and pipelines;

(4) Freedom to fly over the high seas.

These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.

Article 3

1. In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea coast should have free access to the sea. To this end States situated between the sea and a State having no sea coast shall by common agreement with the latter, and in conformity with existing international conventions, accord:

(a) To the State having no sea coast, on a basis of reciprocity, free transit through their territory; and

(b) To ships flying the flag of that State treatment equal to that accorded to their own ships, or to the ships of any other States, as regards access to seaports and the use of such ports.

2. States situated between the sea and a State having no sea coast shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the State having no sea coast, all matters relating to freedom of transit and equal treatment in ports, in case such States are not already parties to existing international conventions.

Article 4

Every State, whether coastal or not, has the right to sail ships under its flag on the high seas.

Article 5

1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. Each State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

Article 6

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

Article 7

The provisions of the preceding articles do not prejudice the question of ships employed on the official service of an intergovernmental organization flying the flag of the organization.

Article 8

1. Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

2. For the purposes of these articles, the term “warship” means a ship belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.

Article 9

Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.

Article 10

1. Every State shall take such measures for ships under its flag as are necessary to ensure safety at sea with regard, inter alia, to:

(a) The use of signals, the maintenance of communications and the prevention of collisions;

(b) The manning of ships and labour conditions for crews taking into account the applicable international labour instruments;

(c) The construction, equipment and seaworthiness of ships.

2. In taking such measures each State is required to conform to generally accepted international standards and to take any steps which may be necessary to ensure their observance.

Article 11

1. In the event of a collision or of any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such persons except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

2. In disciplinary matters, the State which has issued a master’s certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.

3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

Article 12

1. Every State shall require the master of a ship sailing under its flag, insofar as he can do so without serious danger to the ship, the crew or the passengers:

(a) To render assistance to any person found at sea in danger of being lost;

(b) To proceed with all possible speed to the rescue of persons in distress if informed of their need of assistance, insofar as such action may reasonably be expected of him;

(c) After a collision, to render assistance to the other ship, her crew and her passengers and, where possible, to inform the other ship of the name of his own ship, her port of registry and the nearest port at which she will call.

2. Every coastal State shall promote the establishment and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and—where circumstances so require—by way of mutual regional arrangements cooperate with neighbouring States for this purpose.

Article 13

Every State shall adopt effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag, and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall ipso facto be free.

Article 14

All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

Article 15

Piracy consists of any of the following acts:

(1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(3) Any act of inciting or of intentionally facilitating an act described in subparagraph 1 or subparagraph 2 of this article.

Article 16

The acts of piracy, as defined in article 15, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

Article 17

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 15. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

*Artic*l*e 18*

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

Article 19

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

Article 20

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft, for any loss or damage caused by the seizure.

Article 21

A seizure on account of piracy may only be carried out by warships or military aircraft, or other ships or aircraft on government service authorized to that effect.

Article 22

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is reasonable ground for suspecting:

(a) That the ship is engaged in piracy; or

(b) That the ship is engaged in the slave trade; or

(c) That though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in subparagraphs (a), (b) and (c) above, the warship may proceed to verify the ship’s right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

*Arti*c*le 23*

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters or the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 24 of the Convention on the Territorial Sea and the Contiguous Zone, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a third State.

3. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship as a mother ship are within the limits of the territorial sea, or as the case may be within the contiguous zone. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

4. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft on government service specially authorized to that effect.

5. Where hot pursuit is effected by an aircraft:

(a) The provisions of paragraphs 1 to 3 of this article shall apply mutatis mutandis;

(b) The aircraft giving the order to stop must itself actively pursue the ship until a ship or aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest on the high seas that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.

6. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an enquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the high seas, if the circumstances rendered this necessary.

7. Where a ship has been stopped or arrested on the high seas in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

Article 24

Every State shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation and exploration of the seabed and its subsoil, taking account of existing treaty provisions on the subject.

Article 25

1. Every State shall take measures to prevent pollution of the seas from the dumping of radioactive waste, taking into account any standards and regulations which may be formulated by the competent international organizations.

2. All States shall cooperate with the competent international organizations in taking measures for the prevention of pollution of the seas or air space above, resulting from any activities with radioactive materials or other harmful agents.

Article 26

1. All States shall be entitled to lay submarine cables and pipelines on the bed of the high seas.

2. Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of such cables or pipelines.

3. When laying such cables or pipelines the State in question shall pay due regard to cables or pipelines already in position on the seabed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

Article 27

Every State shall take the necessary legislative measures to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable shall be a punishable offence. This provision shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

Article 28

Every State shall take the necessary legislative measures to provide that, if persons subject to its jurisdiction who are the owners of a cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs.

Article 29

Every State shall take the necessary legislative measures to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

Article 30

The provisions of this Convention shall not affect conventions or other international agreements already in force, as between States Parties to them.

Article 31

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.

Article 32

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 33

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 31. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 34

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 35

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

Article 36

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 31:

(a) Of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 31, 32 and 33;

(b) Of the date on which this Convention will come into force, in accordance with article 34;

(c) Of requests for revision in accordance with article 35.

Article 37

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who hall send certified copies thereof to all States referred to in article 31.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

Done at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

3. Convention on Fishing and Conservation of the  
Living Resources of the High Seas.  
Done at Geneva, on 29 April 1958[[881]](#footnote-881)

The States Parties to this Convention,

Considering that the development of modern techniques for the exploitation of the living resources of the sea, increasing man’s ability to meet the need of the world’s expanding population for food, has exposed some of these resources to the danger of being over-exploited,

Considering also that the nature of the problems involved in the conservation of the living resources of the high seas is such that there is a clear necessity that they be solved, whenever possible, on the basis of international cooperation through the concerted action of all the States concerned,

Have agreed as follows:

Article 1

1. All States have the right for their nationals to engage in fishing on the high seas, subject (a) to their treaty obligations, (b) to the interests and rights of coastal States as provided for in this Convention, and (c) to the provisions contained in the following articles concerning conservation of the living resources of the high seas.

2. All States have the duty to adopt, or to cooperate with other States in adopting, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.

Article 2

As employed in this Convention, the expression “conservation of the living resources of the high seas” means the aggregate of the measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply of food and other marine products. Conservation programmes should be formulated with a view to securing in the first place a supply of food for human consumption.

Article 3

A State whose nationals are engaged in fishing any stock or stocks of fish or other living marine resources in any area of the high seas where the nationals of other States are not thus engaged shall adopt, for its own nationals, measures in that area when necessary for the purpose of the conservation of the living resources affected.

Article 4

1. If the nationals of two or more States are engaged in fishing the same stock or stocks of fish or other living marine resources in any area or areas of the high seas, these States shall, at the request of any of them, enter into negotiations with a view to prescribing by agreement for their nationals the necessary measures for the conservation of the living resources affected.

2. If the States concerned do not reach agreement within twelve months, any of the parties may initiate the procedure contemplated by article 9.

Article 5

1. If, subsequent to the adoption of the measures referred to in articles 3 and 4, nationals of other States engage in fishing the same stock or stocks of fish or other living marine resources in any area or areas of the high seas, the other States shall apply the measures, which shall not be discriminatory in form or in fact, to their own nationals not later than seven months after the date on which the measures shall have been notified to the Director-General of the Food and Agriculture Organization of the United Nations. The Director-General shall notify such measures to any State which so requests and, in any case, to any State specified by the State initiating the measure.

2. If these other States do not accept the measures so adopted and if no agreement can be reached within twelve months, any of the interested parties may initiate the procedure contemplated by article 9. Subject to paragraph 2 of article 10, the measures adopted shall remain obligatory pending the decision of the special commission.

Article 6

1. A coastal State has a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea.

2. A coastal State is entitled to take part on an equal footing in any system of research and regulation for purposes of conservation of the living resources of the high seas in that area, even though its nationals do not carry on fishing there.

3. A State whose nationals are engaged in fishing in any area of the high seas adjacent to the territorial sea of a State shall, at the request of that coastal State, enter into negotiations with a view to prescribing by agreement the measures necessary for the conservation of the living resources of the high seas in that area.

4. A State whose nationals are engaged in fishing in any area of the high seas adjacent to the territorial sea of a coastal State shall not enforce conservation measures in that area which are opposed to those which have been adopted by the coastal State, but may enter into negotiations with the coastal State with a view to prescribing by agreement the measures necessary for the conservation of the living resources of the high seas in that area.

5. If the States concerned do not reach agreement with respect to conservation measures within twelve months, any of the parties may initiate the procedure contemplated by article 9.

Article 7

1. Having regard to the provisions of paragraph 1 of article 6, any coastal State may, with a view to the maintenance of the productivity of the living resources of the sea, adopt unilateral measures of conservation appropriate to any stock of fish or other marine resources in any area of the high seas adjacent to its territorial sea, provided that negotiations to that effect with the other States concerned have not led to an agreement within six months.

2. The measures which the coastal State adopts under the previous paragraph shall be valid as to other States only if the following requirements are fulfilled:

(a) That there is a need for urgent application of conservation measures in the light of the existing knowledge of the fishery;

(b) That the measures adopted are based on appropriate scientific findings;

(c) That such measures do not discriminate in form or in fact against foreign fishermen.

3. These measures shall remain in force pending the settlement, in accordance with the relevant provisions of this Convention, of any disagreement as to their validity.

4. If the measures are not accepted by the other States concerned, any of the parties may initiate the procedure contemplated by article 9. Subject to paragraph 2 of article 10, the measures adopted shall remain obligatory pending the decision of the special commission.

5. The principles of geographical demarcation as defined in article 12 of the Convention on the Territorial Sea and the Contiguous Zone shall be adopted when coasts of different States are involved.

Article 8

1. Any State which, even if its nationals are not engaged in fishing in an area of the high seas not adjacent to its coast, has a special interest in the conservation of the living resources of the high seas in that area, may request the State or States whose nationals are engaged in fishing there to take the necessary measures of conservation under articles 3 and 4 respectively, at the same time mentioning the scientific reasons which in its opinion make such measures necessary, and indicating its special interest.

2. If no agreement is reached within twelve months, such State may initiate the procedure contemplated by article 9.

Article 9

1. Any dispute which may arise between States under articles 4, 5, 6, 7 and 8 shall, at the request of any of the parties, be submitted for settlement to a special commission of five members, unless the parties agree to seek a solution by another method of peaceful settlement, as provided for in Article 33 of the Charter of the United Nations.

2. The members of the commission, one of whom shall be designated as chairman, shall be named by agreement between the States in dispute within three months of the request for settlement in accordance with the provisions of this article. Failing agreement they shall, upon the request of any State party, be named by the Secretary-General of the United Nations, within a further three-month period, in consultation with the States in dispute and with the President of the International Court of Justice and the Director-General of the Food and Agriculture Organization of the United Nations, from amongst well-qualified persons being nationals of States not involved in the dispute and specializing in legal, administrative or scientific questions relating to fisheries, depending upon the nature of the dispute to be settled. Any vacancy arising after the original appointment shall be filled in the same manner as provided for the initial selection.

3. Any State party to proceedings under these articles shall have the right to name one of its nationals to the special commission, with the right to participate fully in the proceedings on the same footing as a member of the commission, but without the right to vote or to take part in the writing of the commission’s decision.

4. The commission shall determine its own procedure, assuring each party to the proceedings a full opportunity to be heard and to present its case. It shall also determine how the costs and expenses shall be divided between the parties to the dispute, failing agreement by the parties on this matter.

5. The special commission shall render its decision within a period of five months from the time it is appointed unless it decides, in case of necessity, to extend the time limit for a period not exceeding three months.

6. The special commission shall, in reaching its decisions, adhere to these articles and to any special agreements between the disputing parties regarding settlement of the dispute.

7. Decisions of the commission shall be by majority vote.

Article 10

1. The special commission shall, in disputes arising under article 7, apply the criteria listed in paragraph 2 of that article. In disputes under articles 4, 5, 6 and 8, the commission shall apply the following criteria, according to the issues involved in the dispute:

(a) Common to the determination of disputes arising under articles 4, 5 and 6 are the requirements:

(i) That scientific findings demonstrate the necessity of conservation measures;

(ii) That the specific measures are based on scientific findings and are practicable; and

(iii) That the measures do not discriminate, in form or in fact, against fishermen of other States;

(b) Applicable to the determination of disputes arising under article 8 is the requirement that scientific findings demonstrate the necessity for conservation measures, or that the conservation programme is adequate, as the case may be.

2. The special commission may decide that pending its award the measures in dispute shall not be applied, provided that, in the case of disputes under article 7, the measures shall only be suspended when it is apparent to the commission on the basis of prima facie evidence that the need for the urgent application of such measures does not exist.

Article 11

The decisions of the special commission shall be binding on the States concerned and the provisions of paragraph 2 of Article 94 of the Charter of the United Nations shall be applicable to those decisions. If the decisions are accompanied by any recommendations, they shall receive the greatest possible consideration.

Article 12

1. If the factual basis of the award of the special commission is altered by substantial changes in the conditions of the stock or stocks of fish or other living marine resources or in methods of fishing, any of the States concerned may request the other States to enter into negotiations with a view to prescribing by agreement the necessary modifications in the measures of conservation.

2. If no agreement is reached within a reasonable period of time, any of the States concerned may again resort to the procedure contemplated by article 9 provided that at least two years have elapsed from the original award.

Article 13

1. The regulation of fisheries conducted by means of equipment embedded in the floor of the sea in areas of the high seas adjacent to the territorial sea of a State may be undertaken by that State where such fisheries have long been maintained and conducted by its nationals, provided that non-nationals are permitted to participate in such activities on an equal footing with nationals except in areas where such fisheries have by long usage been exclusively enjoyed by such nationals. Such regulations will not, however, affect the general status of the areas as high seas.

2. In this article, the expression “fisheries conducted by means of equipment embedded in the floor of the sea” means those fisheries using gear with supporting members embedded in the sea floor, constructed on a site and left there to operate permanently or, if removed, restored each season on the same site.

Article 14

In articles 1, 3, 4, 5, 6 and 8, the term “nationals” means fishing boats or craft of any size having the nationality of the State concerned, according to the law of that State, irrespective of the nationality of the members of their crews.

Article 15

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.

Article 16

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 17

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 15. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 18

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 19

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 6, 7, 9, 10, 11 and 12.

2. Any contracting State making a reservation in accordance with the preceding paragraph may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 20

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any contracting party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

Article 21

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 15:

(a) Of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 15, 16 and 17;

(b) Of the date on which this Convention will come into force, in accordance with article 18;

(c) Of requests for revision in accordance with article 20;

(d) Of reservations to this Convention, in accordance with article 19.

Article 22

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 15.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

Done at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

4. Convention on the Continental Shelf.  
Done at Geneva, on 29 April 1958[[882]](#footnote-882)

The States Parties to this Convention

Have agreed as follows:

Article 1

For the purpose of these articles, the term “continental shelf” is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

Article 2

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

4. The natural resources referred to in these articles consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

Article 3

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the airspace above those waters.

Article 4

Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf.

Article 5

1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication.

2. Subject to the provisions of paragraphs 1 and 6 of this article, the coastal State is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection.

3. The safety zones referred to in paragraph 2 of this article may extend to a distance of 500 metres around the installations and other devices which have been erected, measured from each point of their outer edge. Ships of all nationalities must respect these safety zones.

4. Such installations and devices, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

5. Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed.

6. Neither the installations or devices, nor the safety zones around them, may be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

7. The coastal State is obliged to undertake, in the safety zones, all appropriate measures for the protection of the living resources of the sea from harmful agents.

8. The consent of the coastal State shall be obtained in respect of any research concerning the continental shelf and undertaken there. Nevertheless, the coastal State shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the continental shelf, subject to the proviso that the coastal State shall have the right, if it so desires, to participate or to be represented in the research, and that in any event the results shall be published.

Article 6

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land.

Article 7

The provisions of these articles shall not prejudice the right of the coastal State to exploit the subsoil by means of tunnelling irrespective of the depth of water above the subsoil.

Article 8

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.

Article 9

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 10

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 8. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 11

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 12

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1 to 3 inclusive.

2. Any Contracting State making a reservation in accordance with the preceding paragraph may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 13

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

*Article* *14*

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 8:

(a) Of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 8, 9 and 10;

(b) Of the date on which this Convention will come into force, in accordance with article 11;

(c) Of requests for revision, in accordance with article 13;

(d) Of reservations to this Convention, in accordance with article 12.

Article 15

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 8.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

Done at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

5. Optional Protocol of Signature concerning the  
Compulsory Settlement of Disputes.  
Done at Geneva, on 29 April 1958[[883]](#footnote-883)

The States Parties to this Protocol and to any one or more of the Conventions on the Law of the Sea adopted by the United Nations Conference on the Law of the Sea held at Geneva from 24 February to 27 April 1958,

Expressing their wish to resort, in all matters concerning them in respect of any dispute arising out of the interpretation or application of any article of any Convention on the Law of the Sea of 29 April 1958, to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement is provided in the Convention or has been agreed upon by the parties within a reasonable period,

Have agreed as follows:

Article I

Disputes arising out of the interpretation or application of any Convention on the Law of the Sea shall lie within the compulsory jurisdiction of the International Court of Justice, and may accordingly be brought before the Court by an application made by any party to the dispute being Party to this Protocol.

Article II

This undertaking relates to all the provisions of any Convention on the Law of the Sea except, in the Convention on Fishing and Conservation of the Living Resources of the High Seas, articles 4, 5, 6, 7 and 8, to which articles 9, 10, 11 and 12 of that Convention remain applicable.

Article III

The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After  
the expiry of the said period, either Party to this Protocol may bring the dispute before the Court by an application.

Article IV

1. Within the same period of two months, the Parties to this Protocol may agree to adopt a conciliation procedure before resorting to the International Court of Justice.

2. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.

Article V

This Protocol shall remain open for signature by all States who become Parties to any Convention on the Law of the Sea adopted by the United Nations Conference on the Law of the Sea and is subject to ratification where necessary, according to the constitutional requirements of the signatory States.

Article VI

The Secretary-General of the United Nations shall inform all States who become Parties to any Convention on the Law of the Sea of signatures to this Protocol and of the deposit of instruments of ratification in accordance with article V.

*Article* V*II*

The original of this Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article V.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

Done at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

B. Convention on the Reduction of Statelessness

Convention on the Reduction of Statelessness.  
Done at New York, on 30 August 1961[[884]](#footnote-884)

The Contracting States,

Acting in pursuance of resolution 896 (IX), adopted by the General Assembly of the United Nations on 4 December 1954,

Considering it desirable to reduce statelessness by international agreement,

Have agreed as follows:

Article 1

1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:

(a) at birth, by operation of law, or

(b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this article, no such application may be rejected.

A Contracting State which provides for the grant of its nationality in accordance with subparagraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.

2. A Contracting State may make the grant of its nationality in accordance with subparagraph (b) of paragraph 1 of this article subject to one or more of the following conditions:

(a) that the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so;

(b) that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all;

(c) that the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge;

(d) that the person concerned has always been stateless.

3. Notwithstanding the provisions of paragraphs 1 (b) and 2 of this article, a child born in wedlock in the territory of a Contracting State, whose mother has the nationality of that State, shall acquire at birth that nationality if it otherwise would be stateless.

4. A Contracting State shall grant its nationality to a person who would otherwise be stateless and who is unable to acquire the nationality of the Contracting State in whose territory he was born because he had passed the age for lodging his application or has not fulfilled the required residence conditions, if the nationality of one of his parents at the time of the person’s birth was that of the Contracting State first above mentioned. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. If application for such nationality is required, the application shall be made to the appropriate authority by or on behalf of the applicant in the manner prescribed by the national law. Subject to the provisions of paragraph 5 of this article, such application shall not be refused.

5. The Contracting State may make the grant of its nationality in accordance with the provisions of paragraph 4 of this article subject to one or more of the following conditions:

(a) that the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the Contracting State;

(b) that the person concerned has habitually resided in the territory of the Contracting State for such period immediately preceding the lodging of the application, not exceeding three years, as may be fixed by that State;

(c) that the person concerned has always been stateless.

Article 2

A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State.

Article 3

For the purpose of determining the obligations of Contracting States under this Convention, birth on a ship or in an aircraft shall be deemed to have taken place in the territory of the State whose flag the ship flies or in the territory of the State in which the aircraft is registered, as the case may be.

Article 4

1. A Contracting State shall grant its nationality to a person, not born in the territory of a Contracting State, who would otherwise be stateless, if the nationality of one of his parents at the time of the person’s birth was that of that State. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. Nationality granted in accordance with the provisions of this paragraph shall be granted:

(a) at birth, by operation of law, or

(b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this article, no such application may be rejected.

2. A Contracting State may make the grant of its nationality in accordance with the provisions of paragraph 1 of this article subject to one or more of the following conditions:

(a) that the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the Contracting State;

(b) that the person concerned has habitually resided in the territory of the Contracting State for such period immediately preceding the lodging of the application, not exceeding three years, as may be fixed by that State;

(c) that the person concerned has not been convicted of an offence against national security;

(d) that the person concerned has always been stateless.

Article 5

1. If the law of a Contracting State entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon possession or acquisition of another nationality.

2. If, under the law of a Contracting State, a child born out of wedlock loses the nationality of that State in consequence of a recognition of affiliation, he shall be given an opportunity to recover that nationality by written application to the appropriate authority, and the conditions governing such application shall not be more rigorous than those laid down in paragraph 2 of article 1 of this Convention.

Article 6

If the law of a Contracting State provides for loss of its nationality by a person’s spouse or children as a consequence of that person losing or being deprived of that nationality, such loss shall be conditional upon their possession or acquisition of another nationality.

Article 7

1. (a) If the law of a Contracting State permits renunciation of nationality, such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality.

(b) The provisions of subparagraph (a) of this paragraph shall not apply where their application would be inconsistent with the principles stated in articles 13 and 14 of the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations.

2. A national of a Contracting State who seeks naturalization in a foreign country shall not lose his nationality unless he acquires or has been accorded assurance of acquiring the nationality of that foreign country.

3. Subject to the provisions of paragraphs 4 and 5 of this article, a national of a Contracting State shall not lose his nationality, so as to become stateless, on the ground of departure, residence abroad, failure to register or on any similar ground.

4. A naturalized person may lose his nationality on account of residence abroad for a period, not less than seven consecutive years, specified by the law of the Contracting State concerned if he fails to declare to the appropriate authority his intention to retain his nationality.

5. In the case of a national of a Contracting State, born outside its territory, the law of that State may make the retention of its nationality after the expiry of one year from his attaining his majority conditional upon residence at that time in the territory of the State or registration with the appropriate authority.

6. Except in the circumstances mentioned in this article, a person shall not lose the nationality of a Contracting State, if such loss would render him stateless, notwithstanding that such loss is not expressly prohibited by any other provision of this Convention.

Article 8

1. A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.

2. Notwithstanding the provisions of paragraph I of this article, a person may be deprived of the nationality of a Contracting State:

(a) in the circumstances in which, under paragraphs 4 and 5 of article 7, it is permissible that a person should lose his nationality;

(b) where the nationality has been obtained by misrepresentation or fraud.

3. Notwithstanding the provisions of paragraph 1 of this article, a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time:

(a) that, inconsistently with his duty of loyalty to the Contracting State, the person

(i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or

(ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State;

(b) that the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.

4. A Contracting State shall not exercise a power of deprivation permitted by paragraphs 2 or 3 of this article except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body.

Article 9

A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.

Article 10

1. Every treaty between Contracting States providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer. A Contracting State shall use its best endeavours to secure that any such treaty made by it with a State which is not a party to this Convention includes such provisions.

2. In the absence of such provisions a Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition.

Article 11

The Contracting States shall promote the establishment within the framework of the United Nations, as soon as may be after the deposit of the sixth instrument of ratification or accession, of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority.

Article 12

1. In relation to a Contracting State which does not, in accordance with the provisions of paragraph 1 of article 1 or of article 4 of this Convention, grant its nationality at birth by operation of law, the provisions of paragraph 1 of article 1 or of article 4, as the case may be, shall apply to persons born before as well as to persons born after the entry into force of this Convention.

2. The provisions of paragraph 4 of article 1 of this Convention shall apply to persons born before as well as to persons born after its entry into force.

3. The provisions of article 2 of this Convention shall apply only to foundlings found in the territory of a Contracting State after the entry into force of the Convention for that State.

Article 13

This Convention shall not be construed as affecting any provisions more conducive to the reduction of statelessness which may be contained in the law of any Contracting State now or hereafter in force, or may be contained in any other convention, treaty or agreement now or hereafter in force between two or more Contracting States.

Article 14

Any dispute between Contracting States concerning the interpretation or application of this Convention which cannot be settled by other means shall be submitted to the International Court of Justice at the request of any one of the parties to the dispute.

Article 15

1. This Convention shall apply in all non-self-governing, trust, colonial and other non-metropolitan territories for the international relations of which any Contracting State is responsible; the Contracting State concerned shall, subject to the provisions of paragraph 2 of this article, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which the Convention shall apply ipso facto as a result of such signature, ratification or accession.

2. In any case in which, for the purpose of nationality, a non-metropolitan territory is not treated as one with the metropolitan territory, or in any case in which the previous consent of a non-metropolitan territory is required by the constitutional laws or practices of the Contracting State or of the non-metropolitan territory for the application of the Convention to that territory, that Contracting State shall endeavour to secure the needed consent of the non-metropolitan territory within the period of twelve months from the date of signature of the Convention by that Contracting State, and when such consent has been obtained the Contracting State shall notify the Secretary-General of the United Nations. This Convention shall apply to the territory or territories named in such notification from the date of its receipt by the Secretary-General.

3. After the expiry of the twelve-month period mentioned in paragraph 2 of this article, the Contracting States concerned shall inform the Secretary-General of the results of the consultations with those non-metropolitan territories for whose international relations they are responsible and whose consent to the application of this Convention may have been withheld.

Article 16

1. This Convention shall be open for signature at the Headquarters of the United Nations from 30 August 1961 to 31 May 1962.

2. This Convention shall be open for signature on behalf of:

(a) any State Member of the United Nations;

(b) any other State invited to attend the United Nations Conference on the Elimination or Reduction of Future Statelessness;

(c) any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations.

3. This Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. This Convention shall be open for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 17

1. At the time of signature, ratification or accession any State may make a reservation in respect of articles 11, 14 or 15.

2. No other reservations to this Convention shall be admissible.

Article 18

1. This Convention shall enter into force two years after the date of the deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the sixth instrument of ratification or accession, it shall enter into force on the ninetieth day after the deposit by such State of its instrument of ratification or accession or on the date on which this Convention enters into force in accordance with the provisions of paragraph 1 of this article, whichever is the later.

Article 19

1. Any Contracting State may denounce this Convention at any time by a written notification addressed to the Secretary-General of the United Nations. Such denunciation shall take effect for the Contracting State concerned one year after the date of its receipt by the Secretary-General.

2. In cases where, in accordance with the provisions of article 15, this Convention has become applicable to a non-metropolitan territory of a Contracting State, that State may at any time thereafter, with the consent of the territory concerned, give notice to the Secretary-General of the United Nations denouncing this Convention separately in respect of that territory. The denunciation shall take effect one year after the date of the receipt of such notice by the Secretary-General, who shall notify all other Contracting States of such notice and the date of receipt thereof.

Article 20

1. The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States referred to in article 16 of the following particulars:

(a) signatures, ratifications and accessions under article 16;

(b) reservations under article 17;

(c) the date upon which this Convention enters into force in pursuance of article 18;

(d) denunciations under article 19.

2. The Secretary-General of the United Nations shall, after the deposit of the sixth instrument of ratification or accession at the latest, bring to the attention of the General Assembly the question of the establishment, in accordance with article 11, of such a body as therein mentioned.

Article 21

This Convention shall be registered by the Secretary-General of the United Nations on the date of its entry into force.

In witness whereof the undersigned Plenipotentiaries have signed this Convention.

Done at New York, this thirtieth day of August, one thousand nine hundred and sixty-one, in a single copy, of which the Chinese, English, French, Russian and Spanish texts are equally authentic and which shall be deposited in the archives of the United Nations, and certified copies of which shall be delivered by the Secretary-General  
of the United Nations to all Members of the United Nations and to the non-member States referred to in article 16 of this Convention.

C. Vienna Convention on Diplomatic Relations and  
Optional Protocols

1. Vienna Convention on Diplomatic Relations.  
Done at Vienna, on 18 April 1961[[885]](#footnote-885)

The States Parties to the present Convention,

Recalling that peoples of all nations from ancient times have recognized the status of diplomatic agents,

Having in mind the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,

Believing that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States,

Affirming that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention,

Have agreed as follows:

Article 1

For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

(a) The “head of the mission” is the person charged by the sending State with the duty of acting in that capacity;

(b) The “members of the mission” are the head of the mission and the members of the staff of the mission;

(c) The “members of the staff of the mission” are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;

(d) The “members of the diplomatic staff” are the members of the staff of the mission having diplomatic rank;

(e) A “diplomatic agent” is the head of the mission or a member of the diplomatic staff of the mission;

(f) The “members of the administrative and technical staff” are the members of the staff of the mission employed in the administrative and technical service of the mission;

(g) The “members of the service staff” are the members of the staff of the mission in the domestic service of the mission;

(h) A “private servant” is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State;

(i) The “premises of the mission” are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.

Article 2

The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.

Article 3

1. The functions of a diplomatic mission consist, inter alia, in:

(a) Representing the sending State in the receiving State;

(b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;

(c) Negotiating with the Government of the receiving State;

(d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;

(e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.

2. Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.

Article 4

1. The sending State must make certain that the agrément of the receiving State has been given for the person it proposes to accredit as head of the mission to that State.

2. The receiving State is not obliged to give reasons to the sending State for a refusal of agrément.

Article 5

1. The sending State may, after it has given due notification to the receiving States concerned, accredit a head of mission or assign any member of the diplomatic staff, as the case may be, to more than one State, unless there is express objection by any of the receiving States.

2. If the sending State accredits a head of mission to one or more other States it may establish a diplomatic mission headed by a chargé d’affaires ad interim in each State where the head of mission has not his permanent seat.

3. A head of mission or any member of the diplomatic staff of the mission may act as representative of the sending State to any international organization.

Article 6

Two or more States may accredit the same person as head of mission to another State, unless objection is offered by the receiving State.

Article 7

Subject to the provisions of articles 5, 8, 9 and 11, the sending State may freely appoint the members of the staff of the mission. In the case of military, naval or air attachés, the receiving State may require their names to be submitted beforehand, for its approval.

Article 8

1. Members of the diplomatic staff of the mission should in principle be of the nationality of the sending State.

2. Members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the receiving State, except with the consent of that State which may be withdrawn at any time.

3. The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

Article 9

1. The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is persona non grata or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared non grata or not acceptable before arriving in the territory of the receiving State.

2. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this article, the receiving State may refuse to recognize the person concerned as a member of the mission.

Article 10

1. The Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, shall be notified of:

(a) The appointment of members of the mission, their arrival and their final departure or the termination of their functions with the mission;

(b) The arrival and final departure of a person belonging to the family of a member of the mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the mission;

(c) The arrival and final departure of private servants in the employ of persons referred to in subparagraph (a) of this paragraph and, where appropriate, the fact that they are leaving the employ of such persons;

(d) The engagement and discharge of persons resident in the receiving State as members of the mission or private servants entitled to privileges and immunities.

2. Where possible, prior notification of arrival and final departure shall also be given.

Article 11

1. In the absence of specific agreement as to the size of the mission, the receiving State may require that the size of a mission be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the receiving State and to the needs of the particular mission.

2. The receiving State may equally, within similar bounds and on a non-discriminatory basis, refuse to accept officials of a particular category.

Article 12

The sending State may not, without the prior express consent of the receiving State, establish offices forming part of the mission in localities other than those in which the mission itself is established.

Article 13

1. The head of the mission is considered as having taken up his functions in the receiving State either when he has presented his credentials or when he has notified his arrival and a true copy of his credentials has been presented to the Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, in accordance with the practice prevailing in the receiving State which shall be applied in a uniform manner.

2. The order of presentation of credentials or of a true copy thereof will be determined by the date and time of the arrival of the head of the mission.

Article 14

1. Heads of mission are divided into three classes, namely:

(a) That of ambassadors or nuncios accredited to Heads of State, and other heads of mission of equivalent rank;

(b) That of envoys, ministers and internuncios accredited to Heads of State;

(c) That of chargés d’affaires accredited to Ministers for Foreign Affairs.

2. Except as concerns precedence and etiquette, there shall be no differentiation between heads of mission by reason of their class.

Article 15

The class to which the heads of their missions are to be assigned shall be agreed between States.

Article 16

1. Heads of mission shall take precedence in their respective classes in the order of the date and time of taking up their functions in accordance with article 13.

2. Alterations in the credentials of a head of mission not involving any change of class shall not affect his precedence.

3. This article is without prejudice to any practice accepted by the receiving State regarding the precedence of the representative of the Holy See.

Article 17

The precedence of the members of the diplomatic staff of the mission shall be notified by the head of the mission to the Ministry for Foreign Affairs or such other ministry as may be agreed.

Article 18

The procedure to be observed in each State for the reception of heads of mission shall be uniform in respect of each class.

Article 19

1. If the post of head of the mission is vacant, or if the head of the mission is unable to perform his functions a chargé d’affaires ad interim shall act provisionally as head of the mission. The name of the chargé d’affaires ad interim shall be notified, either by the head of the mission or, in case he is unable to do so, by the Ministry for Foreign Affairs of the sending State to the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

2. In cases where no member of the diplomatic staff of the mission is present in the receiving State, a member of the administrative and technical staff may, with the consent of the receiving State, be designated by the sending State to be in charge of the current administrative affairs of the mission.

Article 20

The mission and its head shall have the right to use the flag and emblem of the sending State on the premises of the mission, including the residence of the head of the mission, and on his means of transport.

Article 21

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.

2. It shall also, where necessary, assist missions in obtaining suitable accommodation for their members.

Article 22

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

Article 23

1. The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission.

Article 24

The archives and documents of the mission shall be inviolable at any time and wherever they may be.

Article 25

The receiving State shall accord full facilities for the performance of the functions of the mission.

Article 26

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the mission freedom of movement and travel in its territory.

Article 27

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

3. The diplomatic bag shall not be opened or detained.

4. The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.

5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the mission may designate diplomatic couriers ad hoc. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.

7. A diplomatic bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag but he shall not be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

Article 28

The fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

Article 29

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

Article 30

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.

2. His papers, correspondence and, except as provided in paragraph 3 of article 31, his property, shall likewise enjoy inviolability.

Article 31

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.

3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

Article 32

1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under article 37 may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

Article 33

1. Subject to the provisions of paragraph 3 of this article, a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this article shall also apply to private servants who are in the sole employ of a diplomatic agent, on condition:

(a) That they are not nationals of or permanently resident in the receiving State; and

(b) That they are covered by the social security provisions which may be in force in the sending State or a third State.

3. A diplomatic agent who employs persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.

5. The provisions of this article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

Article 34

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(a) Indirect taxes of a kind which are normally incorporated in the price of goods or services;

(b) Dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(c) Estate, succession or inheritance duties levied by the receiving State, subject to the provisions of paragraph 4 of article 39;

(d) Dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;

(e) Charges levied for specific services rendered;

(f) Registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of article 23.

Article 35

The receiving State shall exempt diplomatic agents from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 36

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

(a) Articles for the official use of the mission;

(b) Articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.

2. The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative.

Article 37

1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in articles 29 to 36.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in article 36, paragraph 1, in respect of articles imported at the time of first installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in article 33.

4. Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

Article 38

1. Except insofar as additional privileges and immunities may be granted by the receiving State, a diplomatic agent who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

Article 39

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

3. In case of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

4. In the event of the death of a member of the mission not a national of or permanently resident in the receiving State or a member of his family forming part of his household, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the receiving State was due solely to the presence there of the deceased as a member of the mission or as a member of the family of a member of the mission.

Article 40

1. If a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the passage of members of the administrative and technical or service staff of a mission, and of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers, who have been granted a passport visa if such visa was necessary, and diplomatic bags in transit, the same inviolability and protection as the receiving State is bound to accord.

4. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and diplomatic bags, whose presence in the territory of the third State is due to force majeure.

Article 41

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. All official business with the receiving State entrusted to the mission by the sending State shall be conducted with or through the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

3. The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State.

Article 42

A diplomatic agent shall not in the receiving State practise for personal profit any professional or commercial activity.

Article 43

The function of a diplomatic agent comes to an end, inter alia:

(a) On notification by the sending State to the receiving State that the function of the diplomatic agent has come to an end;

(b) On notification by the receiving State to the sending State that, in accordance with paragraph 2 of article 9, it refuses to recognize the diplomatic agent as a member of the mission.

Article 44

The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property.

Article 45

If diplomatic relations are broken off between two States, or if a mission is permanently or temporarily recalled:

(a) The receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives;

(b) The sending State may entrust the custody of the premises of the mission, together with its property and archives, to a third State acceptable to the receiving State;

(c) The sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.

Article 46

A sending State may with the prior consent of a receiving State, and at the request of a third State not represented in the receiving State, undertake the temporary protection of the interests of the third State and of its nationals.

Article 47

1. In the application of the provisions of the present Convention, the receiving State shall not discriminate as between States.

2. However, discrimination shall not be regarded as taking place:

(a) Where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its mission in the sending State;

(b) Where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention.

Article 48

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows: until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at the United Nations Headquarters in New York.

Article 49

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 50

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in article 48. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 51

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 52

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in article 48:

(a) Of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with articles 48, 49 and 50;

(b) Of the date on which the present Convention will enter into force, in accordance with article 51.

Article 53

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in article 48.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Done at Vienna this eighteenth day of April one thousand nine hundred and sixty-one.

2. Optional Protocol concerning Acquisition of Nationality. Done at Vienna, on 18 April 1961[[886]](#footnote-886)

The States Parties to the present Protocol and to the Vienna Convention on Diplomatic Relations, hereinafter referred to as “the Convention,” adopted by the United Nations Conference held at Vienna from 2 March to 14 April 1961,

Expressing their wish to establish rules between them concerning acquisition of nationality by the members of their diplomatic missions and of the families forming part of the household of those members,

Have agreed as follows:

Article I

For the purpose of the present Protocol, the expression “members of the mission” shall have the meaning assigned to it in article 1, subparagraph (b), of the Convention, namely “the head of the mission and the members of the staff of the mission.”

Article II

Members of the mission not being nationals of the receiving State, and members of their families forming part of their household, shall not, solely by the operation of the law of the receiving State, acquire the nationality of that State.

Article III

The present Protocol shall be open for signature by all States which may become Parties to the Convention, as follows: until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at the United Nations Headquarters in New York.

Article IV

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article V

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article VI

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification or accession to the Protocol with the Secretary-General of the United Nations, whichever date is the later.

2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this article, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article VII

The Secretary-General of the United Nations shall inform all States which may become Parties to the Convention:

(a) Of signatures to the present Protocol and of the deposit of instruments of ratification or accession, in accordance with articles III, IV and V;

(b) Of the date on which the present Protocol will enter into force, in accordance with article VI.

Article VIII

The original of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article III.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

Done at Vienna this eighteenth day of April one thousand nine hundred and sixty-one.

3. Optional Protocol concerning the Compulsory  
Settlement of Disputes. Done at Vienna,  
on 18 April 1961[[887]](#footnote-887)

The States Parties to the present Protocol and to the Vienna Convention on Diplomatic Relations, hereinafter referred to as “the Convention,” adopted by the United Nations Conference held at Vienna from 2 March to 14 April 1961,

Expressing their wish to resort in all matters concerning them in respect of any dispute arising out of the interpretation or application of the Convention to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement has been agreed upon by the parties within a reasonable period,

Have agreed as follows:

Article I

Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.

Article II

The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application.

Article III

1. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice.

2. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.

Article IV

States Parties to the Convention, to the Optional Protocol concerning Acquisition of Nationality, and to the present Protocol may at any time declare that they will extend the provisions of the present Protocol to disputes arising out of the interpretation or application of the Optional Protocol concerning Acquisition of Nationality. Such declarations shall be notified to the Secretary-General of the United Nations.

Article V

The present Protocol shall be open for signature by all States which may become Parties to the Convention, as follows: until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at the United Nations Headquarters in New York.

Article VI

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article VII

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article VIII

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification or accession to the Protocol with the Secretary-General of the United Nations, whichever day is the later.

2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this article, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article IX

The Secretary-General of the United Nations shall inform all States which may become Parties to the Convention:

(a) Of signatures to the present Protocol and of the deposit of instruments of ratification or accession, in accordance with articles V, VI and VII;

(b) Of declarations made in accordance with article IV of the present Protocol;

(c) Of the date on which the present Protocol will enter into force, in accordance with article VIII.

Article X

The original of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article V.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

Done at Vienna this eighteenth day of April one thousand nine hundred and sixty-one.

D. Vienna Convention on Consular Relations and  
 Optional Protocols

1. Vienna Convention on Consular Relations.  
 Done at Vienna, on 24 April 1963[[888]](#footnote-888)

The States Parties to the present Convention,

Recalling that consular relations have been established between peoples since ancient times,

Having in mind the Purposes and Principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,

Considering that the United Nations Conference on Diplomatic Intercourse and Immunities adopted the Vienna Convention on Diplomatic Relations which was opened for signature on 18 April 1961,

Believing that an international convention on consular relations, privileges and immunities would also contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of functions by consular posts on behalf of their respective States,

Affirming that the rules of customary international law continue to govern matters not expressly regulated by the provisions of the present Convention,

Have agreed as follows:

Article 1. Definitions

1. For the purposes of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

(a) “consular post” means any consulate-general, consulate, vice-consulate or consular agency;

(b) “consular district” means the area assigned to a consular post for the exercise of consular functions;

(c) “head of consular post” means the person charged with the duty of acting in that capacity;

(d) “consular officer” means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions;

(e) “consular employee” means any person employed in the administrative or technical service of a consular post;

(f) “member of the service staff” means any person employed in the domestic service of a consular post;

(g) “members of the consular post” means consular officers, consular employees and members of the service staff;

(h) “members of the consular staff” means consular officers, other than the head of a consular post, consular employees and members of the service staff;

(i) “member of the private staff” means a person who is employed exclusively in the private service of a member of the consular post;

(j) “consular premises” means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post;

(k) “consular archives” includes all the papers, documents, correspondence, books, films, tapes and registers of the consular post, together with the ciphers and codes, the card-indexes and any article of furniture intended for their protection or safe keeping.

2. Consular officers are of two categories, namely career consular officers and honorary consular officers. The provisions of Chapter II of the present Convention apply to consular posts headed by career consular officers, the provisions of Chapter III govern consular posts headed by honorary consular officers.

3. The particular status of members of the consular posts who are nationals or permanent residents of the receiving State is governed by article 71 of the present Convention.

Chapter I. Consular Relations in General

Section I. Establishment and conduct of consular relations

Article 2. Establishment of consular relations

1. The establishment of consular relations between States takes place by mutual consent.

2. The consent given to the establishment of diplomatic relations between two States implies, unless otherwise stated, consent to the establishment of consular relations.

3. The severance of diplomatic relations shall not ipso facto involve the severance of consular relations.

Article 3. Exercise of consular functions

Consular functions are exercised by consular posts. They are also exercised by diplomatic missions in accordance with the provisions of the present Convention.

Article 4. Establishment of a consular post

1. A consular post may be established in the territory of the receiving State only with that State’s consent.

2. The seat of the consular post, its classification and the consular district shall be established by the sending State and shall be subject to the approval of the receiving State.

3. Subsequent changes in the seat of the consular post, its classification or the consular district may be made by the sending State only with the consent of the receiving State.

4. The consent of the receiving State shall also be required if a consulate-general or a consulate desires to open a vice-consulate or a consular agency in a locality other than that in which it is itself established.

5. The prior express consent of the receiving State shall also be required for the opening of an office forming part of an existing consular post elsewhere than at the seat thereof.

Article 5. Consular functions

Consular functions consist in:

(a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;

(b) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;

(c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;

(d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;

(e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;

(f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;

(g) safeguarding the interests of nationals, both individuals and bodies corporate, of the sending States in cases of succession mortis causa in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;

(h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;

(i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;

(j) transmitting judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;

(k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;

(1) extending assistance to vessels and aircraft mentioned in subparagraph (k) of this article, and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship’s papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen insofar as this may be authorized by the laws and regulations of the sending State;

(m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

Article 6. Exercise of consular functions  
outside the consular district

A consular officer may, in special circumstances, with the consent of the receiving State, exercise his functions outside his consular district.

Article 7. Exercise of consular functions in a third State

The sending State may, after notifying the States concerned, entrust a consular post established in a particular State with the exercise of consular functions in another State, unless there is express objection by one of the States concerned.

Article 8. Exercise of consular functions   
on behalf of a third State

Upon appropriate notification to the receiving State, a consular post of the sending State may, unless the receiving State objects, exercise consular functions in the receiving State on behalf of a third State.

Article 9. Classes of heads of consular posts

1. Heads of consular posts are divided into four classes, namely

(a) consuls-general;

(b) consuls;

(c) vice-consuls;

(d) consular agents.

2. Paragraph 1 of this article in no way restricts the right of any of the Contracting Parties to fix the designation of consular officers other than the heads of consular posts.

Article 10. Appointment and admission of heads   
of consular posts

1. Heads of consular posts are appointed by the sending State and are admitted to the exercise of their functions by the receiving State.

2. Subject to the provisions of the present Convention, the formalities for the appointment and for the admission of the head of a consular post are determined by the laws, regulations and usages of the sending State and of the receiving State respectively.

Article 11. The consular commission or notification   
of appointment

1. The head of a consular post shall be provided by the sending State with a document, in the form of a commission or similar instrument, made out for each appointment, certifying his capacity and showing, as a general rule, his full name, his category and class, the consular district and the seat of the consular post.

2. The sending State shall transmit the commission or similar instrument through the diplomatic or other appropriate channel to the Government of the State in whose territory the head of a consular post is to exercise his functions.

3. If the receiving State agrees, the sending State may, instead of a commission or similar instrument, send to the receiving State a notification containing the particulars required by paragraph 1 of this article.

Article 12. *The* exequatur

1. The head of a consular post is admitted to the exercise of his functions by an authorization from the receiving State termed an exequatur, whatever the form of this authorization.

2. A State which refused to grant an exequatur is not obliged to give to the sending State reasons for such refusal.

3. Subject to the provisions of articles 13 and 15, the head of a consular post shall not enter upon his duties until he has received an exequatur.

Article 13. Provisional admission of heads of consular posts

Pending delivery of the exequatur, the head of a consular post may be admitted on a provisional basis to the exercise of his functions. In that case, the provisions of the present Convention shall apply.

Article 14. Notification to the authorities   
of the consular district

As soon as the head of a consular post is admitted even provisionally to the exercise of his functions, the receiving State shall immediately notify the competent authorities of the consular district. It shall also ensure that the necessary measures are taken to enable the head of a consular post to carry out the duties of his office and to have the benefit of the provisions of the present Convention.

Article 15. Temporary exercise of the functions of the  
head of a consular post

1. If the head of a consular post is unable to carry out his functions or the position of head of consular post is vacant, an acting head of post may act provisionally as head of the consular post.

2. The full name of the acting head of post shall be notified either by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, or, if he is unable to do so, by any competent authority of the sending State, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry. As a general rule, this notification shall be given in advance. The receiving State may make the admission as acting head of post of a person who is neither a diplomatic agent nor a consular officer of the sending State in the receiving State conditional on its consent.

3. The competent authorities of the receiving State shall afford assistance and protection to the acting head of post. While he is in charge of the post, the provisions of the present Convention shall apply to him on the same basis as to the head of the consular post concerned. The receiving State shall not, however, be obliged to grant to an acting head of post any facility, privilege or immunity which the head of the consular post enjoys only subject to conditions not fulfilled by the acting head of post.

4. When, in the circumstances referred to in paragraph 1 of this article, a member of the diplomatic staff of the diplomatic mission of the sending State in the receiving State is designated by the sending State as an acting head of post, he shall, if the receiving State does not object thereto, continue to enjoy diplomatic privileges and immunities.

Article 16. Precedence as between heads of consular posts

1. Heads of consular posts shall rank in each class according to the date of the grant of the exequatur.

2. If, however, the head of a consular post before obtaining the exequatur is admitted to the exercise of his functions provisionally, his precedence shall be determined according to the date of the provisional admission; this precedence shall be maintained after the granting of the exequatur.

3. The order of precedence as between two or more heads of consular posts who obtained the exequatur or provisional admission on the same date shall be determined according to the dates on which their commissions or similar instruments or the notifications referred to in paragraph 3 of article 11 were presented to the receiving State.

4. Acting heads of posts shall rank after all heads of consular posts and, as between themselves, they shall rank according to the dates on which they assumed their functions as acting heads of posts as indicated in the notifications given under paragraph 2 of article 15.

5. Honorary consular officers who are heads of consular posts shall rank in each class after career heads of consular posts, in the order and according to the rules laid down in the foregoing paragraphs.

6. Heads of consular posts shall have precedence over consular officers not having that status.

Article 17. Performance of diplomatic acts by consular officers

1. In a State where the sending State has no diplomatic mission and is not represented by a diplomatic mission of a third State, a consular officer may, with the consent of the receiving State, and without affecting his consular status, be authorized to perform diplomatic acts. The performance of such acts by a consular officer shall not confer upon him any right to claim diplomatic privileges and immunities.

2. A consular officer may, after notification addressed to the receiving State, act as representative of the sending State to any intergovernmental organization. When so acting, he shall be entitled to enjoy any privileges and immunities accorded to such a representative by customary international law or by international agreements; however, in respect of the performance by him of any consular function, he shall not be entitled to any greater immunity from jurisdiction than that to which a consular officer is entitled under the present Convention.

Article 18. Appointment of the same person by two or more States  
as a consular officer

Two or more States may, with the consent of the receiving State, appoint the same person as a consular officer in that State.

Article 19. Appointment of members of consular staff

1. Subject to the provisions of articles 20, 22 and 23, the sending State may freely appoint the members of the consular staff.

2. The full name, category and class of all consular officers, other than the head of a consular post, shall be notified by the sending State to the receiving State in sufficient time for the receiving State, if it so wishes, to exercise its rights under paragraph 3 of article 23.

3. The sending State may, if required by its laws and regulations, request the receiving State to grant an exequatur to a consular officer other than the head of a consular post.

4. The receiving State may, if required by its laws and regulations, grant an exequatur to a consular officer other than the head of a consular post.

Article 20. Size of the consular staff

In the absence of an express agreement as to the size of the consular staff, the receiving State may require that the size of the staff be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the consular district and to the needs of the particular post.

Article 21. Precedence as between consular officers   
of a consular post

The order of precedence as between the consular officers of a consular post and any change thereof shall be notified by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.

Article 22. Nationality of consular officers

1. Consular officers should, in principle, have the nationality of the sending State.

2. Consular officers may not be appointed from among persons having the nationality of the receiving State except with the express consent of that State which may be withdrawn at any time.

3. The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

Article 23. *Persons declared “*non grata*”*

1. The receiving State may at any time notify the sending State that a consular officer is persona non grata or that any other member of the consular staff is not acceptable. In that event, the sending State shall, as the case may be, either recall the person concerned or terminate his functions with the consular post.

2. If the sending State refuses or fails within a reasonable time to carry out its obligations under paragraph 1 of this article, the receiving State may, as the case may be, either withdraw the exequatur from the person concerned or cease to consider him as a member of the consular staff.

3. A person appointed as a member of a consular post may be declared unacceptable before arriving in the territory of the receiving State or, if already in the receiving State, before entering on his duties with the consular post. In any such case, the sending State shall withdraw his appointment.

4. In the cases mentioned in paragraphs 1 and 3 of this article, the receiving State is not obliged to give to the sending State reasons for its decision.

Article 24. Notification to the receiving State of appointments,  
arrivals and departures

1. The Ministry for Foreign Affairs of the receiving State or the authority designated by that Ministry shall be notified of:

(a) the appointment of members of a consular post, their arrival after appointment to the consular post, their final departure or the termination of their functions and any other changes affecting their status that may occur in the course of their service with the consular post;

(b) the arrival and final departure of a person belonging to the family of a member of a consular post forming part of his household and, where appropriate, the fact that a person becomes or ceases to be such a member of the family;

(c) the arrival and final departure of members of the private staff and, where appropriate, the termination of their service as such;

(d) the engagement and discharge of persons resident in the receiving State as members of a consular post or as members of the private staff entitled to privileges and immunities.

2. When possible, prior notification of arrival and final departure shall also be given.

Section II. End of consular functions

Article 25. Termination of the functions of a member   
of a consular post

The functions of a member of a consular post shall come to an end, inter alia:

(a) on notification by the sending State to the receiving State that his functions have come to an end;

(b) on withdrawal of the exequatur;

(c) on notification by the receiving State to the sending State that the receiving State has ceased to consider him as a member of the consular staff.

Article 26. Departure from the territory of the receiving State

The receiving State shall, even in case of armed conflict, grant to members of the consular post and members of the private staff, other than nationals of the receiving State, and to members of their families forming part of their households irrespective of nationality, the necessary time and facilities to enable them to prepare their departure and to leave at the earliest possible moment after the termination of the functions of the members concerned. In particular, it shall, in case of need, place at their disposal the necessary means of transport for themselves and their property other than property acquired in the receiving State the export of which is prohibited at the time of departure.

Article 27. Protection of consular premises and archives and of the  
interests of the sending State in exceptional circumstances

1. In the event of the severance of consular relations between two States:

(a) the receiving State shall, even in case of armed conflict, respect and protect the consular premises, together with the property of the consular post and the consular archives;

(b) the sending State may entrust the custody of the consular premises, together with the property contained therein and the consular archives, to a third State acceptable to the receiving State;

(c) the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.

2. In the event of the temporary or permanent closure of a consular post, the provisions of subparagraph (a) of paragraph 1 of this article shall apply. In addition,

(a) if the sending State, although not represented in the receiving State by a diplomatic mission, has another consular post in the territory of that State, that consular post may be entrusted with the custody of the premises of the consular post which has been closed, together with the property contained therein and the consular archives, and, with the consent of the receiving State, with the exercise of consular functions in the district of that consular post; or

(b) if the sending State has no diplomatic mission and no other consular post in the receiving State, the provisions of subparagraphs (b) and (c) of paragraph 1 of this article shall apply.

Chapter II. Facilities, Privileges and Immunities  
Relating to Consular Posts, Career Consular  
Officers and Other Members of a Consular Post

Section I. Facilities, privileges and immunities relating  
to a consular post

Article 28. Facilities for the work of the consular post

The receiving State shall accord full facilities for the performance of the functions of the consular post.

Article 29. Use of national flag and coat-of-arms

1. The sending State shall have the right to the use of its national flag and coat-of-arms in the receiving State in accordance with the provisions of this article.

2. The national flag of the sending State may be flown and its coat-of-arms displayed on the building occupied by the consular post and at the entrance door thereof, on the residence of the head of the consular post and on his means of transport when used on official business.

3. In the exercise of the right accorded by this article regard shall be had to the laws, regulations and usages of the receiving State.

Article 30. Accommodation

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws and regulations, by the sending State of premises necessary for its consular post or assist the latter in obtaining accommodation in some other way.

2. It shall also, where necessary, assist the consular post in obtaining suitable accommodation for its members.

Article 31. Inviolability of the consular premises

1. Consular premises shall be inviolable to the extent provided in this article.

2. The authorities of the receiving State shall not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.

3. Subject to the provisions of paragraph 2 of this article, the receiving State is under a special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

4. The consular premises, their furnishings, the property of the consular post and its means of transport shall be immune from any form of requisition for purposes of national defence or public utility. If expropriation is necessary for such purposes, all possible steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending State.

Article 32. Exemption from taxation of consular premises

1. Consular premises and the residence of the career head of consular post of which the sending State or any person acting on its behalf is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to paragraph 1 of this article shall not apply to such dues and taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State or with the person acting on its behalf.

Article 33. Inviolability of the consular archives and documents

The consular archives and documents shall be inviolable at all times and wherever they may be.

*Articl*e *34.*Freedom of movement

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure freedom of movement and travel in its territory to all members of the consular post.

Article 35. Freedom of communication

1. The receiving State shall permit and protect freedom of communication on the part of the consular post for all official purposes. In communicating with the Government, the diplomatic missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including diplomatic or consular couriers, diplomatic or consular bags and messages in code or cipher. However, the consular post may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the consular post shall be inviolable. Official correspondence means all correspondence relating to the consular post and its functions.

3. The consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this article, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.

4. The packages constituting the consular bag shall bear visible external marks of their character and may contain only official correspondence and documents or articles intended exclusively for official use.

5. The consular courier shall be provided with an official document indicating his status and the number of packages constituting the consular bag. Except with the consent of the receiving State he shall be neither a national of the receiving State, nor, unless he is a national of the sending State, a permanent resident of the receiving State. In the performance of his functions he shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State, its diplomatic missions and its consular posts may designate consular couriers ad hoc. In such cases the provisions of paragraph 5 of this article shall also apply except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge.

7. A consular bag may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a consular courier. By arrangement with the appropriate local authorities, the consular post may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

Article 36. Communication and contact with nationals  
of the sending State

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.

Article 37. Information in cases of deaths, guardianship   
or trusteeship, wrecks and air accidents

If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty:

(a) in the case of the death of a national of the sending State, to inform without delay the consular post in whose district the death occurred;

(b) to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments;

(c) if a vessel, having the nationality of the sending State, is wrecked or runs aground in the territorial sea or internal waters of the receiving State, or if an aircraft registered in the sending State suffers an accident on the territory of the receiving State, to inform without delay the consular post nearest to the scene of the occurrence.

Article 38. Communication with the authorities   
of the receiving State

In the exercise of their functions, consular officers may address:

(a) the competent local authorities of their consular district;

(b) the competent central authorities of the receiving State if and to the extent that this is allowed by the laws, regulations and usages of the receiving State or by the relevant international agreements.

Article 39. Consular fees and charges

1. The consular post may levy in the territory of the receiving State the fees and charges provided by the laws and regulations of the sending State for consular acts.

2. The sums collected in the form of the fees and charges referred to in paragraph 1 of this article, and the receipts for such fees and charges, shall be exempt from all dues and taxes in the receiving State.

Section II. Facilities, privileges and immunities  
relating to career consular officers and  
other members of a consular post

Article 40. Protection of consular officers

The receiving State shall treat consular officers with due respect and shall take all appropriate steps to prevent any attack on their person, freedom or dignity.

Article 41. Personal inviolability of consular officers

1. Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.

2. Except in the case specified in paragraph 1 of this article, consular officers shall not be committed to prison or be liable to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect.

3. If criminal proceedings are instituted against a consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except in the case specified in paragraph 1 of this article, in a manner which will hamper the exercise of consular functions as little as possible. When, in the circumstances mentioned in paragraph 1 of this article, it has become necessary to detain a consular officer, the proceedings against him shall be instituted with the minimum of delay.

Article 42. Notification of arrest, detention or prosecution

In the event of the arrest or detention, pending trial, of a member of the consular staff, or of criminal proceedings being instituted against him, the receiving State shall promptly notify the head of the consular post. Should the latter be himself the object of any such measure, the receiving State shall notify the sending State through the diplomatic channel.

Article 43. Immunity from jurisdiction

1. Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.

2. The provisions of paragraph 1 of this article shall not, however, apply in respect of a civil action either:

(a) arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; or

(b) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.

Article 44. Liability to give evidence

1. Members of a consular post may be called upon to attend as witnesses in the course of judicial or administrative proceedings. A consular employee or a member of the service staff shall not, except in the cases mentioned in paragraph 3 of this article, decline to give evidence. If a consular officer should decline to do so, no coercive measure or penalty may be applied to him.

2. The authority requiring the evidence of a consular officer shall avoid interference with the performance of his functions. It may, when possible, take such evidence at his residence or at the consular post or accept a statement from him in writing.

3. Members of a consular post are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

Article 45. Waiver of privileges and immunities

1. The sending State may waive, with regard to a member of the consular post, any of the privileges and immunities provided for in articles 41, 43 and 44.

2. The waiver shall in all cases be express, except as provided in paragraph 3 of this article, and shall be communicated to the receiving State in writing.

3. The initiation of proceedings by a consular officer or a consular employee in a matter where he might enjoy immunity from jurisdiction under article 43 shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

4. The waiver of immunity from jurisdiction for the purposes of civil or administrative proceedings shall not be deemed to imply the waiver of immunity from the measures of execution resulting from the judicial decision; in respect of such measures, a separate waiver shall be necessary.

Article 46. Exemption from registration of aliens   
and residence permits

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

2. The provisions of paragraph 1 of this article shall not, however, apply to any consular employee who is not a permanent employee of the sending State or who carries on any private gainful occupation in the receiving State or to any member of the family of any such employee.

Article 47. Exemption from work permits

1. Members of the consular post shall, with respect to services rendered for the sending State, be exempt from any obligations in regard to work permits imposed by the laws and regulations of the receiving State concerning the employment of foreign labour.

2. Members of the private staff of consular officers and of consular employees shall, if they do not carry on any other gainful occupation in the receiving State, be exempt from the obligations referred to in paragraph 1 of this article.

Article 48. Social security exemption

1. Subject to the provisions of paragraph 3 of this article, members of the consular post with respect to services rendered by them for the sending State, and members of their families forming part of their households, shall be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this article shall apply also to members of the private staff who are in the sole employ of members of the consular post, on condition:

(a) that they are not nationals of or permanently resident in the receiving State; and

(b) that they are covered by the social security provisions which are in force in the sending State or a third State.

3. Members of the consular post who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the receiving State, provided that such participation is permitted by that State.

Article 49. Exemption from taxation

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(a) indirect taxes of a kind which are normally incorporated in the price of goods or services;

(b) dues or taxes on private immovable property situated in the territory of the receiving State, subject to the provisions of article 32;

(c) estate, succession or inheritance duties, and duties on transfers, levied by the receiving State, subject to the provisions of paragraph (b) of article 51;

(d) dues and taxes on private income, including capital gains, having its source in the receiving State and capital taxes relating to investments made in commercial or financial undertakings in the receiving State;

(e) charges levied for specific services rendered;

(f) registration, court or record fees, mortgage dues and stamp duties, subject to the provisions of article 32.

2. Members of the service staff shall be exempt from dues and taxes on the wages which they receive for their services.

3. Members of the consular post who employ persons whose wages or salaries are not exempt from income tax in the receiving State shall observe the obligations which the laws and regulations of that State impose upon employers concerning the levying of income tax.

Article 50. Exemption from customs duties and inspection

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

(a) articles for the official use of the consular post;

(b) articles for the personal use of a consular officer or members of his family forming part of his household, including articles intended for his establishment. The articles intended for consumption shall not exceed the quantities necessary for direct utilization by the persons concerned.

2. Consular employees shall enjoy the privileges and exemptions specified in paragraph 1 of this article in respect of articles imported at the time of first installation.

3. Personal baggage accompanying consular officers and members of their families forming part of their households shall be exempt from inspection. It may be inspected only if there is serious reason to believe that it contains articles other than those referred to in subparagraph (b) of paragraph 1 of this article, or articles the import or export of which is prohibited by the laws and regulations of the receiving State or which are subject to its quarantine laws and regulations. Such inspection shall be carried out in the presence of the consular officer or member of his family concerned.

Article 51. Estate of a member of the consular post  
or of a member of his family

In the event of the death of a member of the consular post or of a member of his family forming part of his household, the receiving State:

(a) shall permit the export of the movable property of the deceased, with the exception of any such property acquired in the receiving State the export of which was prohibited at the time of his death;

(b) shall not levy national, regional or municipal estate, succession or inheritance duties, and duties on transfers, on movable property the presence of which in the receiving State was due solely to the presence in that State of the deceased as a member of the consular post or as a member of the family of a member of the consular post.

Article 52. Exemption from personal services   
and contributions

The receiving State shall exempt members of the consular post and members of their families forming part of their households from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 53. Beginning and end of consular   
privileges and immunities

1. Every member of the consular post shall enjoy the privileges and immunities provided in the present Convention from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when he enters on his duties with the consular post.

2. Members of the family of a member of the consular post forming part of his household and members of his private staff shall receive the privileges and immunities provided in the present Convention from the date from which he enjoys privileges and immunities in accordance with paragraph 1 of this article or from the date of their entry into the territory of the receiving State or from the date of their becoming a member of such family or private staff, whichever is the latest.

3. When the functions of a member of the consular post have come to an end, his privileges and immunities and those of a member of his family forming part of his household or a member of his private staff shall normally cease at the moment when the person concerned leaves the receiving State or on the expiry of a reasonable period in which to do so, whichever is the sooner, but shall subsist until that time, even in case of armed conflict. In the case of the persons referred to in paragraph 2 of this article, their privileges and immunities shall come to an end when they cease to belong to the household or to be in the service of a member of the consular post provided, however, that if such persons intend leaving the receiving State within a reasonable period thereafter, their privileges and immunities shall subsist until the time of their departure.

4. However, with respect to acts performed by a consular officer or a consular employee in the exercise of his functions, immunity from jurisdiction shall continue to subsist without limitation of time.

5. In the event of the death of a member of the consular post, the members of his family forming part of his household shall continue to enjoy the privileges and immunities accorded to them until they leave the receiving State or until the expiry of a reasonable period enabling them to do so, whichever is the sooner.

Article 54. Obligations of third States

1. If a consular officer passes through or is in the territory of a third State, which has granted him a visa if a visa was necessary, while proceeding to take up or return to his post or when returning to the sending State, the third State shall accord to him all immunities provided for by the other articles of the present Convention as may be required to ensure his transit or return. The same shall apply in the case of any member of his family forming part of his household enjoying such privileges and immunities who are accompanying the consular officer or travelling separately to join him or to return to the sending State.

2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the transit through their territory of other members of the consular post or of members of their families forming part of their households.

3. Third States shall accord to official correspondence and to other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. They shall accord to consular couriers who have been granted a visa, if a visa was necessary, and to consular bags in transit, the same inviolability and protection as the receiving State is bound to accord under the present Convention.

4. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and to consular bags, whose presence in the territory of the third State is due to force majeure.

Article 55. Respect for the laws and regulations   
of the receiving State

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of the State.

2. The consular premises shall not be used in any manner incompatible with the exercise of consular functions.

3. The provisions of paragraph 2 of this article shall not exclude the possibility of offices of other institutions or agencies being installed in part of the building in which the consular premises are situated, provided that the premises assigned to them are separate from those used by the consular post. In that event, the said offices shall not, for the purposes of the present Convention, be considered to form part of the consular premises.

Article 56. Insurance against third party risks

Members of the consular post shall comply with any requirements imposed by the laws and regulations of the receiving State in respect of insurance against third party risks arising from the use of any vehicle, vessel or aircraft.

Article 57. Special provisions concerning   
private gainful occupation

1. Career consular officers shall not carry on for personal profit any professional or commercial activity in the receiving State.

2. Privileges and immunities provided in this chapter shall not be accorded:

(a) to consular employees or to members of the service staff who carry on any private gainful occupation in the receiving State;

(b) to members of the family of a person referred to in subparagraph (a) of this paragraph or to members of his private staff;

(c) to members of the family of a member of a consular post who themselves carry on any private gainful occupation in the receiving State.

Chapter III.  Regime Relating to Honorary Consular  
Officers and Consular Posts Headed by such Officers

Article 58. General provisions relating to facilities,   
privileges and immunities

1. Articles 28, 29, 30, 34, 35, 36, 37, 38 and 39, paragraph 3 of article 54 and paragraphs 2 and 3 of article 55 shall apply to consular posts headed by an honorary consular officer. In addition, the facilities, privileges and immunities of such consular posts shall be governed by articles 59, 60, 61 and 62.

2. Articles 42 and 43, paragraph 3 of article 44, articles 45 and 53 and paragraph 1 of article 55 shall apply to honorary consular officers. In addition, the facilities, privileges and immunities of such consular officers shall be governed by articles 63, 64, 65, 66 and 67.

3. Privileges and immunities provided in the present Convention shall not be accorded to members of the family of an honorary consular officer or of a consular employee employed at a consular post headed by an honorary consular officer.

4. The exchange of consular bags between two consular posts headed by honorary consular officers in different States shall not be allowed without the consent of the two receiving States concerned.

Article 59. Protection of the consular premises

The receiving State shall take such steps as may be necessary to protect the consular premises of a consular post headed by an honorary consular officer against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

Article 60. Exemption from taxation of consular premises

1. Consular premises of a consular post headed by an honorary consular officer of which the sending State is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this article shall not apply to such dues and taxes if, under the laws and regulations of the receiving State, they are payable by the person who contracted with the sending State.

Article 61. Inviolability of consular archives and documents

The consular archives and documents of a consular post headed by an honorary consular officer shall be inviolable at all times and wherever they may be, provided that they are kept separate from other papers and documents and, in particular, from the private correspondence of the head of a consular post and of any person working with him, and from the materials, books or documents relating to their profession or trade.

Article 62. Exemption from customs duties

The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services on the following articles, provided that they are for the official use of a consular post headed by an honorary consular officer: coats-of-arms, flags, signboards, seals and stamps, books, official printed matter, office furniture, office equipment and similar articles supplied by or at the instance of the sending State to the consular post.

Article 63. Criminal proceedings

If criminal proceedings are instituted against an honorary consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except when he is under arrest or detention, in a manner which will hamper the exercise of consular functions as little as possible. When it has become necessary to detain an honorary consular officer, the proceedings against him shall be instituted with the minimum of delay.

Article 64. Protection of honorary consular officers

The receiving State is under a duty to accord to an honorary consular officer such protection as may be required by reason of his official position.

Article 65. Exemption from registration of aliens   
and residence permits

Honorary consular officers, with the exception of those who carry on for personal profit any professional or commercial activity in the receiving State, shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

Article 66. Exemption from taxation

An honorary consular officer shall be exempt from all dues and taxes on the remuneration and emoluments which he receives from the sending State in respect of the exercise of consular functions.

*Artic*l*e 67.*Exemption from personal services and contributions

The receiving State shall exempt honorary consular officers from all personal services and from all public services of any kind whatsoever and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 68. Optional character of the institution of  
honorary consular officers

Each State is free to decide whether it will appoint or receive honorary consular officers.

Chapter IV.  General Provisions

Article 69. Consular agents who are not heads   
of consular posts

1. Each State is free to decide whether it will establish or admit consular agencies conducted by consular agents not designated as heads of consular post by the sending State.

2. The conditions under which the consular agencies referred to in paragraph 1 of this article may carry on their activities and the privileges and immunities which may be enjoyed by the consular agents in charge of them shall be determined by agreement between the sending State and the receiving State.

Article 70. Exercise of consular functions by   
diplomatic missions

1. The provisions of the present Convention apply also, so far as the context permits, to the exercise of consular functions by a diplomatic mission.

2. The names of members of a diplomatic mission assigned to the consular section or otherwise charged with the exercise of the consular functions of the mission shall be notified to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.

3. In the exercise of consular functions a diplomatic mission may address:

(a) the local authorities of the consular district;

(b) the central authorities of the receiving State if this is allowed by the laws, regulations and usages of the receiving State or by relevant international agreements.

4. The privileges and immunities of the members of a diplomatic mission referred to in paragraph 2 of this article shall continue to be governed by the rules of international law concerning diplomatic relations.

Article 71. Nationals or permanent residents   
of the receiving State

1. Except insofar as additional facilities, privileges and immunities may be granted by the receiving State, consular officers who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, and the privileges provided in paragraph 3 of article 44. So far as these consular officers are concerned, the receiving State shall likewise be bound by the obligation laid down in article 42. If criminal proceedings are instituted against such a consular officer, the proceedings shall, except when he is under arrest or detention, be conducted in a manner which will hamper the exercise of consular functions as little as possible.

2. Other members of the consular post who are nationals of or permanently resident in the receiving State and members of their families, as well as members of the families of consular officers referred to in paragraph 1 of this article, shall enjoy facilities, privileges and immunities only insofar as these are granted to them by the receiving State. Those members of the families of members of the consular post and those members of the private staff who are themselves nationals of or permanently resident in the receiving State shall likewise enjoy facilities, privileges and immunities only insofar as these are granted to them by the receiving State. The receiving State shall, however, exercise its jurisdiction over those persons in such a way as not to hinder unduly the performance of the functions of the consular post.

Article 72. Non-discrimination

1. In the application of the provisions of the present Convention the receiving State shall not discriminate as between States.

2. However, discrimination shall not be regarded as taking place:

(a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its consular posts in the sending State;

(b) where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention.

Article 73. Relationship between the present Convention  
and other international agreements

1. The provisions of the present Convention shall not affect other international agreements in force as between States Parties to them.

2. Nothing in the present Convention shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof.

Chapter V. Final Provisions

Article 74. Signature

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows: until 31 October 1963 at the Federal Ministry for Foreign Affairs of the Republic of Austria and subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

Article 75. Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 76. Accession

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in article 74. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 77. Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 78. Notifications by the Secretary-General

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in article 74:

(a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with articles 74, 75 and 76;

(b) of the date on which the present Convention will enter into force, in accordance with article 77.

Article 79. Authentic texts

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in article 74.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Done at Vienna this twenty-fourth day of April, one thousand nine hundred and sixty-three.

2. Optional Protocol concerning Acquisition of Nationality. Done at Vienna, on 24 April 1963\*[[889]](#footnote-889)

The States Parties to the present Protocol and to the Vienna Convention on Consular Relations, hereinafter referred to as “the Convention,” adopted by the United Nations Conference held at Vienna from 4 March to 22 April 1963,

Expressing their wish to establish rules between them concerning acquisition of nationality by members of the consular post and by members of their families forming part of their households,

Have agreed as follows:

Article I

For the purposes of the present Protocol, the expression “members of the consular post” shall have the meaning assigned to it in subparagraph (g) of paragraph 1 of article 1 of the Convention, namely, “consular officers, consular employees and members of the service staff”.

*Arti*c*le II*

Members of the consular post not being nationals of the receiving State, and members of their families forming part of their households, shall not, solely by the operation of the law of the receiving State, acquire the nationality of that State.

Article III

The present Protocol shall be open for signature by all States which may become Parties to the Convention, as follows: until 31 October 1963 at the Federal Ministry for Foreign Affairs of the Republic of Austria and, subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

Article IV

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article V

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article VI

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification of or accession to the Protocol with the Secretary-General of the United Nations, whichever date is the later.

2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this article, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article VII

The Secretary-General of the United Nations shall inform all States which may become Parties to the Convention:

(a) of signatures to the Protocol and of the deposit of instruments of ratification or accession, in accordance with articles III, IV and V;

(b) of the date on which the present Protocol will enter into force, in accordance with article VI.

Article VIII

The original of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article III.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

Done at Vienna this twenty-fourth day of April, one thousand nine hundred and sixty-three.

3. Optional Protocol concerning the Compulsory  
Settlement of Disputes. Done at Vienna,  
on 24 April 1963\*[[890]](#footnote-890)

The States Parties to the present Protocol and to the Vienna Convention on Consular Relations, hereinafter referred to as “the Convention,” adopted by the United Nations Conference held at Vienna from 4 March to 22 April 1963,

Expressing their wish to resort in all matters concerning them in respect of any dispute arising out of the interpretation or application of the Convention to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement has been agreed upon by the parties within a reasonable period.

Have agreed as follows:

Article I

Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.

Article II

The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application.

Article III

1. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice.

2. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.

Article IV

States Parties to the Convention, to the Optional Protocol concerning Acquisition of Nationality, and to the present Protocol may at any time declare that they will extend the provisions of the present Protocol to disputes arising out of the interpretation or application of the Optional Protocol concerning Acquisition of Nationality. Such declarations shall be notified to the Secretary-General of the United Nations.

Article V

The present Protocol shall be open for signature by all States which may become Parties to the Convention as follows: until 31 October 1963 at the Federal Ministry for Foreign Affairs of the Republic of Austria and, subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

Article VI

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article VII

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article VIII

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification or accession to the Protocol with the Secretary-General of the United Nations, whichever date is the later.

2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this article, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article IX

The Secretary-General of the United Nations shall inform all States which may become Parties to the Convention:

(a) of signatures to the present Protocol and of the deposit of instruments of ratification or accession, in accordance with articles V, VI and VII;

(b) of declarations made in accordance with article IV of the present Protocol;

(c) of the date on which the present Protocol will enter into force, in accordance with article VIII.

Article X

The original of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article V.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

Done at Vienna, this twenty-fourth day of April, one thousand nine hundred and sixty-three.

E. Convention on Special Missions and   
Optional Protocol

1. Convention on Special Missions. Adopted by  
the General Assembly of the United Nations,  
on 8 December 1969[[891]](#footnote-891)

The States Parties to the present Convention,

Recalling that special treatment has always been accorded to special missions,

Having in mind the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security and the development of friendly relations and cooperation among States,

Recalling that the importance of the question of special missions was recognized during the United Nations Conference on Diplomatic Intercourse and Immunities and in resolution I adopted by the Conference on 10 April 1961,

Considering that the United Nations Conference on Diplomatic Intercourse and Immunities adopted the Vienna Convention on Diplomatic Relations, which was opened for signature on 18 April 1961,

Considering that the United Nations Conference on Consular Relations adopted the Vienna Convention on Consular Relations, which was opened for signature on 24 April 1963,

Believing that an international convention on special missions would complement those two Conventions and would contribute to the development of friendly relations among nations, whatever their constitutional and social systems,

Realizing that the purpose of privileges and immunities relating to special missions is not to benefit individuals but to ensure the efficient performance of the functions of special missions as missions representing the State,

Affirming that the rules of customary international law continue to govern questions not regulated by the provisions of the present Convention,

Have agreed as follows:

Article 1. Use of terms

For the purposes of the present Convention:

(a) a “special mission” is a temporary mission, representing the State, which is sent by one State to another State with the consent of the latter for the purpose of dealing with it on specific questions or of performing in relation to it a specific task;

(b) a “permanent diplomatic mission” is a diplomatic mission within the meaning of the Vienna Convention on Diplomatic Relations;

(c) a “consular post” is any consulate-general, consulate, vice-consulate or consular agency;

(d) the “head of a special mission” is the person charged by the sending State with the duty of acting in that capacity;

(e) a “representative of the sending State in the special mission” is any person on whom the sending State has conferred that capacity;

(f) the “members of a special mission” are the head of the special mission, the representatives of the sending State in the special mission and the members of the staff of the special mission;

(g) the “members of the staff of the special mission” are the members of the diplomatic staff, the administrative and technical staff and the service staff of the special mission;

(h) the “members of the diplomatic staff” are the members of the staff of the special mission who have diplomatic status for the purposes of the special mission;

(i) the “members of the administrative and technical staff” are the members of the staff of the special mission employed in the administrative and technical service of the special mission;

(j) the “members of the service staff” are the members of the staff of the special mission employed by it as household workers or for similar tasks;

(k) the “private staff” are persons employed exclusively in the private service of the members of the special mission.

Article 2. Sending of a special mission

A State may send a special mission to another State with the consent of the latter, previously obtained through the diplomatic or another agreed or mutually acceptable channel.

Article 3. Functions of a special mission

The functions of a special mission shall be determined by the mutual consent of the sending and the receiving State.

Article 4. Sending of the same special mission   
to two or more States

A State which wishes to send the same special mission to two or more States shall so inform each receiving State when seeking the consent of that State.

Article 5. Sending of a joint special mission by two   
or more States

Two or more States which wish to send a joint special mission to another State shall so inform the receiving State when seeking the consent of that State.

Article 6. Sending of special missions by two   
or more States in order to deal with a question  
of common interest

Two or more States may each send a special mission at the same time to another State, with the consent of that State obtained in accordance with article 2, in order to deal together, with the agreement of all of these States, with a question of common interest to all of them.

Article 7. Non-existence of diplomatic or consular relations

The existence of diplomatic or consular relations is not necessary for the sending or reception of a special mission.

Article 8. Appointment of the members of the special mission

Subject to the provisions of articles 10, 11 and 12, the sending State may freely appoint the members of the special mission after having given to the receiving State all necessary information concerning the size and composition of the special mission, and in particular the names and designations of the persons it intends to appoint. The receiving State may decline to accept a special mission of a size that is not considered by it to be reasonable, having regard to circumstances and conditions in the receiving State and to the needs of the particular mission. It may also, without giving reasons, decline to accept any person as a member of the special mission.

Article 9. Composition of the special mission

1. A special mission shall consist of one or more representatives of the sending State from among whom the sending State may appoint a head. It may also include diplomatic staff, administrative and technical staff and service staff.

2. When members of a permanent diplomatic mission or of a consular post in the receiving State are included in a special mission, they shall retain their privileges and immunities as members of their permanent diplomatic mission or consular post in addition to the privileges and immunities accorded by the present Convention.

Article 10. Nationality of the members of the special mission

1. The representatives of the sending State in the special mission and the members of its diplomatic staff should in principle be of the nationality of the sending State.

2. Nationals of the receiving State may not be appointed to a special mission except with the consent of that State, which may be withdrawn at any time.

3. The receiving State may reserve the right provided for in paragraph 2 of this article with regard to nationals of a third State who are not also nationals of the sending State.

Article 11. Notifications

1. The Ministry of Foreign Affairs of the receiving State, or such other organ of that State as may be agreed, shall be notified of:

(a) the composition of the special mission and any subsequent changes therein;

(b) the arrival and final departure of members of the mission and the termination of their functions with the mission;

(c) the arrival and final departure of any person accompanying a member of the mission;

(d) the engagement and discharge of persons resident in the receiving State as members of the mission or as private staff;

(e) the appointment of the head of the special mission or, if there is none, of the representative referred to in paragraph 1 of article 14, and of any substitute for them;

(f) the location of the premises occupied by the special mission and of the private accommodation enjoying inviolability under articles 30, 36 and 39, as well as any other information that may be necessary to identify such premises and accommodation.

2. Unless it is impossible, notification of arrival and final departure must be given in advance.

Article 12. Persons declared “non grata” or not acceptable

1. The receiving State may, at any time and without having to explain its decision, notify the sending State that any representative of the sending State in the special mission or any member of its diplomatic staff is persona non grata or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared non grata or not acceptable before arriving in the territory of the receiving State.

2. If the sending State refuses, or fails within a reasonable period, to carry out its obligations under paragraph 1 of this article, the receiving State may refuse to recognize the person concerned as a member of the special mission.

Article 13. Commencement of the functions   
 of a special mission

1. The functions of a special mission shall commence as soon as the mission enters into official contact with the Ministry of Foreign Affairs or with such other organ of the receiving State as may be agreed.

2. The commencement of the functions of a special mission shall not depend upon presentation of the mission by the permanent diplomatic mission of the sending State or upon the submission of letters of credence or full powers.

Article 14. Authority to act on behalf of the special mission

1. The head of the special mission or, if the sending State has not appointed a head, one of the representatives of the sending State designated by the latter is authorized to act on behalf of the special mission and to address communications to the receiving State. The receiving State shall address communications concerning the special mission to the head of the mission, or, if there is none, to the representative referred to above, either direct or through the permanent diplomatic mission.

2. However, a member of the special mission may be authorized by the sending State, by the head of the special mission or, if there is none, by the representative referred to in paragraph 1 of this article, either to substitute for the head of the special mission or for the aforesaid representative or to perform particular acts on behalf of the mission.

Article 15. Organ of the receiving State with which  
official business is conducted

All official business with the receiving State entrusted to the special mission by the sending State shall be conducted with or through the Ministry of Foreign Affairs or with such other organ of the receiving State as may be agreed.

Article 16. Rules concerning precedence

1. Where two or more special missions meet in the territory of the receiving State or of a third State, precedence among the missions shall be determined, in the absence of a special agreement, according to the alphabetical order of the names of the States used by the protocol of the State in whose territory the missions are meeting.

2. Precedence among two or more special missions which meet on a ceremonial or formal occasion shall be governed by the protocol in force in the receiving State.

3. Precedence among the members of the same special mission shall be that which is notified to the receiving State or to the third State in whose territory two or more special missions are meeting.

Article 17. Seat of the special mission

1. A special mission shall have its seat in the locality agreed by the States concerned.

2. In the absence of agreement, the special mission shall have its seat in the locality where the Ministry of Foreign Affairs of the receiving State is situated.

3. If the special mission performs its functions in different localities, the States concerned may agree that it shall have more than one seat from among which they may choose one as the principal seat.

Article 18. Meeting of special missions in the territory   
of a third State

1. Special missions from two or more States may meet in the territory of a third State only after obtaining the express consent of that State, which retains the right to withdraw it.

2. In giving its consent, the third State may lay down conditions which shall be observed by the sending States.

3. The third State shall assume in respect of the sending States the rights and obligations of a receiving State to the extent that it indicates in giving its consent.

Article 19. Right of the special mission to use the flag  
and emblem of the sending State

1. A special mission shall have the right to use the flag and emblem of the sending State on the premises occupied by the mission, and on its means of transport when used on official business.

2. In the exercise of the right accorded by this article, regard shall be had to the laws, regulations and usages of the receiving State.

Article 20. End of the functions of a special mission

1. The functions of a special mission shall come to an end, inter alia, upon:

(a) the agreement of the States concerned;

(b) the completion of the task of the special mission;

(c) the expiry of the duration assigned for the special mission, unless it is expressly extended;

(d) notification by the sending State that it is terminating or recalling the special mission;

(e) notification by the receiving State that it considers the special mission terminated.

2. The severance of diplomatic or consular relations between the sending State and the receiving State shall not of itself have the effect of terminating special missions existing at the time of such severance.

Article 21. Status of the Head of State and persons of high rank

1. The Head of the sending State, when he leads a special mission, shall enjoy in the receiving State or in a third State the facilities, privileges and immunities accorded by international law to Heads of State on an official visit.

2. The Head of the Government, the Minister for Foreign Affairs and other persons of high rank, when they take part in a special mission of the sending State, shall enjoy in the receiving State or in a third State, in addition to what is granted by the present Convention, the facilities, privileges and immunities accorded by international law.

Article 22. General facilities

The receiving State shall accord to the special mission the facilities required for the performance of its functions, having regard to the nature and task of the special mission.

Article 23. Premises and accommodation

The receiving State shall assist the special mission, if it so requests, in procuring the necessary premises and obtaining suitable accommodation for its members.

Article 24. Exemption of the premises of the special mission  
from taxation

1. To the extent compatible with the nature and duration of the functions performed by the special mission, the sending State and the members of the special mission acting on behalf of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises occupied by the special mission, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or with a member of the special mission.

Article 25. Inviolability of the premises

1. The premises where the special mission is established in accordance with the present Convention shall be inviolable. The agents of the receiving State may not enter the said premises, except with the consent of the head of the special mission or, if appropriate, of the head of the permanent diplomatic mission of the sending State accredited to the receiving State. Such consent may be assumed in case of fire or other disaster that seriously endangers public safety, and only in the event that it has not been possible to obtain the express consent of the head of the special mission or, where appropriate, of the head of the permanent mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the special mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the special mission, their furnishings, other property used in the operation of the special mission and its means of transport shall be immune from search, requisition, attachment or execution.

Article 26. Inviolability of archives and documents

The archives and documents of the special mission shall be inviolable at all times and wherever they may be. They should, when necessary, bear visible external marks of identification.

Article 27. Freedom of movement

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the special mission such freedom of movement and travel in its territory as is necessary for the performance of the functions of the special mission.

Article 28. Freedom of communication

1. The receiving State shall permit and protect free communication on the part of the special mission for all official purposes. In communicating with the Government of the sending State, its diplomatic missions, its consular posts and its other special missions or with sections of the same mission, wherever situated, the special mission may employ all appropriate means, including couriers and messages in code or cipher. However, the special mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the special mission shall be inviolable. Official correspondence means all correspondence relating to the special mission and its functions.

3. Where practicable, the special mission shall use the means of communication, including the bag and the courier, of the permanent diplomatic mission of the sending State.

4. The bag of the special mission shall not be opened or detained.

5. The packages constituting the bag of the special mission must bear visible external marks of their character and may contain only documents or articles intended for the official use of the special mission.

6. The courier of the special mission, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

7. The sending State or the special mission may designate couriers ad hoc of the special mission. In such cases the provisions of paragraph 6 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when the courier ad hoc has delivered to the consignee the special mission’s bag in his charge.

8. The bag of the special mission may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. The captain shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier of the special mission. By arrangement with the appropriate authorities, the special mission may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

Article 29. Personal inviolability

The persons of the representatives of the sending State in the special mission and of the members of its diplomatic staff shall be inviolable. They shall not be liable to any form of arrest or detention. The receiving State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their persons, freedom or dignity.

Article 30. Inviolability of the private accommodation

1. The private accommodation of the representatives of the sending State in the special mission and of the members of its diplomatic staff shall enjoy the same inviolability and protection as the premises of the special mission.

2. Their papers, their correspondence and, except as provided in paragraph 4 of article 31, their property shall likewise enjoy inviolability.

Article 31. Immunity from jurisdiction

1. The representatives of the sending State in the special mission and the members of its diplomatic staff shall enjoy immunity from the criminal jurisdiction of the receiving State.

2. They shall also enjoy immunity from the civil and administrative jurisdiction of the receiving State, except in the case of:

(a) a real action relating to private immovable property situated in the territory of the receiving State, unless the person concerned holds it on behalf of the sending State for the purposes of the mission;

(b) an action relating to succession in which the person concerned is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) an action relating to any professional or commercial activity exercised by the person concerned in the receiving State outside his official functions;

(d) an action for damages arising out of an accident caused by a vehicle used outside the official functions of the person concerned.

3. The representatives of the sending State in the special mission and the members of its diplomatic staff are not obliged to give evidence as witnesses.

4. No measures of execution may be taken in respect of a representative of the sending State in the special mission or a member of its diplomatic staff except in the cases coming under subparagraphs (a), (b), (c) and (d) of paragraph 2 of this article and provided that the measures concerned can be taken without infringing the inviolability of his person or his accommodation.

5. The immunity from jurisdiction of the representatives of the sending State in the special mission and of the members of its diplomatic staff does not exempt them from the jurisdiction of the sending State.

Article 32. Exemption from social security legislation

1. Subject to the provisions of paragraph 3 of this article, representatives of the sending State in the special mission and members of its diplomatic staff shall, in respect of services rendered for the sending State, be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this article shall also apply to persons who are in the sole private employ of a representative of the sending State in the special mission or of a member of its diplomatic staff, on condition:

(a) that such employed persons are not nationals of or permanently resident in the receiving State; and

(b) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. Representatives of the sending State in the special mission and members of its diplomatic staff who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the receiving State where such participation is permitted by that State.

5. The provisions of this article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

Article 33. Exemption from dues and taxes

The representatives of the sending State in the special mission and the members of its diplomatic staff shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(a) indirect taxes of a kind which are normally incorporated in the price of goods or services;

(b) dues and taxes on private immovable property situated in the territory of the receiving State, unless the person concerned holds it on behalf of the sending State for the purposes of the mission;

(c) estate, succession or inheritance duties levied by the receiving State, subject to the provisions of article 44;

(d) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;

(e) charges levied for specific services rendered;

(f) registration, court or record fees, mortgage dues and stamp duty, subject to the provisions of article 24.

Article 34. Exemption from personal services

The receiving State shall exempt the representatives of the sending State in the special mission and the members of its diplomatic staff from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 35. Exemption from customs duties and inspection

1. Within the limits of such laws and regulations as it may adopt, the receiving State shall permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

(a) articles for the official use of the special mission;

(b) articles for the personal use of the representatives of the sending State in the special mission and the members of its diplomatic staff.

2. The personal baggage of the representatives of the sending State in the special mission and of the members of its diplomatic staff shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. In such cases, inspection shall be conducted only in the presence of the person concerned or of his authorized representative.

Article 36. Administrative and technical staff

Members of the administrative and technical staff of the special mission shall enjoy the privileges and immunities specified in articles 29 to 34, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 2 of article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges mentioned in paragraph 1 of article 35 in respect of articles imported at the time of their first entry into the territory of the receiving State.

Article 37. Service staff

Members of the service staff of the special mission shall enjoy immunity from the jurisdiction of the receiving State in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment, and exemption from social security legislation as provided in article 32.

Article 38. Private staff

Private staff of the members of the special mission shall be exempt from dues and taxes on the emoluments they receive by reason of their employment. In all other respects, they may enjoy privileges and immunities only to the extent permitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the special mission.

Article 39. Members of the family

1. Members of the families of representatives of the sending State in the special mission and of members of its diplomatic staff shall, if they accompany such members of the special mission, enjoy the privileges and immunities specified in articles 29 to 35 provided that they are not nationals of or permanently resident in the receiving State.

2. Members of the families of members of the administrative and technical staff of the special mission shall, if they accompany such members of the special mission, enjoy the privileges and immunities specified in article 36 provided that they are not nationals of or permanently resident in the receiving State.

Article 40. Nationals of the receiving State and persons   
permanently resident in the receiving State

1. Except insofar as additional privileges and immunities may be granted by the receiving State, the representatives of the sending State in the special mission and the members of its diplomatic staff who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and inviolability in respect of official acts performed in the exercise of their functions.

2. Other members of the special mission and private staff who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent granted to them by that State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the special mission.

Article 41. Waiver of immunity

1. The sending State may waive the immunity from jurisdiction of its representatives in the special mission, of the members of its diplomatic staff, and of other persons enjoying immunity under articles 36 to 40.

2. Waiver must always be express.

3. The initiation of proceedings by any of the persons referred to in paragraph 1 of this article shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

Article 42. Transit through the territory of a third State

1. If a representative of the sending State in the special mission or a member of its diplomatic staff passes through or is in the territory of a third State while proceeding to take up his functions or returning to the sending State, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the person referred to in this paragraph, whether travelling with him or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the transit of members of the administrative and technical or service staff of the special mission, or of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. Subject to the provisions of paragraph 4 of this article, they shall accord to the couriers and bags of the special mission in transit the same inviolability and protection as the receiving State is bound to accord under the present Convention.

4. The third State shall be bound to comply with its obligations in respect of the persons mentioned in paragraphs 1, 2 and 3 of this article only if it has been informed in advance, either in the visa application or by notification, of the transit of those persons as members of the special mission, members of their families or couriers, and has raised no objection to it.

5. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to the official communications and the bags of the special mission, when the use of the territory of the third State is due to force majeure.

Article 43. Duration of privileges and immunities

1. Every member of the special mission shall enjoy the privileges and immunities to which he is entitled from the moment he enters the territory of the receiving State for the purpose of performing his functions in the special mission or, if he is already in its territory, from the moment when his appointment is notified to the Ministry of Foreign Affairs or such other organ of the receiving State as may be agreed.

2. When the functions of a member of the special mission have come to an end, his privileges and immunities shall normally cease at the moment when he leaves the territory of the receiving State, or on the expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, in respect of acts performed by such a member in the exercise of his functions, immunity shall continue to subsist.

3. In the event of the death of a member of the special mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the territory of the receiving State.

Article 44. Property of a member of the special mission   
or of a member of his family in the event of death

1. In the event of the death of a member of the special mission or of a member of his family accompanying him, if the deceased was not a national of or permanently resident in the receiving State, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death.

2. Estate, succession and inheritance duties shall not be levied on movable property which is in the receiving State solely because of the presence there of the deceased as a member of the special mission or of the family of a member of the mission.

Article 45. Facilities to leave the territory of the receiving State  
and to remove the archives of the special mission

1. The receiving State must, even in case of armed conflict, grant facilities to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons, irrespective of their nationality, to leave at the earliest possible moment. In particular it must, in case of need, place at their disposal the necessary means of transport for themselves and their property.

2. The receiving State must grant the sending State facilities for removing the archives of the special mission from the territory of the receiving State.

Article 46. Consequences of the cessation of the functions  
of the special mission

1. When the functions of a special mission come to an end, the receiving State must respect and protect the premises of the special mission so long as they are assigned to it, as well as the property and archives of the special mission. The sending State must withdraw the property and archives within a reasonable period of time.

2. In case of the absence or severance of diplomatic or consular relations between the sending State and the receiving State and if the functions of the special mission have come to an end, the sending State may, even if there is an armed conflict, entrust the custody of the property and archives of the special mission to a third State acceptable to the receiving State.

Article 47. Respect for the laws and regulations of   
the receiving State and use of the premises of the special mission

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying those privileges and immunities under the present Convention to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. The premises of the special mission must not be used in any manner incompatible with the functions of the special mission as envisaged in the present Convention, in other rules of general international law or in any special agreements in force between the sending and the receiving State.

Article 48. Professional or commercial activity

The representatives of the sending State in the special mission and the members of its diplomatic staff shall not practise for personal profit any professional or commercial activity in the receiving State.

*Article* *49.*Non-discrimination

1. In the application of the provisions of the present Convention, no discrimination shall be made as between States.

2. However, discrimination shall not be regarded as taking place:

(a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its special mission in the sending State;

(b) where States modify among themselves, by custom or agreement, the extent of facilities, privileges and immunities for their special missions, although such a modification has not been agreed with other States, provided that it is not incompatible with the object and purpose of the present Convention and does not affect the enjoyment of the rights or the performance of the obligations of third States.

Article 50. Signature

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, until 31 December 1970 at United Nations Headquarters in New York.

Article 51. Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 52. Accession

The present Convention shall remain open for accession by any State belonging to any of the categories mentioned in article 50. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 53. Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 54. Notifications by the depositary

The Secretary-General of the United Nations shall inform all States belonging to any of the categories mentioned in article 50:

(a) of signatures to the present Convention and of the deposit of instruments of ratification or accession in accordance with articles 50, 51 and 52;

(b) of the date on which the present Convention will enter into force in accordance with article 53.

Article 55. Authentic texts

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the categories mentioned in article 50.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed the present Convention, opened for signature at New York on 16 December 1969.

2. Optional Protocol concerning the Compulsory  
Settlement of Disputes. Adopted by the  
General Assembly of the United Nations,  
on 8 December 1969\*[[892]](#footnote-892)

The States Parties to the present Protocol and to the Convention on Special Missions, hereinafter referred to as “the Convention,” adopted by the General Assembly of the United Nations on 8 December 1969,

Expressing their wish to resort, in all matters concerning them in respect of any dispute arising out of the interpretation or application of the Convention, to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement has been agreed upon by the parties within a reasonable period of time,

Have agreed follows:

Article I

Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by a written application made by any party to the dispute being a Party to the present Protocol.

Article II

The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by a written application.

Article III

1. Within the said period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice.

2. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by a written application.

Article IV

The present Protocol shall be open for signature by all States which may become Parties to the Convention, until 31 December 1970 at United Nations Headquarters in New York.

Article V

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article VI

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article VII

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification of or accession to the Protocol with the Secretary-General of the United Nations, whichever day is later.

2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this article, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article VIII

The Secretary-General of the United Nations shall inform all States which may become Parties to the Convention:

(a) of signatures to the present Protocol and of the deposit of instruments of ratification or accession in accordance with articles IV, V and VI;

(b) of the date on which the present Protocol will enter into force in accordance with article VII.

Article IX

The original of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article IV.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed the present Protocol, opened for signature at New York on 16 December 1969.

F. Vienna Convention on the  
Law of Treaties

Vienna Convention on the Law of Treaties.  
Done at Vienna, on 23 May 1969[[893]](#footnote-893)

The States Parties to the present Convention,

Considering the fundamental role of treaties in the history of international relations,

Recognizing the ever-increasing importance of treaties as a source of international law and as a means of developing peaceful cooperation among nations, whatever their constitutional and social systems,

Noting that the principles of free consent and of good faith and the pacta sunt servanda rule are universally recognized,

Affirming that disputes concerning treaties, like other international disputes, should be settled by peaceful means and in conformity with the principles of justice and international law,

Recalling the determination of the peoples of the United Nations to establish conditions under which justice and respect for the obligations arising from treaties can be maintained,

Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedoms for all,

Believing that the codification and progressive development of the law of treaties achieved in the present Convention will promote the purposes of the United Nations set forth in the Charter, namely, the maintenance of international peace and security, the development of friendly relations and the achievement of cooperation among nations,

Affirming that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

Have agreed as follows:

Part I. Introduction

Article 1. Scope of the present Convention

The present Convention applies to treaties between States.

Article 2. Use of terms

1. For the purposes of the present Convention:

(a) “treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(b) “ratification,” “acceptance,” “approval” and “accession” mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(c) “full powers” means a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty;

(d) “reservation” means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;

(e) “negotiating State” means a State which took part in the drawing up and adoption of the text of the treaty;

(f) “contracting State” means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;

(g) “party” means a State which has consented to be bound by the treaty and for which the treaty is in force;

(h) “third State” means a State not a party to the treaty;

(i) “international organization” means an intergovernmental organization.

2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

Article 3. International agreements not within the scope  
of the present Convention

The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:

(a) the legal force of such agreements;

(b) the application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;

(c) the application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties.

Article 4. Non-retroactivity of the present Convention

Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States.

Article 5. Treaties constituting international organizations and treaties adopted within an international organization

The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

Part II.  Conclusion and Entry into Force of Treaties

Section 1. Conclusion of treaties

Article 6. Capacity of States to conclude treaties

Every State possesses capacity to conclude treaties.

Article 7. Full powers

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:

(a) he produces appropriate full powers; or

(b) it appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;

(b) heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited;

(c) representatives accredited by States to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ.

Article 8. Subsequent confirmation of an act performed  
without authorization

An act relating to the conclusion of a treaty performed by a person who cannot be considered under article 7 as authorized to represent a State for that purpose is without legal effect unless afterwards confirmed by that State.

Article 9. Adoption of the text

1. The adoption of the text of a treaty takes place by the consent of all the States participating in its drawing up except as provided in paragraph 2.

2. The adoption of the text of a treaty at an international conference takes place by the vote of two thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule.

Article 10. Authentication of the text

The text of a treaty is established as authentic and definitive:

(a) by such procedure as may be provided for in the text or agreed upon by the States participating in its drawing up; or

(b) failing such procedure, by the signature, signature ad referendum or initialling by the representatives of those States of the text of the treaty or of the Final Act of a conference incorporating the text.

*Artic*l*e 11.*Means of expressing consent to be bound by a treaty

The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.

Article 12. Consent to be bound by a treaty   
expressed by signature

1. The consent of a State to be bound by a treaty is expressed by the signature of its representative when:

(a) the treaty provides that signature shall have that effect;

(b) it is otherwise established that the negotiating States were agreed that signature should have that effect; or

(c) the intention of the State to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.

2. For the purposes of paragraph 1:

(a) the initialling of a text constitutes a signature of the treaty when it is established that the negotiating States so agreed;

(b) the signature ad referendum of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.

Article 13. Consent to be bound by a treaty expressed by an  
exchange of instruments constituting a treaty

The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

(a) the instruments provide that their exchange shall have that effect; or

(b) it is otherwise established that those States were agreed that the exchange of instruments should have that effect.

Article 14. Consent to be bound by a treaty expressed by   
ratification, acceptance or approval

1. The consent of a State to be bound by a treaty is expressed by ratification when:

(a) the treaty provides for such consent to be expressed by means of ratification;

(b) it is otherwise established that the negotiating States were agreed that ratification should be required;

(c) the representative of the State has signed the treaty subject to ratification; or

(d) the intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

2. The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification.

Article 15. Consent to be bound by a treaty   
expressed by accession

The consent of a State to be bound by a treaty is expressed by accession when:

(a) the treaty provides that such consent may be expressed by that State by means of accession;

(b) it is otherwise established that the negotiating States were agreed that such consent may be expressed by that State by means of accession; or

(c) all the parties have subsequently agreed that such consent may be expressed by that State by means of accession.

Article 16. Exchange or deposit of instruments of ratification,  
acceptance, approval or accession

Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon:

(a) their exchange between the contracting States;

(b) their deposit with the depositary; or

(c) their notification to the contracting States or to the depositary, if so agreed.

Article 17. Consent to be bound by part of a treaty and  
choice of differing provisions

1. Without prejudice to articles 19 to 23, the consent of a State to be bound by part of a treaty is effective only if the treaty so permits or the other contracting States so agree.

2. The consent of a State to be bound by a treaty which permits a choice between differing provisions is effective only if it is made clear to which of the provisions the consent relates.

Article 18. Obligation not to defeat the object and purpose  
of a treaty prior to its entry into force

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

(a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or

(b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

Section 2. Reservations

Article 19. Formulation of reservations

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) the reservation is prohibited by the treaty;

(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

Article 20. Acceptance of and objection to reservations

1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.

2. When it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.

4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

(a) acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;

(b) an objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State;

(c) an act expressing a State’s consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.

5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

Article 21. Legal elects of reservations and of objections   
to reservations

1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:

(a) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(b) modifies those provisions to the same extent for that other party in its relations with the reserving State.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty inter se.

3. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

Article 22. Withdrawal of reservations and of  
objections to reservations

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.

2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.

3. Unless the treaty otherwise provides, or it is otherwise agreed:

(a) the withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by that State;

(b) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State which formulated the reservation.

Article 23. Procedure regarding reservations

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty.

2. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.

3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.

4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

Section 3. Entry into force and provisional application of treaties

Article 24. Entry into force

1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.

2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.

3. When the consent of a State to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State on that date, unless the treaty otherwise provides.

4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.

Article 25. Provisional application

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:

(a) the treaty itself so provides; or

(b) the negotiating States have in some other manner so agreed.

2. Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

Part III. Observance, Application and  
Interpretation of Treaties

Section 1. Observance of treaties

Article 26. “Pacta sunt servanda”

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Article 27. Internal law and observance of treaties

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.

Section 2. Application of treaties

Article 28. Non-retroactivity of treaties

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

Article 29. Territorial scope of treaties

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

Article 30. Application of successive treaties relating to  
the same subject matter

1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States Parties to successive treaties relating to the same subject matter shall be determined in accordance with the following paragraphs.

2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.

4. When the parties to the later treaty do not include all the parties to the earlier one:

(a) as between States Parties to both treaties the same rule applies as in paragraph 3;

(b) as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty.

Section 3. Interpretation of treaties

Article 31. General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32. Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or

(b) leads to a result which is manifestly absurd or unreasonable.

Article 33. Interpretation of treaties authenticated   
in two or more languages

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.

3. The terms of the treaty are presumed to have the same meaning in each authentic text.

4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

Section 4. Treaties and third States

Article 34. General rule regarding third States

A treaty does not create either obligations or rights for a third State without its consent.

Article 35. Treaties providing for obligations for third States

An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.

Article 36. Treaties providing for rights for third States

1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.

2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.

Article 37. Revocation or modification of obligations or  
rights of third States

1. When an obligation has arisen for a third State in conformity with article 35, the obligation may be revoked or modified only with the consent of the parties to the treaty and of the third State, unless it is established that they had otherwise agreed.

2. When a right has arisen for a third State in conformity with article 36, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State.

Article 38. Rules in a treaty becoming binding on third States  
through international custom

Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such.

Part IV. Amendment and Modification of Treaties

Article 39. General rule regarding the amendment of treaties

A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except insofar as the treaty may otherwise provide.

Article 40. Amendment of multilateral treaties

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.

2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States, each one of which shall have the right to take part in:

(a) the decision as to the action to be taken in regard to such proposal;

(b) the negotiation and conclusion of any agreement for the amendment of the treaty.

3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.

4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; article 30, paragraph 4 (b), applies in relation to such State.

5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:

(a) be considered as a party to the treaty as amended; and

(b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.

Article 41. Agreements to modify multilateral treaties between  
certain of the parties only

1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:

(a) the possibility of such a modification is provided for by the treaty; or

(b) the modification in question is not prohibited by the treaty and:

(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

(ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.

2. Unless in a case falling under paragraph 1 (a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.

Part V. Invalidity, Termination and Suspension of the Operation of Treaties

Section 1. General provisions

Article 42. Validity and continuance in force of treaties

1. The validity of a treaty or of the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention.

2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.

Article 43. Obligations imposed by international law  
independently of a treaty

The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present Convention or of the provisions of the treaty, shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty.

Article 44. Separability of treaty provisions

1. A right of a party, provided for in a treaty or arising under article 56, to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.

2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present Convention may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in article 60.

3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where:

(a) the said clauses are separable from the remainder of the treaty with regard to their application;

(b) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and

(c) continued performance of the remainder of the treaty would not be unjust.

4. In cases falling under articles 49 and 50, the State entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or, subject to paragraph 3, to the particular clauses alone.

5. In cases falling under articles 51, 52 and 53, no separation of the provisions of the treaty is permitted.

Article 45. Loss of a right to invoke a ground   
for invalidating, terminating, withdrawing from or   
suspending the operation of a treaty

A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:

(a) it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or

(b) it must by reason of its conduct be considered as having acquiesced in the validity of the treaty or in its maintenance in force or in operation, as the case may be.

Section 2. Invalidity of treaties

Article 46. Provisions of internal law regarding competence  
to conclude treaties

1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

Article 47. Specific restrictions on authority to express  
the consent of a State

If the authority of a representative to express the consent of a State to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating the consent expressed by him unless the restriction was notified to the other negotiating States prior to his expressing such consent.

Article 48. Error

1. A State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty.

2. Paragraph 1 shall not apply if the State in question contributed by its own conduct to the error or if the circumstances were such as to put that State on notice of a possible error.

3. An error relating only to the wording of the text of a treaty does not affect its validity; article 79 then applies.

Article 49. Fraud

If a State has been induced to conclude a treaty by the fraudulent conduct of another negotiating State, the State may invoke the fraud as invalidating its consent to be bound by the treaty.

Article 50. Corruption of a representative of a State

If the expression of a State’s consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by another negotiating State, the State may invoke such corruption as invalidating its consent to be bound by the treaty.

Article 51, Coercion of a representative of a State

The expression of a State’s consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him shall be without any legal effect.

Article 52. Coercion of a State by the threat or use of force

A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

Article 53. Treaties conflicting with a peremptory norm of  
general international law (“jus cogens”)

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

Section 3. Termination and suspension  
of the operation of treaties

Article 54. Termination of or withdrawal from a treaty under  
its provisions or by consent of the parties

The termination of a treaty or the withdrawal of a party may take place:

(a) in conformity with the provisions of the treaty; or

(b) at any time by consent of all the parties after consultation with the other contracting States.

Article 55. Reduction of the parties to a multilateral   
treaty below the number necessary for its entry into force

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.

Article 56. Denunciation of or withdrawal from a treaty  
 containing no provision regarding termination,  
denunciation or withdrawal

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

(a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or

(b) a right of denunciation or withdrawal may be implied by the nature of the treaty.

2. A party shall give not less than twelve months’ notice of its intention to denounce or withdraw from a treaty under paragraph 1.

Article 57. Suspension of the operation of a treaty under its  
provisions or by consent of the parties

The operation of a treaty in regard to all the parties or to a particular party may be suspended:

(a) in conformity with the provisions of the treaty; or

(b) at any time by consent of all the parties after consultation with the other contracting States.

Article 58. Suspension of the operation of a multilateral treaty by  
agreement between certain of the parties only

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if:

(a) the possibility of such a suspension is provided for by the treaty; or

(b) the suspension in question is not prohibited by the treaty and:

(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

(ii) is not incompatible with the object and purpose of the treaty.

2. Unless in a case falling under paragraph 1 (a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of those provisions of the treaty the operation of which they intend to suspend.

Article 59. Termination or suspension of the operation of a treaty  
implied by conclusion of a later treaty

1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject matter and:

(a) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty; or

(b) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

Article 60. Termination or suspension of the operation   
of a treaty as a consequence of its breach

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles:

(a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:

(i) in the relations between themselves and the defaulting State; or

(ii) as between all the parties;

(b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;

(c) any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of this article, consists in:

(a) a repudiation of the treaty not sanctioned by the present Convention; or

(b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.

Article 61. Supervening impossibility of performance

1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.

2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

Article 62. Fundamental change of circumstances

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

(a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty:

(a) if the treaty establishes a boundary; or

(b) if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.

Article 63. Severance of diplomatic or consular relations

The severance of diplomatic or consular relations between parties to a treaty does not affect the legal relations established between them by the treaty except insofar as the existence of diplomatic or consular relations is indispensable for the application of the treaty.

Article 64. Emergence of a new peremptory norm of general  
international law (“jus cogens”)

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

Section 4. Procedure

Article 65. Procedure to be followed with respect to invalidity,  
termination, withdrawal from or suspension   
of the operation of a treaty

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 67 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

5. Without prejudice to article 45, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

Article 66. Procedures for judicial settlement,   
arbitration and conciliation

If, under paragraph 3 of article 65, no solution has been reached within a period of 12 months following the date on which the objection was raised, the following procedures shall be followed:

(a) any one of the parties to a dispute concerning the application or the interpretation of article 53 or 64 may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration;

(b) any one of the parties to a dispute concerning the application or the interpretation of any of the other articles in Part V of the present Convention may set in motion the procedure specified in the Annex to the Convention by submitting a request to that effect to the Secretary-General of the United Nations.

Article 67. Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty

1. The notification provided for under article 65, paragraph 1, must be made in writing.

2. Any act of declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 65 shall be carried out through an instrument communicated to the other parties. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

Article 68. Revocation of notifications and instruments   
provided for in articles 65 and 67

A notification or instrument provided for in article 65 or 67 may be revoked at any time before it takes effect.

Section 5. Consequences of the invalidity, termination  
or suspension of the operation of a treaty

Article 69. Consequences of the invalidity of a treaty

1. A treaty the invalidity of which is established under the present Convention is void. The provisions of a void treaty have no legal force.

2. If acts have nevertheless been performed in reliance on such a treaty:

(a) each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed;

(b) acts performed in good faith before the invalidity was invoked are not rendered unlawful by reason only of the invalidity of the treaty.

3. In cases falling under article 49, 50, 51 or 52, paragraph 2 does not apply with respect to the party to which the fraud, the act of corruption or the coercion is imputable.

4. In the case of the invalidity of a particular State’s consent to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State and the parties to the treaty.

Article 70. Consequences of the termination of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:

(a) releases the parties from any obligation further to perform the treaty;

(b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

Article 71. Consequences of the invalidity of a treaty which conflicts  
with a peremptory norm of general international law

1. In the case of a treaty which is void under article 53 the parties shall:

(a) eliminate as far as possible the consequences of any act performed in reliance on any provision which conflicts with the peremptory norm of general international law; and

(b) bring their mutual relations into conformity with the peremptory norm of general international law.

2. In the case of a treaty which becomes void and terminates under article 64, the termination of the treaty:

(a) releases the parties from any obligation further to perform the treaty;

(b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination, provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

Article 72. Consequences of the suspension of the   
operation of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present Convention:

(a) releases the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of the suspension;

(b) does not otherwise affect the legal relations between the parties established by the treaty.

2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty.

Part VI. Miscellaneous Provisions

Article 73. Cases of State succession, State responsibility  
and outbreak of hostilities

The provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States.

Article 74. Diplomatic and consular relations and the  
conclusion of treaties

The severance or absence of diplomatic or consular relations between two or more States does not prevent the conclusion of treaties between those States. The conclusion of a treaty does not in itself affect the situation in regard to diplomatic or consular relations.

Article 75. Case of an aggressor State

The provisions of the present Convention are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State’s aggression.

Part VII. Depositaries, Notifications,  
Corrections and Registration

Article 76. Depositaries of treaties

1. The designation of the depositary of a treaty may be made by the negotiating States, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization.

2. The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a State and a depositary with regard to the performance of the latter’s functions shall not affect that obligation.

Article 77. Functions of depositaries

1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States, comprise in particular:

(a) keeping custody of the original text of the treaty and of any full powers delivered to the depositary;

(b) preparing certified copies of the original text and preparing any further text of the treaty in such additional languages as may be required by the treaty and transmitting them to the parties and to the States entitled to become parties to the treaty;

(c) receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;

(d) examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the State in question;

(e) informing the parties and the States entitled to become parties to the treaty of acts, notifications and communications relating to the treaty;

(f) informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, acceptance, approval or accession required for the entry into force of the treaty has been received or deposited;

(g) registering the treaty with the Secretariat of the United Nations;

(h) performing the functions specified in other provisions of the present Convention.

2. In the event of any difference appearing between a State and the depositary as to the performance of the latter’s functions, the depositary shall bring the question to the attention of the signatory States and the contracting States or, where appropriate, of the competent organ of the international organization concerned.

Article 78. Notifications and communications

Except as the treaty or the present Convention otherwise provide, any notification or communication to be made by any State under the present Convention shall:

(a) if there is no depositary, be transmitted direct to the States for which it is intended, or if there is a depositary, to the latter;

(b) be considered as having been made by the State in question only upon its receipt by the State to which it was transmitted or, as the case may be, upon its receipt by the depositary;

(c) if transmitted to a depositary, be considered as received by the State for which it was intended only when the latter State has been informed by the depositary in accordance with article 77, paragraph 1 (e).

Article 79. Correction of errors in texts or   
in certified copies of treaties

1. Where, after the authentication of the text of a treaty, the signatory States and the contracting States are agreed that it contains an error, the error shall, unless they decide upon some other means of correction, be corrected:

(a) by having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;

(b) by executing or exchanging an instrument or instruments setting out the correction which it has been agreed to make; or

(c) by executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

2. Where the treaty is one for which there is a depositary, the latter shall notify the signatory States and the contracting States of the error and of the proposal to correct it and shall specify an appropriate time-limit within which objection to the proposed correction may be raised. If, on the expiry of the time-limit:

(a) no objection has been raised, the depositary shall make and initial the correction in the text and shall execute a procès-verbal of the rectification of the text and communicate a copy of it to the parties and to the States entitled to become parties to the treaty;

(b) an objection has been raised, the depositary shall communicate the objection to the signatory States and to the contracting States.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory States and the contracting States agree should be corrected.

4. The corrected text replaces the defective text ab initio, unless the signatory States and the contracting States otherwise decide.

5. The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

6. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a procès-verbal specifying the rectification and communicate a copy of it to the signatory States and to the contracting States.

Article 80. Registration and publication of treaties

1. Treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication.

2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the preceding paragraph.

Part VIII. Final Provisions

Article 81. Signature

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a party to the Convention, as follows: until 30 November 1969, at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 April 1970, at United Nations Headquarters, New York.

Article 82. Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 83. Accession

The present Convention shall remain open for accession by any State belonging to any of the categories mentioned in article 81. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 84. Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the thirty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 85. Authentic texts

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Done at Vienna this twenty-third day of May, one thousand nine hundred and sixty-nine.

Annex

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 66, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

(b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the last of their own appointments, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

G. Convention on the Prevention and Punishment of Crimes Against Internationally Protected  
Persons, Including Diplomatic Agents

1. General Assembly resolution 3166 (XXVIII)  
 of 14 December 1973

The General Assembly,

Considering that the codification and progressive development of international law contributes to the implementation of the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations,

Recalling that in response to the request made in General Assembly resolution 2780 (XXVI) of 3 December 1971, the International Law Commission, at its twenty-fourth session, studied the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law and prepared draft articles on the prevention and punishment of crimes against such persons,

Having considered the draft articles and also the comments and observations thereon submitted by States, specialized agencies and other intergovernmental organizations in response to the invitation extended by the General Assembly in its resolution 2926 (XXVII) of 28 November 1972,

Convinced of the importance of securing international agreement on appropriate and effective measures for the prevention and punishment of crimes against diplomatic agents and other internationally protected persons in view of the serious threat to the maintenance and promotion of friendly relations and cooperation among States created by the commission of such crimes,

Having elaborated for that purpose the provisions contained in the Convention annexed hereto,

1. Adopts the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, annexed to the present resolution;

2. Re-emphasizes the great importance of the rules of international law concerning the inviolability of and special protection to be afforded to internationally protected persons and the obligations of States in relation thereto;

3. Considers that the annexed Convention will enable States to carry out their obligations more effectively;

4. Recognizes also that the provisions of the annexed 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 Cooperation among States in accordance with the Charter of the United Nations, by peoples struggling against colonialism, alien domination, foreign occupation, racial discrimination and apartheid;

5. Invites States to become parties to the annexed Convention;

6. Decides that the present resolution, whose provisions are related to the annexed Convention, shall always be published together with it.

2. Convention on the Prevention and Punishment of  
Crimes against Internationally Protected Persons,  
including Diplomatic Agents,[[894]](#footnote-894) Annexed to  
General Assembly resolution 3166 (XVIII)  
of 14 December 1973

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and the promotion of friendly relations and cooperation among States,

Considering that crimes against diplomatic agents and other internationally protected persons jeopardizing the safety of these persons create a serious threat to the maintenance of normal international relations which are necessary for cooperation among States,

Believing that the commission of such crimes is a matter of grave concern to the international community,

Convinced that there is an urgent need to adopt appropriate and effective measures for the prevention and punishment of such crimes,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. “Internationally protected person” means:

(a) A Head of State, including any member of a collegial body performing the functions of a Head of State under the constitution of the State concerned, a Head of Government or a Minister for Foreign Affairs, whenever any such person is in a foreign State, as well as members of his family who accompany him;

(b) Any representative or official of a State or any official or other agent of an international organization of an intergovernmental character who, at the time when and in the place where a crime against him, his official premises, his private accommodation or his means of transport is committed, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity, as well as members of his family forming part of his household.

2. “Alleged offender” means a person as to whom there is sufficient evidence to determine prima facie that he has committed or participated in one or more of the crimes set forth in article 2.

Article 2

1. The intentional commission of:

(a) A murder, kidnapping or other attack upon the person or liberty of an internationally protected person;

(b) A violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty;

(c) A threat to commit any such attack;

(d) An attempt to commit any such attack; and

(e) An act constituting participation as an accomplice in any such attack shall be made by each State Party a crime under its internal law.

2. Each State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature.

3. Paragraphs 1 and 2 of this article in no way derogate from the obligations of States Parties under international law to take all appropriate measures to prevent other attacks on the person, freedom or dignity of an internationally protected person.

Article 3

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set forth in article 2 in the following cases:

(a) When the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the crime is committed against an internationally protected person as defined in article 1 who enjoys his status as such by virtue of functions which he exercises on behalf of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these crimes in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 4

States Parties shall cooperate in the prevention of the crimes set forth in article 2, particularly by:

(a) taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories;

(b) exchanging information and coordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes.

Article 5

1. The State Party in which any of the crimes set forth in article 2 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to all other States concerned, directly or through the Secretary-General of the United Nations, all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.

2. Whenever any of the crimes set forth in article 2 has been committed against an internationally protected person, any State Party which has information concerning the victim and the circumstances of the crime shall endeavour to transmit it, under the conditions provided for in its internal law, fully and promptly to the State Party on whose behalf he was exercising his functions.

Article 6

1. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its internal law so as to ensure his presence for the purpose of prosecution or extradition. Such measures shall be notified without delay directly or through the Secretary-General of the United Nations to:

(a) The State where the crime was committed;

(b) The State or States of which the alleged offender is a national or, if he is a stateless person, in whose territory he permanently resides;

(c) The State or States of which the internationally protected person concerned is a national or on whose behalf he was exercising his functions;

(d) All other States concerned; and

(e) The international organization of which the internationally protected person concerned is an official or an agent.

2. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

(a) To communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights or, if he is a stateless person, which he requests and which is willing to protect his rights; and

(b) To be visited by a representative of that State.

Article 7

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

Article 8

1. To the extent that the crimes set forth in article 2 are not listed as extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every future extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may, if it decides to extradite, consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the procedural provisions and the other conditions of the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the procedural provisions and the other conditions of the law of the requested State.

4. Each of the crimes shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 1 of article 3.

Article 9

Any person regarding whom proceedings are being carried out in connection with any of the crimes set forth in article 2 shall be guaranteed fair treatment at all stages of the proceedings.

Article 10

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the crimes set forth in article 2, including the supply of all evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

Article 11

The State Party where an alleged offender is prosecuted shall communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 12

The provisions of this Convention shall not affect the application of the Treaties on Asylum, in force at the date of the adoption of this Convention, as between the States which are parties to those Treaties; but a State Party to this Convention may not invoke those Treaties with respect to another State Party to this Convention which is not a party to those Treaties.

Article 13

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 14

This Convention shall be open for signature by all States, until 31 December 1974, at United Nations Headquarters in New York.

Article 15

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 16

This Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 17

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 18

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect six months following the date on which notification is received by the Secretary-General of the United Nations.

Article 19

The Secretary-General of the United Nations shall inform all States, inter alia:

(a) Of signatures to this Convention, of the deposit of instruments of ratification or accession in accordance with articles 14, 15 and 16 and of notifications made under article 18;

(b) Of the date on which this Convention will enter into force in accordance with article 17.

Article 20

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

in witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 14 December 1973.

H. Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character

Vienna Convention on the Representation of States  
in their Relations with International Organizations  
of a Universal Character. Done at Vienna,  
on 14 March 1975[[895]](#footnote-895)

The States Parties to the present Convention,

Recognizing the increasingly important role of multilateral diplomacy in relations between States and the responsibilities of the United Nations, its specialized agencies and other international organizations of a universal character within the international community,

Having in mind the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security and the promotion of friendly relations and cooperation among States,

Recalling the work of codification and progressive development of international law applicable to bilateral relations between States which was achieved by the Vienna Convention on Diplomatic Relations of 1961, the Vienna Convention on Consular Relations of 1963, and the Convention on Special Missions of 1969,

Believing that an international convention on the representation of States in their relations with international organizations of a universal character would contribute to the promotion of friendly relations and cooperation among States, irrespective of their political, economic and social systems,

Recalling the provisions of Article 105 of the Charter of the United Nations,

Recognizing that the purpose of privileges and immunities contained in the present Convention is not to benefit individuals but to ensure the efficient performance of their functions in connection with organizations and conferences,

Taking account of the Convention on the Privileges and Immunities of the United Nations of 1946, the Convention on the Privileges and Immunities of the Specialized Agencies of 1947 and other agreements in force between States and between States and international organizations,

Affirming that the rules of customary international law continue to govern questions not expressly regulated by the provisions of the present Convention,

Have agreed as follows:

Part I. Introduction

Article 1. Use of terms

1. For the purposes of the present Convention:

(1) “international organization” means an intergovernmental organization;

(2) “international organization of a universal character” means the United Nations, its specialized agencies, the International Atomic Energy Agency and any similar organization whose membership and responsibilities are on a worldwide scale;

(3) “Organization” means the international organization in question;

(4) “organ” means:

(a) any principal or subsidiary organ of an international organization, or

(b) any commission, committee or subgroup of any such organ, in which States are members;

(5) “conference” means a conference of States convened by or under the auspices of an international organization;

(6) “mission” means, as the case may be, the permanent mission or the permanent observer mission;

(7) “permanent mission” means a mission of permanent character, representing the State, sent by a State member of an international organization to the Organization;

(8) “permanent observer mission” means a mission of permanent character, representing the State, sent to an international organization by a State not a member of the Organization;

(9) “delegation” means, as the case may be, the delegation to an organ or the delegation to a conference;

(10) “delegation to an organ” means the delegation sent by a State to participate on its behalf in the proceedings of the organ;

(11) “delegation to a conference” means the delegation sent by a State to participate on its behalf in the conference;

(12) “observer delegation” means, as the case may be, the observer delegation to an organ or the observer delegation to a conference;

(13) “observer delegation to an organ” means the delegation sent by a State to participate on its behalf as an observer in the proceedings of the organ;

(14) “observer delegation to a conference” means the delegation sent by a State to participate on its behalf as an observer in the proceedings of the conference;

(15) “host State” means the State in whose territory:

(a) the Organization has its seat or an office, or

(b) a meeting of an organ or a conference is held;

(16) “sending State” means the State which sends:

(a) a mission to the Organization at its seat or to an office of the Organization, or

(b) a delegation to an organ or a delegation to a conference, or

(c) an observer delegation to an organ or an observer delegation to a conference;

(17) “head of mission” means, as the case may be, the permanent representative or the permanent observer;

(18) “permanent representative” means the person charged by the sending State with the duty of acting as the head of the permanent mission;

(19) “permanent observer” means the person charged by the sending State with the duty of acting as the head of the permanent observer mission;

(20) “members of the mission” means the head of mission and the members of the staff;

(21) “head of delegation” means the delegate charged by the sending State with the duty of acting in that capacity;

(22) “delegate” means any person designated by a State to participate as its representative in the proceedings of an organ or in a conference;

(23) “members of the delegation” means the delegates and the members of the staff;

(24) “head of the observer delegation” means the observer delegate charged by the sending State with the duty of acting in that capacity;

(25) “observer delegate” means any person designated by a State to attend as an observer the proceedings of an organ or of a conference;

(26) “members of the observer delegation” means the observer delegates and the members of the staff;

(27) “members of the staff” means the members of the diplomatic staff, the administrative and technical staff and the service staff of the mission, the delegation or the observer delegation;

(28) “members of the diplomatic staff” means the members of the staff of the mission, the delegation or the observer delegation who enjoy diplomatic status for the purpose of the mission, the delegation or the observer delegation;

(29) “members of the administrative and technical staff” means the members of the staff employed in the administrative and technical service of the mission, the delegation or the observer delegation;

(30) “members of the service staff” means the members of the staff employed by the mission, the delegation or the observer delegation as household workers or for similar tasks;

(31) “private staff” means persons employed exclusively in the private service of the members of the mission or the delegation;

(32) “premises of the mission” means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purpose of the mission, including the residence of the head of mission;

(33) “premises of the delegation” means the buildings or parts of buildings, irrespective of ownership, used solely as the offices of the delegation;

(34) “rules of the Organization” means, in particular, the constituent instruments, relevant decisions and resolutions, and established practice of the Organization.

2. The provisions of paragraph 1 of this article regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in other international instruments or the internal law of any State.

Article 2. Scope of the present Convention

1. The present Convention applies to the representation of States in their relations with any international organization of a universal character, and to their representation at conferences convened by or under the auspices of such an organization, when the Convention has been accepted by the host State and the Organization has completed the procedure envisaged by article 90.

2. The fact that the present Convention does not apply to other international organizations is without prejudice to the application to the representation of States in their relations with such other organizations of any of the rules set forth in the Convention which would be applicable under international law independently of the Convention.

3. The fact that the present Convention does not apply to other conferences is without prejudice to the application to the representation of States at such other conferences of any of the rules set forth in the Convention which would be applicable under international law independently of the Convention.

4. Nothing in the present Convention shall preclude the conclusion of agreements between States or between States and international organizations making the Convention applicable in whole or in part to international organizations or conferences other than those referred to in paragraph 1 of this article.

Article 3. Relationship between the present Convention and the relevant rules of international organizations or conferences

The provisions of the present Convention are without prejudice to any relevant rules of the Organization or to any relevant rules of procedure of the Conference.

Article 4. Relationship between the present Convention  
and other international agreements

The provisions of the present Convention:

(a) are without prejudice to other international agreements in force between States or between States and international organizations of a universal character, and

(b) shall not preclude the conclusion of other international agreements regarding the representation of States in their relations with international organizations of a universal character or their representation at conferences convened by or under the auspices of such organizations.

Part II. Missions to International Organizations

Article 5. Establishment of missions

1. Member States may, if the rules of the Organization so permit, establish permanent missions for the performance of the functions mentioned in article 6.

2. Non-member States may, if the rules of the Organization so permit, establish permanent observer missions for the performance of the functions mentioned in article 7.

3. The Organization shall notify the host State of the institution of a mission prior to its establishment.

Article 6. Functions of the permanent mission

The functions of the permanent mission consist, inter alia, in:

(a) ensuring the representation of the sending State to the Organization;

(b) maintaining liaison between the sending State and the Organization;

(c) negotiating with and within the Organization;

(d) ascertaining activities in the Organization and reporting thereon to the Government of the sending State;

(e) ensuring the participation of the sending State in the activities of the Organization;

(f) protecting the interests of the sending State in relation to the Organization;

(g) promoting the realization of the purposes and principles of the Organization by cooperating with and within the Organization.

Article 7. Functions of the permanent observer mission

The functions of the permanent observer mission consist, inter alia, in:

(a) ensuring the representation of the sending State and safeguarding its interests in relation to the Organization and maintaining liaison with it;

(b) ascertaining activities in the Organization and reporting thereon to the Government of the sending State;

(c) promoting cooperation with the Organization and negotiating with it.

Article 8. Multiple accreditation or appointment

1. The sending State may accredit the same person as head of mission to two or more international organizations or appoint a head of mission as a member of the diplomatic staff of another of its missions.

2. The sending State may accredit a member of the diplomatic staff of the mission as head of mission to other international organizations or appoint a member of the staff of the mission as a member of the staff of another of its missions.

3. Two or more States may accredit the same person as head of mission to the same international organization.

Article 9. Appointment of the members of the mission

Subject to the provisions of articles 14 and 73, the sending State may freely appoint the members of the mission.

Article 10. Credentials of the head of mission

The credentials of the head of mission shall be issued by the Head of State, by the Head of Government, by the Minister for Foreign Affairs or, if the rules of the Organization so permit, by another competent authority of the sending State and shall be transmitted to the Organization.

Article 11. Accreditation to organs of the Organization

1. A member State may specify in the credentials issued to its permanent representative that he is authorized to act as a delegate to one or more organs of the Organization.

2. Unless a member State provides otherwise, its permanent representative may act as a delegate to organs of the Organization for which there are no special requirements as regards representation.

3. A non-member State may specify in the credentials issued to its permanent observer that he is authorized to act as an observer delegate to one or more organs of the Organization when this is permitted by the rules of the Organization or the organ concerned.

Article 12. Full powers for the conclusion of a treaty  
with the Organization

1. The head of mission, by virtue of his functions and without having to produce full powers, is considered as representing his State for the purpose of adopting the text of a treaty between that State and the Organization.

2. The head of mission is not considered by virtue of his functions as representing his State for the purpose of signing a treaty, or signing a treaty ad referendum, between that State and the Organization unless it appears from the practice of the Organization, or from other circumstances, that the intention of the parties was to dispense with full powers.

Article 13. Composition of the mission

In addition to the head of mission, the mission may include diplomatic staff, administrative and technical staff and service staff.

Article 14. Size of the mission

The size of the mission shall not exceed what is reasonable and normal, having regard to the functions of the Organization, the needs of the particular mission and the circumstances and conditions in the host State.

Article 15. Notifications

1. The sending State shall notify the Organization of:

(a) the appointment, position, title and order of precedence of the members of the mission, their arrival, their final departure or the termination of their functions with the mission, and any other changes affecting their status that may occur in the course of their service with the mission;

(b) the arrival and final departure of any person belonging to the family of a member of the mission and forming part of his household and, where appropriate, the fact that a person becomes or ceases to be such a member of the family;

(c) the arrival and final departure of persons employed on the private staff of members of the mission and the termination of their employment as such;

(d) the beginning and the termination of the employment of persons resident in the host State as members of the staff of the mission or as persons employed on the private staff;

(e) the location of the premises of the mission and of the private residences enjoying inviolability under articles 23 and 29, as well as any other information that may be necessary to identify such premises and residences.

2. Where possible, prior notification of arrival and final departure shall also be given.

3. The Organization shall transmit to the host State the notification referred to in paragraphs 1 and 2 of this article.

4. The sending State may also transmit to the host State the notification referred to in paragraphs 1 and 2 of this article.

Article 16. Acting head of mission

If the post of head of mission is vacant, or if the head of mission is unable to perform his functions, the sending State may appoint an acting head of mission whose name shall be notified to the Organization and by it to the host State.

Article 17. Precedence

1. Precedence among permanent representatives shall be determined by the alphabetical order of the names of the States used in the Organization.

2. Precedence among permanent observers shall be determined by the alphabetical order of the names of the States used in the Organization.

Article 18. Location of the mission

Missions should be established in the locality where the Organization has its seat. However, if the rules of the Organization so permit and with the prior consent of the host State, the sending State may establish a mission or an office of a mission in a locality other than that in which the Organization has its seat.

Article 19. Use of flag and emblem

1. The mission shall have the right to use the flag and emblem of the sending State on its premises. The head of mission shall have the same right as regards his residence and means of transport.

2. In the exercise of the right accorded by this article regard shall be had to the laws, regulations and usages of the host State.

Article 20. General facilities

1. The host State shall accord to the mission all necessary facilities for the performance of its functions.

2. The Organization shall assist the mission in obtaining those facilities and shall accord to the mission such facilities as lie within its own competence.

Article 21. Premises and accommodation

1. The host State and the Organization shall assist the sending State in obtaining on reasonable terms premises necessary for the mission in the territory of the host State. Where necessary, the host State shall facilitate in accordance with its laws the acquisition of such premises.

2. Where necessary, the host State and the Organization shall also assist the mission in obtaining on reasonable terms suitable accommodation for its members.

Article 22. Assistance by the Organization in respect  
of privileges and immunities

1. The Organization shall, where necessary, assist the sending State, its mission and the members of its mission in securing the enjoyment of the privileges and immunities provided for under the present Convention.

2. The Organization shall, where necessary, assist the host State in securing the discharge of the obligations of the sending State, its mission and the members of its mission in respect of the privileges and immunities provided for under the present Convention.

Article 23. Inviolability of premises

1. The premises of the mission shall be inviolable. The agents of the host State may not enter them, except with the consent of the head of mission.

2. (a) The host State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

(b) In case of an attack on the premises of the mission, the host State shall take all appropriate steps to prosecute and punish persons who have committed the attack.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

Article 24. Exemption of the premises from taxation

1. The premises of the mission of which the sending State or any person acting on its behalf is the owner or the lessee shall be exempt from all national, regional or municipal dues and taxes other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the host State by persons contracting with the sending State or with any person acting on its behalf.

Article 25. Inviolability of archives and documents

The archives and documents of the mission shall be inviolable at all times and wherever they may be.

Article 26. Freedom of movement

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the host State shall ensure freedom of movement and travel in its territory to all members of the mission and members of their families forming part of their households.

Article 27. Freedom of communication

1. The host State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government of the sending State, its permanent diplomatic missions, consular posts, permanent missions, permanent observer missions, special missions, delegations and observer delegations, wherever situated, the mission may employ all appropriate means, including couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the host State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

3. The bag of the mission shall not be opened or detained.

4. The packages constituting the bag of the mission must bear visible external marks of their character and may contain only documents or articles intended for the official use of the mission.

5. The courier of the mission, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the host State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the mission may designate couriers ad hoc of the mission. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when the courier ad hoc has delivered to the consignee the mission’s bag in his charge.

7. The bag of the mission may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier of the mission. By arrangement with the appropriate authorities of the host State, the mission may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

Article 28. Personal inviolability

The persons of the head of mission and of the members of the diplomatic staff of the mission shall be inviolable. They shall not be liable to any form of arrest or detention. The host State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their persons, freedom or dignity and to prosecute and punish persons who have committed such attacks.

Article 29. Inviolability of residence and property

1. The private residence of the head of mission and of the members of the diplomatic staff of the mission shall enjoy the same inviolability and protection as the premises of the mission.

2. The papers, correspondence and, except as provided in paragraph 2 of article 30, the property of the head of mission or of members of the diplomatic staff of the mission shall also enjoy inviolability.

Article 30. Immunity from jurisdiction

1. The head of mission and the members of the diplomatic staff of the mission shall enjoy immunity from the criminal jurisdiction of the host State. They shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(a) a real action relating to private immovable property situated in the territory of the host State, unless the person in question holds it on behalf of the sending State for the purposes of the mission;

(b) an action relating to succession in which the person in question is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) an action relating to any professional or commercial activity exercised by the person in question in the host State outside his official functions.

2. No measures of execution may be taken in respect of the head of mission or a member of the diplomatic staff of the mission except in cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

3. The head of mission and the members of the diplomatic staff of the mission are not obliged to give evidence as witnesses.

4. The immunity of the head of mission or of a member of the diplomatic staff of the mission from the jurisdiction of the host State does not exempt him from the jurisdiction of the sending State.

Article 31. Waiver of immunity

1. The immunity from jurisdiction of the head of mission and members of the diplomatic staff of the mission and of persons enjoying immunity under article 36 may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by any of the persons referred to in paragraph 1 of this article shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

5. If the sending State does not waive the immunity of any of the persons mentioned in paragraph 1 of this article in respect of a civil action, it shall use its best endeavours to bring about a just settlement of the case.

Article 32. Exemption from social security legislation

1. Subject to the provisions of paragraph 3 of this article, the head of mission and the members of the diplomatic staff of the mission shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the host State.

2. The exemption provided for in paragraph 1 of this article shall also apply to persons who are in the sole private employ of the head of mission or of a member of the diplomatic staff of the mission, on condition:

(a) that such employed persons are not nationals of or permanently resident in the host State; and

(b) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. The head of mission and the members of the diplomatic staff of the mission who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the host State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the host State provided that such participation is permitted by that State.

5. The provisions of this article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

Article 33. Exemption from dues and taxes

The head of mission and the members of the diplomatic staff of the mission shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(a) indirect taxes of a kind which are normally incorporated in the price of goods or services;

(b) dues and taxes on private immovable property situated in the territory of the host State, unless the person concerned holds it on behalf of the sending State for the purposes of the mission;

(c) estate, succession or inheritance duties levied by the host State, subject to the provisions of paragraph 4 of article 38;

(d) dues and taxes on private income having its source in the host State and capital taxes on investments made in commercial undertakings in the host State;

(e) charges levied for specific services rendered;

(f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of article 24.

Article 34. Exemption from personal services

The host State shall exempt the head of mission and the members of the diplomatic staff of the mission from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 35. Exemption from customs duties and inspection

1. The host State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes and related charges other than charges for storage, cartage and similar services, on:

(a) articles for the official use of the mission;

(b) articles for the personal use of the head of mission or a member of the diplomatic staff of the mission, including articles intended for his establishment.

2. The personal baggage of the head of mission or a member of the diplomatic staff of the mission shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host State. In such cases, inspection shall be conducted only in the presence of the person enjoying the exemption or of his authorized representative.

Article 36. Privileges and immunities of other persons

1. The members of the family of the head of mission forming part of his household and the members of the family of a member of the diplomatic staff of the mission forming part of his household shall, if they are not nationals of or permanently resident in the host State, enjoy the privileges and immunities specified in articles 28, 29, 30, 32, 33, 34 and in paragraphs 1(b) and 2 of article 35.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households who are not nationals of or permanently resident in the host State, shall enjoy the privileges and immunities specified in articles 28, 29, 30, 32, 33 and 34, except that the immunity from civil and administrative jurisdiction of the host State specified in paragraph 1 of article 30 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in paragraph 1 (b) of article 35 in respect of articles imported at the time of final installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the host State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption specified in article 32.

4. Private staff of members of the mission shall, if they are not nationals of or permanently resident in the host State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

Article 37. Nationals and permanent residents of the host State

1. Except in so far as additional privileges and immunities may be granted by the host State, the head of mission or any member of the diplomatic staff of the mission who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction and inviolability in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the mission who are nationals of or permanently resident in the host State shall enjoy only immunity from jurisdiction in respect of official acts performed in the exercise of their functions. In all other respects, those members, and persons on the private staff who are nationals of or permanently resident in the host State, shall enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those members and persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

Article 38. Duration of privileges and immunities

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the host State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the host State by the Organization or by the sending State.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the territory, or on the expiry of a reasonable period in which to do so. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

3. In the event of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the territory.

4. In the event of the death of a member of the mission not a national of or permanently resident in the host State or of a member of his family forming part of his household, the host State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the territory the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property which is in the host State solely because of the presence there of the deceased as a member of the mission or of the family of a member of the mission.

Article 39. Professional or commercial activity

1. The head of mission and members of the diplomatic staff of the mission shall not practise for personal profit any professional or commercial activity in the host State.

2. Except insofar as such privileges and immunities may be granted by the host State, members of the administrative and technical staff and persons forming part of the household of a member of the mission shall not, when they practise a professional or commercial activity for personal profit, enjoy any privilege or immunity in respect of acts performed in the course of or in connection with the practise of such activity.

*Art*i*cle 40.*End of functions

The functions of the head of mission or of a member of the diplomatic staff of the mission shall come to an end, inter alia:

(a) on notification of their termination by the sending State to the Organization;

(b) if the mission is finally or temporarily recalled.

Article 41. Protection of premises, property and archives

1. When the mission is temporarily or finally recalled, the host State must respect and protect the premises, property and archives of the mission. The sending State must take all appropriate measures to terminate this special duty of the host State as soon as possible. It may entrust custody of the premises, property and archives of the mission to the Organization if it so agrees, or to a third State acceptable to the host State.

2. The host State, if requested by the sending State, shall grant the latter facilities for removing the property and archives of the mission from the territory of the host State.

Part III. Delegations to Organs and to Conferences

Article 42. Sending of delegations

1. A State may send a delegation to an organ or to a conference in accordance with the rules of the Organization.

2. Two or more States may send the same delegation to an organ or to a conference in accordance with the rules of the Organization.

Article 43. Appointment of the members of the delegation

Subject to the provisions of articles 46 and 73, the sending State may freely appoint the members of the delegation.

Article 44. Credentials of delegates

The credentials of the head of delegation and of other delegates shall be issued by the Head of State, by the Head of Government, by the Minister for Foreign Affairs or, if the rules of the Organization or the rules of procedure of the conference so permit, by another competent authority of the sending State. They shall be transmitted, as the case may be, to the Organization or to the conference.

Article 45. Composition of the delegation

In addition to the head of delegation, the delegation may include other delegates, diplomatic staff, administrative and technical staff and service staff.

Article 46. Size of the delegation

The size of the delegation shall not exceed what is reasonable and normal, having regard, as the case may be, to the functions of the organ or the object of the conference, as well as the needs of the particular delegation and the circumstances and conditions in the host State.

Article 47. Notifications

1. The sending State shall notify the Organization or, as the case may be, the conference of:

(a) the composition of the delegation, including the position, title and order of precedence of the members of the delegation, and any subsequent changes therein;

(b) the arrival and final departure of members of the delegation and the termination of their functions with the delegation;

(c) the arrival and final departure of any person accompanying a member of the delegation;

(d) the beginning and the termination of the employment of persons resident in the host State as members of the staff of the delegation or as persons employed on the private staff;

(e) the location of the premises of the delegation and of the private accommodation enjoying inviolability under article 59, as well as any other information that may be necessary to identify such premises and accommodation.

2. Where possible, prior notification of arrival and final departure shall also be given.

3. The Organization or, as the case may be, the conference shall transmit to the host State the notifications referred to in paragraphs 1 and 2 of this article.

4. The sending State may also transmit to the host State the notifications referred to in paragraphs 1 and 2 of this article.

Article 48. Acting head of delegation

1. If the head of delegation is absent or unable to perform his functions, an acting head of delegation shall be designated from among the other delegates by the head of delegation or, in case he is unable to do so, by a competent authority of the sending State. The name of the acting head of delegation shall be notified, as the case may be, to the Organization or to the conference.

2. If a delegation does not have another delegate available to serve as acting head of delegation, another person may be designated for that purpose. In such case credentials must be issued and transmitted in accordance with article 44.

Article 49. Precedence

Precedence among delegations shall be determined by the alphabetical order of the names of the States used in the Organization.

Article 50. Status of the Head of State and persons of high rank

1. The Head of State or any member of a collegial body performing the functions of Head of State under the constitution of the State concerned, when he leads the delegation, shall enjoy in the host State or in a third State, in addition to what is granted by the present Convention, the facilities, privileges and immunities accorded by international law to Heads of State.

2. The Head of Government, the Minister for Foreign Affairs or other person of high rank, when he leads or is a member of the delegation, shall enjoy in the host State or in a third State, in addition to what is granted by the present Convention, the facilities, privileges and immunities accorded by international law to such persons.

Article 51. General facilities

1. The host State shall accord to the delegation all necessary facilities for the performance of its tasks.

2. The Organization or, as the case may be, the conference shall assist the delegation in obtaining those facilities and shall accord to the delegation such facilities as lie within its own competence.

Article 52. Premises and accommodation

If so requested, the host State and, where necessary, the Organization or the conference shall assist the sending State in obtaining on reasonable terms premises necessary for the delegation and suitable accommodation for its members.

Article 53. Assistance in respect of privileges and immunities

1. The Organization or, as the case may be, the Organization and the conference shall, where necessary, assist the sending State, its delegation and the members of its delegation in securing the enjoyment of the privileges and immunities provided for under the present Convention.

2. The Organization or, as the case may be, the Organization and the conference shall, where necessary, assist the host State in securing the discharge of the obligations of the sending State, its delegation and the members of its delegation in respect of the privileges and immunities provided for under the present Convention.

Article 54. Exemption of the premises from taxation

1. The sending State or any member of the delegation acting on behalf of the delegation shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the delegation other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the host State by persons contracting with the sending State or with a member of the delegation.

Article 55. Inviolability of archives and documents

The archives and documents of the delegation shall be inviolable at all times and wherever they may be.

Article 56. Freedom of movement

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the host State shall ensure to all members of the delegation such freedom of movement and travel in its territory as is necessary for the performance of the tasks of the delegation.

*Articl*e *57.*Freedom of communication

1. The host State shall permit and protect free communication on the part of the delegation for all official purposes. In communicating with the Government of the sending State, its permanent diplomatic missions, consular posts, permanent missions, permanent observer missions, special missions, other delegations, and observer delegations, wherever situated, the delegation may employ all appropriate means, including couriers and messages in code or cipher. However, the delegation may install and use a wireless transmitter only with the consent of the host State.

2. The official correspondence of the delegation shall be inviolable. Official correspondence means all correspondence relating to the delegation and its tasks.

3. Where practicable, the delegation shall use the means of communication, including the bag and the courier, of the permanent diplomatic mission, of a consular post, of the permanent mission or of the permanent observer mission of the sending State.

4. The bag of the delegation shall not be opened or detained.

5. The packages constituting the bag of the delegation must bear visible external marks of their character and may contain only documents or articles intended for the official use of the delegation.

6. The courier of the delegation, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the host State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

7. The sending State or the delegation may designate couriers ad hoc of the delegation. In such cases the provisions of paragraph 6 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when the courier ad hoc has delivered to the consignee the delegation’s bag in his charge.

8. The bag of the delegation may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier of the delegation. By arrangement with the appropriate authorities of the host State, the delegation may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

Article 58. Personal inviolability

The persons of the head of delegation and of other delegates and members of the diplomatic staff of the delegation shall be inviolable. They shall not be liable, inter alia, to any form of arrest or detention. The host State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their persons, freedom or dignity and to prosecute and punish persons who have committed such attacks.

Article 59. Inviolability of private accommodation and property

1. The private accommodation of the head of delegation and of other delegates and members of the diplomatic staff of the delegation shall enjoy inviolability and protection.

2. The papers, correspondence and, except as provided in paragraph 2 of article 60, the property of the head of delegation and of other delegates or members of the diplomatic staff of the delegation shall also enjoy inviolability.

Article 60. Immunity from jurisdiction

1. The head of delegation and other delegates and members of the diplomatic staff of the delegation shall enjoy immunity from the criminal jurisdiction of the host State, and immunity from its civil and administrative jurisdiction in respect of all acts performed in the exercise of their official functions.

2. No measures of execution may be taken in respect of such persons unless they can be taken without infringing their rights under articles 58 and 59.

3. Such persons are not obliged to give evidence as witnesses.

4. Nothing in this article shall exempt such persons from the civil and administrative jurisdiction of the host State in relation to an action for damages arising from an accident caused by a vehicle, vessel or aircraft, used or owned by the persons in question, where those damages are not recoverable from insurance.

5. Any immunity of such persons from the jurisdiction of the host State does not exempt them from the jurisdiction of the sending State.

Article 61. Waiver of immunity

1. The immunity from jurisdiction of the head of delegation and of other delegates and members of the diplomatic staff of the delegation and of persons enjoying immunity under article 66 may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by any of the persons referred to in paragraph 1 of this article shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

5. If the sending State does not waive the immunity of any of the persons mentioned in paragraph 1 of this article in respect of a civil action, it shall use its best endeavours to bring about a just settlement of the case.

Article 62. Exemption from social security legislation

1. Subject to the provisions of paragraph 3 of this article, the head of delegation and other delegates and members of the diplomatic staff of the delegation shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the host State.

2. The exemption provided for in paragraph 1 of this article shall also apply to persons who are in the sole private employ of the head of delegation or of any other delegate or member of the diplomatic staff of the delegation, on condition:

(a) that such employed persons are not nationals of or permanently resident in the host State; and

(b) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. The head of delegation and other delegates and members of the diplomatic staff of the delegation who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the host State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the host State provided that such participation is permitted by that State.

5. The provisions of this article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

*Article* *63.*Exemption from dues and taxes

The head of delegation and other delegates and members of the diplomatic staff of the delegation shall be exempt, to the extent practicable, from all dues and taxes, personal or real, national, regional or municipal, except:

(a) indirect taxes of a kind which are normally incorporated in the price of goods or services;

(b) dues and taxes on private immovable property situated in the territory of the host State, unless the person concerned holds it on behalf of the sending State for the purposes of the delegation;

(c) estate, succession or inheritance duties levied by the host State, subject to the provisions of paragraph 4 of article 68;

(d) dues and taxes on private income having its source in the host State and capital taxes on investments made in commercial undertakings in the host State;

(e) charges levied for specific services rendered;

(f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of article 54.

Article 64. Exemption from personal services

The host State shall exempt the head of delegation and other delegates and members of the diplomatic staff of the delegation from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 65. Exemption from customs duties and inspection

1. The host State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes and related charges other than charges for storage, cartage and similar services, on:

(a) articles for the official use of the delegation;

(b) articles for the personal use of the head of delegation or any other delegate or member of the diplomatic staff of the delegation, imported in his personal baggage at the time of his first entry into the territory of the host State to attend the meeting of the organ or conference.

2. The personal baggage of the head of delegation or any other delegate or member of the diplomatic staff of the delegation shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host State. In such cases, inspection shall be conducted only in the presence of the person enjoying the exemption or of his authorized representative.

Article 66. Privileges and immunities of other persons

1. The members of the family of the head of delegation who accompany him and the members of the family of any other delegate or member of the diplomatic staff of the delegation who accompany him shall, if they are not nationals of or permanently resident in the host State, enjoy the privileges and immunities specified in articles 58, 60 and 64 and in paragraphs 1 (b) and 2 of article 65 and exemption from aliens’ registration obligations.

2. Members of the administrative and technical staff of the delegation shall, if they are not nationals of or permanently resident in the host State, enjoy the privileges and immunities specified in articles 58, 59, 60, 62, 63 and 64. They shall also enjoy the privileges specified in paragraph 1 (b) of article 65 in respect of articles imported in their personal baggage at the time of their first entry into the territory of the host State for the purpose of attending the meeting of the organ or conference. Members of the family of a member of the administrative and technical staff who accompany him shall, if they are not nationals of or permanently resident in the host State, enjoy the privileges and immunities specified in articles 58, 60 and 64 and in paragraph 1 (b) of article 65 to the extent accorded to such a member of the staff.

3. Members of the service staff of the delegation who are not nationals of or permanently resident in the host State shall enjoy the same immunity in respect of acts performed in the course of their duties as is accorded to members of the administrative and technical staff of the delegation, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption specified in article 62.

4. Private staff of members of the delegation shall, if they are not nationals of or permanently resident in the host State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the tasks of the delegation.

Article 67. Nationals and permanent residents of the host State

1. Except insofar as additional privileges and immunities may be granted by the host State the head of delegation or any other delegate or member of the diplomatic staff of the delegation who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction and inviolability in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the delegation and persons on the private staff who are nationals of or permanently resident in the host State shall enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those members and persons in such a manner as not to interfere unduly with the performance of the tasks of the delegation.

Article 68. Duration of privileges and immunities

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the host State for the purpose of attending the meeting of an organ or conference or, if already in its territory, from the moment when his appointment is notified to the host State by the Organization, by the conference or by the sending State.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the territory, or on the expiry of a reasonable period in which to do so. However, with respect to acts performed by such a person in the exercise of his functions as a member of the delegation, immunity shall continue to subsist.

3. In the event of the death of a member of the delegation, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the territory.

4. In the event of the death of a member of the delegation not a national of or permanently resident in the host State or of a member of his family accompanying him, the host State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the territory the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property which is in the host State solely because of the presence there of the deceased as a member of the delegation or of the family of a member of the delegation.

Article 69. End of functions

The functions of the head of delegation or of any other delegate or member of the diplomatic staff of the delegation shall come to an end, inter alia:

(a) on notification of their termination by the sending State to the Organization or the conference;

(b) upon the conclusion of the meeting of the organ or the conference.

Article 70. Protection of premises, property and archives

1. When the meeting of an organ or a conference comes to an end, the host State must respect and protect the premises of the delegation so long as they are used by it, as well as the property and archives of the delegation. The sending State must take all appropriate measures to terminate this special duty of the host State as soon as possible.

2. The host State, if requested by the sending State, shall grant the latter facilities for removing the property and the archives of the delegation from the territory of the host State.

Part IV. Observer Delegations to organs and to Conferences

Article 71. Sending of observer delegations

A State may send an observer delegation to an organ or to a conference in accordance with the rules of the Organization.

Article 72. General provision concerning observer delegations

All the provisions of articles 43 to 70 of the present Convention shall apply to observer delegations.

Part V. General Provisions

Article 73. Nationality of the members of the mission, the delegation  
or the observer delegation

1. The head of mission and members of the diplomatic staff of the mission, the head of delegation, other delegates and members of the diplomatic staff of the delegation, the head of the observer delegation, other observer delegates and members of the diplomatic staff of the observer delegation should in principle be of the nationality of the sending State.

2. The head of mission and members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the host State except with the consent of that State, which may be withdrawn at any time.

3. Where the head of delegation, any other delegate or any member of the diplomatic staff of the delegation or the head of the observer delegation, any other observer delegate or any member of the diplomatic staff of the observer delegation is appointed from among persons having the nationality of the host State, the consent of that State shall be assumed if it has been notified of such appointment of a national of the host State and has made no objection.

Article 74. Laws concerning acquisition of nationality

Members of the mission, the delegation or the observer delegation not being nationals of the host State, and members of their families forming part of their household or, as the case may be, accompanying them, shall not, solely by the operation of the law of the host State, acquire the nationality of that State.

Article 75. Privileges and immunities in case of multiple functions

When members of the permanent diplomatic mission or of a consular post in the host State are included in a mission, a delegation or an observer delegation, they shall retain their privileges and immunities as members of their permanent diplomatic mission or consular post in addition to the privileges and immunities accorded by the present Convention.

Article 76. Cooperation between sending States and host States

Whenever necessary and to the extent compatible with the independent exercise of the functions of the mission, the delegation or the observer delegation, the sending State shall cooperate as fully as possible with the host State in the conduct of any investigation or prosecution carried out pursuant to the provisions of articles 23, 28, 29 and 58.

Article 77. Respect for the laws and regulations of the host State

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the host State. They also have a duty not to interfere in the internal affairs of that State.

2. In case of grave and manifest violation of the criminal law of the host State by a person enjoying immunity from jurisdiction, the sending State shall, unless it waives the immunity of the person concerned, recall him, terminate his functions with the mission, the delegation or the observer delegation or secure his departure, as appropriate. The sending State shall take the same action in case of grave and manifest interference in the internal affairs of the host State. The provisions of this paragraph shall not apply in the case of any act that the person concerned performed in carrying out the functions of the mission or the tasks of the delegation or of the observer delegation.

3. The premises of the mission and the premises of the delegation shall not be used in any manner incompatible with the exercise of the functions of the mission or the performance of the tasks of the delegation.

4. Nothing in this article shall be construed as prohibiting the host State from taking such measures as are necessary for its own protection. In that event the host State shall, without prejudice to articles 84 and 85, consult the sending State in an appropriate manner in order to ensure that such measures do not interfere with the normal functioning of the mission, the delegation or the observer delegation.

5. The measures provided for in paragraph 4 of this article shall be taken with the approval of the Minister for Foreign Affairs or of any other competent minister in conformity with the constitutional rules of the host State.

Article 78. Insurance against third-party risks

The members of the mission, of the delegation or of the observer delegation shall comply with all obligations under the laws and regulations of the host State relating to third-party liability insurance for any vehicle, vessel or aircraft used or owned by them.

Article 79. Entry into the territory of the host State

1. The host State shall permit entry into its territory of:

(a) members of the mission and members of their families forming part of their respective households, and

(b) members of the delegation and members of their families accompanying them, and

(c) members of the observer delegation and members of their families accompanying them.

2. Visas, when required, shall be granted as promptly as possible to any person referred to in paragraph 1 of this article.

Article 80. Facilities for departure

The host State shall, if requested, grant facilities to enable persons enjoying privileges and immunities, other than nationals of the host State, and members of the families of such persons irrespective of their nationality, to leave its territory.

Article 81. Transit through the territory of a third State

1. If a head of mission or a member of the diplomatic staff of the mission, a head of delegation, other delegate or member of the diplomatic staff of the delegation, a head of an observer delegation, other observer delegate or member of the diplomatic staff of the observer delegation passes through or is in the territory of a third State which has granted him a passport visa if such visa was necessary, while proceeding to take up or to resume his functions, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit.

2. The provisions of paragraph 1 of this article shall also apply in the case of:

(a) members of the family of the head of mission or of a member of the diplomatic staff of the mission forming part of his household and enjoying privileges and immunities, whether travelling with him or travelling separately to join him or to return to their country;

(b) members of the family of the head of delegation, of any other delegate or member of the diplomatic staff of the delegation who are accompanying him and enjoying privileges and immunities, whether travelling with him or travelling separately to join him or to return to their country;

(c) members of the family of the head of the observer delegation, of any other observer delegate or member of the diplomatic staff of the observer delegation, who are accompanying him and enjoy privileges and immunities whether travelling with him or travelling separately to join him or to return to their country.

3. In circumstances similar to those specified in paragraphs 1 and 2 of this article, third States shall not hinder the passage of members of the administrative and technical or service staff, and of members of their families, through their territories.

4. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as the host State is bound to accord under the present Convention. They shall accord to the couriers of the mission, of the delegation or of the observer delegation, who have been granted a passport visa if such visa was necessary, and to the bags of the mission, of the delegation or of the observer delegation in transit the same inviolability and protection as the host State is bound to accord under the present Convention.

5. The obligations of third States under paragraphs 1, 2, 3 and 4 of this article shall also apply to the persons mentioned respectively in those paragraphs and to the official communications and bags of the mission, of the delegation or of the observer delegation when they are present in the territory of the third State owing to force majeure.

Article 82. Non-recognition of States or governments or absence  
of diplomatic or consular relations

1. The rights and obligations of the host State and of the sending State under the present Convention shall be affected neither by the non-recognition by one of those States of the other State or of its government nor by the non-existence or the severance of diplomatic or consular relations between them.

2. The establishment or maintenance of a mission, the sending or attendance of a delegation or of an observer delegation or any act in application of the present Convention shall not by itself imply recognition by the sending State of the host State or its government or by the host State of the sending State or its government.

Article 83. Non-discrimination

In the application of the provisions of the present Convention no discrimination shall be made as between States.

*Artic*l*e 84.*Consultations

If a dispute between two or more States Parties arises out of the application or interpretation of the present Convention, consultations between them shall be held upon the request of any of them. At the request of any of the parties to the dispute, the Organization or the conference shall be invited to join in the consultations.

Article 85. Conciliation

1. If the dispute is not disposed of as a result of the consultations referred to in article 84 within one month from the date of their inception, any State participating in the consultations may bring the dispute before a conciliation commission constituted in accordance with the provisions of this article by giving written notice to the Organization and to the other States participating in the consultations.

2. Each conciliation commission shall be composed of three members: two members who shall be appointed respectively by each of the parties to the dispute, and a Chairman appointed in accordance with paragraph 3 of this article. Each State Party to the present Convention shall designate in advance a person to serve as a member of such a commission. It shall notify the designation to the Organization, which shall maintain a register of persons so designated. If it does not make the designation in advance, it may do so during the conciliation procedure up to the moment at which the Commission begins to draft the report which it is to prepare in accordance with paragraph 7 of this article.

3. The Chairman of the Commission shall be chosen by the other two members. If the other two members are unable to agree within one month from the notice referred to in paragraph 1 of this article or if one of the parties to the dispute has not availed itself of its right to designate a member of the Commission, the Chairman shall be designated at the request of one of the parties to the dispute by the chief administrative officer of the Organization. The appointment shall be made within a period of one month from such request. The chief administrative officer of the Organization shall appoint as the Chairman a qualified jurist who is neither an official of the Organization nor a national of any State party to the dispute.

4. Any vacancy shall be filled in the manner prescribed for the initial appointment.

5. The Commission shall function as soon as the Chairman has been appointed even if its composition is incomplete.

6. The Commission shall establish its own rules of procedure and shall reach its decisions and recommendations by a majority vote. It may recommend to the Organization, if the Organization is so authorized in accordance with the Charter of the United Nations, to request an advisory opinion from the International Court of Justice regarding the application or interpretation of the present Convention.

7. If the Commission is unable to obtain an agreement among the parties to the dispute on a settlement of the dispute within two months from the appointment of its Chairman, it shall prepare as soon as possible a report of its proceedings and transmit it to the parties to the dispute. The report shall include the Commission’s conclusions upon the facts and questions of law and the recommendations which it has submitted to the parties to the dispute in order to facilitate a settlement of the dispute. The two months time limit may be extended by decision of the Commission. The recommendations in the report of the Commission shall not be binding on the parties to the dispute unless all the parties to the dispute have accepted them. Nevertheless, any party to the dispute may declare unilaterally that it will abide by the recommendations in the report so far as it is concerned.

8. Nothing in the preceding paragraphs of this article shall preclude the establishment of any other appropriate procedure for the settlement of disputes arising out of the application or interpretation of the present Convention or the conclusion of any agreement between the parties to the dispute to submit the dispute to a procedure instituted in the Organization or to any other procedure.

9. This article is without prejudice to provisions concerning the settlement of disputes contained in international agreements in force between States or between States and international organizations.

Part VI. Final Clauses

Article 86. Signature

The present Convention shall be open for signature by all States until 30 September 1975 at the Federal Ministry for Foreign Affairs of the Republic of Austria and subsequently, until 30 March 1976, at United Nations Headquarters in New York.

Article 87. Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 88. Accession

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 89. Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the thirty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 90. Implementation by organizations

After the entry into force of the present Convention, the competent organ of an international organization of a universal character may adopt a decision to implement the relevant provisions of the Convention. The Organization shall communicate the decision to the host State and to the depositary of the Convention.

Article 91. Notifications by the depositary

1. As depositary of the present Convention, the Secretary-General of the United Nations shall inform all States:

(a) of signatures to the Convention and of the deposit of instruments of ratification or accession, in accordance with articles 86, 87 and 88;

(b) of the date on which the Convention will enter into force, in accordance with article 89;

(c) of any decision communicated in accordance with article 90.

2. The Secretary-General of the United Nations shall also inform all States, as necessary, of other acts, notifications or communications relating to the present Convention.

Article 92. Authentic texts

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Done at Vienna this fourteenth day of March, one thousand nine hundred and seventy-five.

I. Vienna Convention on Succession  
 of States in Respect of Treaties

Vienna Convention on Succession of States  
in respect of Treaties.Done at Vienna,   
on 23 August 1978[[896]](#footnote-896)

The States Parties to the present Convention,

Considering the profound transformation of the international community brought about by the decolonization process,

Considering also that other factors may lead to cases of succession of States in the future,

Convinced, in these circumstances, of the need for the codification and progressive development of the rules relating to succession of States in respect of treaties as a means for ensuring greater juridical security in international relations,

Noting that the principles of free consent, good faith and pacta sunt servanda are universally recognized,

Emphasizing that the consistent observance of general multilateral treaties which deal with the codification and progressive development of international law and those the object and purpose of which are of interest to the international community as a whole is of special importance for the strengthening of peace and international cooperation,

Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force, and of universal respect for, and observance of, human rights and fundamental freedoms for all,

Recalling that respect for the territorial integrity and political independence of any State is required by the Charter of the United Nations,

Bearing in mind the provisions of the Vienna Convention on the Law of Treaties of 1969,

Bearing also in mind article 73 of that Convention,

Affirming that questions of the law of treaties other than those that may arise from a succession of States are governed by the relevant rules of international law, including those rules of customary international law which are embodied in the Vienna Convention on the Law of Treaties of 1969,

Affirming that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

Have agreed as follows:

Part I. General Provisions

Article 1. Scope of the present Convention

The present Convention applies to the effects of a succession of States in respect of treaties between States.

Article 2. Use of terms

1. For the purposes of the present Convention:

(a) “treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments, and whatever its particular designation;

(b) “succession of States” means the replacement of one State by another in the responsibility for the international relations of territory;

(c) “predecessor State” means the State which has been replaced by another State on the occurrence of a succession of States;

(d) “successor State” means the State which has replaced another State on the occurrence of a succession of States;

(e) “date of the succession of States” means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates;

(f) “newly independent State” means a successor State the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible;

(g) “notification of succession” means in relation to a multilateral treaty any notification, however phrased or named, made by a successor State expressing its consent to be considered as bound by the treaty;

(h) “full powers” means in relation to a notification of succession or any other notification under the present Convention a document emanating from the competent authority of a State designating a person or persons to represent the State for communicating the notification of succession or, as the case may be, the notification;

(i) “ratification,” “acceptance” and “approval” mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(j) “reservation” means a unilateral statement, however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty or when making a notification of succession to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;

(k) “contracting State” means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;

(1) “party” means a State which has consented to be bound by the treaty and for which the treaty is in force;

(m) “other State party” means in relation to a successor State any party, other than the predecessor State, to a treaty in force at the date of a succession of States in respect of the territory to which that succession of States relates;

(n) “international organization” means an intergovernmental organization.

2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

Article 3. Cases not within the scope of the present Convention

The fact that the present Convention does not apply to the effects of a succession of States in respect of international agreements concluded between States and other subjects of international law or in respect of international agreements not in written form shall not affect:

(a) the application to such cases of any of the rules set forth in the present Convention to which they are subject under international law independently of the Convention;

(b) the application as between States of the present Convention to the effects of a succession of States in respect of international agreements to which other subjects of international law are also parties.

Article 4. Treaties constituting international organizations and treaties adopted within an international organization

The present Convention applies to the effects of a succession of States in respect of:

(a) any treaty which is the constituent instrument of an international organization without prejudice to the rules concerning acquisition of membership and without prejudice to any other relevant rules of the organization;

(b) any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

Article 5. Obligations imposed by international law  
independently of a treaty

The fact that a treaty is not considered to be in force in respect of a State by virtue of the application of the present Convention shall not in any way impair the duty of that State to fulfil any obligation embodied in the treaty to which it is subject under international law independently of the treaty.

Article 6. Cases of succession of States covered  
by the present Convention

The present Convention applies only to the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations.

Article 7. Temporal application of the present Convention

1. Without prejudice to the application of any of the rules set forth in the present Convention to which the effects of a succession of States would be subject under international law independently of the Convention, the Convention applies only in respect of a succession of States which has occurred after the entry into force of the Convention except as may be otherwise agreed.

2. A successor State may, at the time of expressing its consent to be bound by the present Convention or at any time thereafter, make a declaration that it will apply the provisions of the Convention in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other contracting State or State Party to the Convention which makes a declaration accepting the declaration, of the successor State. Upon the entry into force of the Convention as between the States making the declarations or upon the making of the declaration of acceptance, whichever occurs later, the provisions of the Convention shall apply to the effects of the succession of States as from the date of that succession of States.

3. A successor State may at the time of signing or of expressing its consent to be bound by the present Convention make a declaration that it will apply the provisions of the Convention provisionally in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other signatory or contracting State which makes a declaration accepting the declaration of the successor State; upon the making of the declaration of acceptance, those provisions shall apply provisionally to the effects of the succession of States as between those two States as from the date of that succession of States.

4. Any declaration made in accordance with paragraph 2 or 3 shall be contained in a written notification communicated to the depositary, who shall inform the Parties and the States entitled to become Parties to the present Convention of the communication to him of that notification and of its terms.

Article 8. Agreements for the devolution of treaty obligations or   
rights from a predecessor State to a successor State

1. The obligations or rights of a predecessor State under treaties in force in respect of a territory at the date of a succession of States do not become the obligations or rights of the successor State towards other States Parties to those treaties by reason only of the fact that the predecessor State and the successor State have concluded an agreement providing that such obligations or rights shall devolve upon the successor State.

2. Notwithstanding the conclusion of such an agreement, the effects of a succession of States on treaties which, at the date of that succession of States, were in force in respect of the territory in question are governed by the present Convention.

Article 9. Unilateral declaration by a successor State regarding  
treaties of the predecessor State

1. Obligations or rights under treaties in force in respect of a territory at the date of a succession of States do not become the obligations or rights of the successor State or of other States Parties to those treaties by reason only of the fact that the successor State has made a unilateral declaration providing for the continuance in force of the treaties in respect of its territory.

2. In such a case, the effects of the succession of States on treaties which, at the date of that succession of States, were in force in respect of the territory in question are governed by the present Convention.

Article 10. Treaties providing for the participation  
of a successor State

1. When a treaty provides that, on the occurrence of a succession of States, a successor State shall have the option to consider itself a party to the treaty, it may notify its succession in respect of the treaty in conformity with the provisions of the treaty or, failing any such provisions, in conformity with the provisions of the present Convention.

2. If a treaty provides that, on the occurrence of a succession of States, a successor State shall be considered as a party to the treaty, that provision takes effect as such only if the successor State expressly accepts in writing to be so considered.

3. In cases falling under paragraph 1 or 2, a successor State which establishes its consent to be a party to the treaty is considered as a party from the date of the succession of States unless the treaty otherwise provides or it is otherwise agreed.

Article 11. Boundary regimes

A succession of States does not as such affect:

(a) a boundary established by a treaty; or

(b) obligations and rights established by a treaty and relating to the regime of a boundary.

Article 12. Other territorial regimes

1. A succession of States does not as such affect:

(a) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of any territory of a foreign State and considered as attaching to the territories in question;

(b) rights established by a treaty for the benefit of any territory and relating to the use, or to restrictions upon the use, of any territory of a foreign State and considered as attaching to the territories in question.

2. A succession of States does not as such affect:

(a) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of a group of States or of all States and considered as attaching to that territory;

(b) rights established by a treaty for the benefit of a group of States or of all States and relating to the use of any territory, or to restrictions upon its use, and considered as attaching to that territory.

3. The provisions of the present article do not apply to treaty obligations of the predecessor State providing for the establishment of foreign military bases on the territory to which the succession of States relates.

Article 13. The present Convention and permanent sovereignty  
over natural wealth and resources

Nothing in the present Convention shall affect the principles of international law affirming the permanent sovereignty of every people and every State over its natural wealth and resources.

Article 14. Questions relating to the validity of a treaty

Nothing in the present Convention shall be considered as prejudging in any respect any question relating to the validity of a treaty.

Part II. Succession in Respect of Part of Territory

Article 15. Succession in respect of part of territory

When part of the territory of a State, or when any territory for the international relations of which a State is responsible, not being part of the territory of that State, becomes part of the territory of another State:

(a) treaties of the predecessor State cease to be in force in respect of the territory to which the succession of States relates from the date of the succession of States; and

(b) treaties of the successor State are in force in respect of the territory to which the succession of States relates from the date of the succession of States, unless it appears from the treaty or is otherwise established that the application of the treaty to that territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Part III. Newly Independent States

Section 1. General rule

Article 16. Position in respect of the treaties   
of the predecessor State

A newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to which the succession of States relates.

Section 2. Multilateral treaties

Article 17. Participation in treaties in force at the date of  
the succession of States

1. Subject to paragraphs 2 and 3, a newly independent State may, by a notification of succession, establish its status as a party to any multilateral treaty which at the date of the succession of States was in force in respect of the territory to which the succession of States relates.

2. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

3. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties, the newly independent State may establish its status as a party to the treaty only with such consent.

Article 18. Participation in treaties not in force at the date  
of the succession of States

1. Subject to paragraphs 3 and 4, a newly independent State may, by a notification of succession, establish its status as a contracting State to a multilateral treaty which is not in force if at the date of the succession of States the predecessor State was a contracting State in respect of the territory to which that succession of States relates.

2. Subject to paragraphs 3 and 4, a newly independent State may, by a notification of succession, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if at the date of the succession of States the predecessor State was a contracting State in respect of the territory to which that succession of States relates.

3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

4. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties or of all the contracting States, the newly independent State may establish its status as a party or as a contracting State to the treaty only with such consent.

5. When a treaty provides that a specified number of contracting States shall be necessary for its entry into force, a newly independent State which establishes its status as a contracting State to the treaty under paragraph 1 shall be counted as a contracting State for the purpose of that provision unless a different intention appears from the treaty, or is otherwise established.

Article 19. Participation in treaties signed by the predecessor State  
subject to ratification, acceptance or approval

1. Subject to paragraphs 3 and 4, if before the date of the succession of States the predecessor State signed a multilateral treaty subject to ratification, acceptance or approval and by the signature intended that the treaty should extend to the territory to which the succession of States relates, the newly independent State may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

2. For the purpose of paragraph 1, unless a different intention appears from the treaty or is otherwise established, the signature by the predecessor State of a treaty is considered to express the intention that the treaty should extend to the entire territory for the international relations of which the predecessor State was responsible.

3. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

4. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties or of all the contracting States, the newly independent State may become a party or a contracting State to the treaty only with such consent.

Article 20. Reservations

1. When a newly independent State establishes its status as a party or as a contracting State to a multilateral treaty by a notification of succession under article 17 or 18, it shall be considered as maintaining any reservation to that treaty which was applicable at the date of the succession of States in respect of the territory to which the succession of States relates unless, when making the notification of succession, it expresses a contrary intention or formulates a reservation which relates to the same subject matter as that reservation.

2. When making a notification of succession establishing its status as a party or as a contracting State to a multilateral treaty under article 17 or 18, a newly independent State may formulate a reservation unless the reservation is one the formulation of which would be excluded by the provisions of subparagraph (a), (b) or (c) of article 19 of the Vienna Convention on the Law of Treaties.

3. When a newly independent State formulates a reservation in conformity with paragraph 2, the rules set out in articles 20 to 23 of the Vienna Convention on the Law of Treaties apply in respect of that reservation.

Article 21. Consent to be bound by part of a treaty and  
choice between differing provisions

1. When making a notification of succession under article 17 or 18 establishing its status as a party or contracting State to a multilateral treaty, a newly independent State may, if the treaty so permits, express its consent to be bound by part of the treaty or make a choice between differing provisions under the conditions laid down in the treaty for expressing such consent or making such choice.

2. A newly independent State may also exercise, under the same conditions as the other parties or contracting States, any right provided for in the treaty to withdraw or modify any consent expressed or choice made by itself or by the predecessor State in respect of the territory to which the succession of States relates.

3. If the newly independent State does not in conformity with paragraph 1 express its consent or make a choice, or in conformity with paragraph 2 withdraw or modify the consent or choice of the predecessor State, it shall be considered as maintaining:

(a) the consent of the predecessor State, in conformity with the treaty, to be bound, in respect of the territory to which the succession of States relates, by part of that treaty; or

(b) the choice of the predecessor State, in conformity with the treaty, between differing provisions in the application of the treaty in respect of the territory to which the succession of States relates.

Article 22. Notification of succession

1. A notification of succession in respect of a multilateral treaty under article 17 or 18 shall be made in writing.

2. If the notification of succession is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

3. Unless the treaty otherwise provides, the notification of succession shall:

(a) be transmitted by the newly independent State to the depositary, or, if there is no depositary, to the parties or the contracting States;

(b) be considered to be made by the newly independent State on the date on which it is received by the depositary or, if there is no depositary, on the date on which it is received by all the parties or, as the case may be, by all the contracting States.

4. Paragraph 3 does not affect any duty that the depositary may have, in accordance with the treaty or otherwise, to inform the parties or the contracting States of the notification of succession or any communication made in connection therewith by the newly independent State.

5. Subject to the provisions of the treaty, the notification of succession or the communication made in connection therewith shall be considered as received by the State for which it is intended only when the latter State has been informed by the depositary.

Article 23. Effects of a notification of succession

1. Unless the treaty otherwise provides or it is otherwise agreed, a newly independent State which makes a notification of succession under article 17 or article 18, paragraph 2, shall be considered a party to the treaty from the date of the succession of States or from the date of entry into force of the treaty, whichever is the later date.

2. Nevertheless, the operation of the treaty shall be considered as suspended as between the newly independent State and the other parties to the treaty until the date of making of the notification of succession except insofar as that treaty may be applied provisionally in accordance with article 27 or as may be otherwise agreed.

3. Unless the treaty otherwise provides or it is otherwise agreed, a newly independent State which makes a notification of succession under article 18, paragraph 1, shall be considered a contracting State to the treaty from the date on which the notification of succession is made.

Section 3. Bilateral treaties

Article 24. Conditions under which a treaty is considered as being  
in force in the case of a succession of States

1. A bilateral treaty which at the date of a succession of States was in force in respect of the territory to which the succession of States relates is considered as being in force between a newly independent State and the other State party when:

(a) they expressly so agree; or

(b) by reason of their conduct they are to be considered as having so agreed.

2. A treaty considered as being in force under paragraph 1 applies in the relations between the newly independent State and the other State party from the date of the succession of States, unless a different intention appears from their agreement or is otherwise established.

Article 25. The position as between the predecessor State  
and the newly independent State

A treaty which under article 24 is considered as being in force between a newly independent State and the other State party is not by reason only of that fact to be considered as being in force also in the relations between the predecessor State and the newly independent State.

Article 26. Termination, suspension of operation   
or amendment of the treaty as between the predecessor   
State and the other State party

1. When under article 24 a treaty is considered as being in force between a newly independent State and the other State party, the treaty:

(a) does not cease to be in force between them by reason only of the fact that it has subsequently been terminated as between the predecessor State and the other State party;

(b) is not suspended in operation as between them by reason only of the fact that it has subsequently been suspended in operation as between the predecessor State and the other State party;

(c) is not amended as between them by reason only of the fact that it has subsequently been amended as between the predecessor State and the other State party.

2. The fact that a treaty has been terminated or, as the case may be, suspended in operation as between the predecessor State and the other State party after the date of the succession of States does not prevent the treaty from being considered to be in force or, as the case may be, in operation as between the newly independent State and the other State party if it is established in accordance with article 24 that they so agreed.

3. The fact that a treaty has been amended as between the predecessor State and the other State party after the date of the succession of States does not prevent the unamended treaty from being considered to be in force under article 24 as between the newly independent State and the other State party, unless it is established that they intended the treaty as amended to apply between them.

Section 4. Provisional application

Article 27. Multilateral treaties

1. If, at the date of the succession of States, a multilateral treaty was in force in respect of the territory to which the succession of States relates and the newly independent State gives notice of its intention that the treaty should be applied provisionally in respect of its territory, that treaty shall apply provisionally between the newly independent State and any party which expressly so agrees or by reason of its conduct is to be considered as having so agreed.

2. Nevertheless, in the case of a treaty which falls within the category mentioned in article 17, paragraph 3, the consent of all the parties to such provisional application is required.

3. If, at the date of the succession of States, a multilateral treaty not yet in force was being applied provisionally in respect of the territory to which the succession of States relates and the newly independent State gives notice of its intention that the treaty should continue to be applied provisionally in respect of its territory, that treaty shall apply provisionally between the newly independent State and any contracting State which expressly so agrees or by reason of its conduct is to be considered as having so agreed.

4. Nevertheless, in the case of a treaty which falls within the category mentioned in article 17, paragraph 3, the consent of all the contracting States to such continued provisional application is required.

5. Paragraphs 1 to 4 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Article 28. Bilateral treaties

A bilateral treaty which at the date of a succession of States was in force or was being provisionally applied in respect of the territory to which the succession of States relates is considered as applying provisionally between the newly independent State and the other State concerned when:

(a) they expressly so agree; or

(b) by reason of their conduct they are to be considered as having so agreed.

Article 29. Termination of provisional application

1. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a multilateral treaty under article 27 may be terminated:

(a) by reasonable notice of termination given by the newly independent State or the party or contracting State provisionally applying the treaty and the expiration of the notice; or

(b) in the case of a treaty which falls within the category mentioned in article 17, paragraph 3, by reasonable notice of termination given by the newly independent State or all of the parties or, as the case may be, all of the contracting States and the expiration of the notice.

2. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a bilateral treaty under article 28 may be terminated by reasonable notice of termination given by the newly independent State or the other State concerned and the expiration of the notice.

3. Unless the treaty provides for a shorter period for its termination or it is otherwise agreed, reasonable notice of termination shall be twelve months’ notice from the date on which it is received by the other State or States provisionally applying the treaty.

4. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a multilateral treaty under article 27 shall be terminated if the newly independent State gives notice of its intention not to become a party to the treaty.

Section 5. Newly independent states formed  
from two or more territories

Article 30. Newly independent States formed from two  
or more territories

1. Articles 16 to 29 apply in the case of a newly independent State formed from two or more territories.

2. When a newly independent State formed from two or more territories is considered as or becomes a party to a treaty by virtue of article 17, 18 or 24 and at the date of the succession of States the treaty was in force, or consent to be bound had been given, in respect of one or more, but not all, of those territories, the treaty shall apply in respect of the entire territory of that State unless:

(a) it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation;

(b) in the case of a multilateral treaty not falling under article 17, paragraph 3, or under article 18, paragraph 4, the notification of succession is restricted to the territory in respect of which the treaty was in force at the date of the succession of States, or in respect of which consent to be bound by the treaty had been given prior to that date;

(c) in the case of a multilateral treaty falling under article 17, paragraph 3, or under article 18, paragraph 4, the newly independent State and the other States Parties or, as the case may be, the other contracting States otherwise agree; or

(d) in the case of a bilateral treaty, the newly independent State and the other State concerned otherwise agree.

3. When a newly independent State formed from two or more territories becomes a party to a multilateral treaty under article 19 and by the signature or signatures of the predecessor State or States it had been intended that the treaty should extend to one or more, but not all, of those territories, the treaty shall apply in respect of the entire territory of the newly independent State unless:

(a) it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation;

(b) in the case of a multilateral treaty not falling under article 19, paragraph 4, the ratification, acceptance or approval of the treaty is restricted to the territory or territories to which it was intended that the treaty should extend; or

(c) in the case of a multilateral treaty falling under article 19, paragraph 4, the newly independent State and the other States Parties or, as the case may be, the other contracting States otherwise agree.

Part IV. Uniting and Separation of States

Article 31. Effects of a uniting of States in respect of treaties  
in force at the date of the succession of States

1. When two or more States unite and so form one successor State, any treaty in force at the date of the succession of States in respect of any of them continues in force in respect of the successor State unless:

(a) the successor State and the other State party or States Parties otherwise agree; or

(b) it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

2. Any treaty continuing in force in conformity with paragraph 1 shall apply only in respect of the part of the territory of the successor State in respect of which the treaty was in force at the date of the succession of States unless:

(a) in the case of a multilateral treaty not falling within the category mentioned in article 17, paragraph 3, the successor State makes a notification that the treaty shall apply in respect of its entire territory;

(b) in the case of a multilateral treaty falling within the category mentioned in article 17, paragraph 3, the successor State and the other States Parties otherwise agree; or

(c) in the case of a bilateral treaty, the successor State and the other State party otherwise agree.

3. Paragraph 2 (a) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Article 32. Effects of a uniting of States in respect of treaties not in force  
at the date of the succession of States

1. Subject to paragraphs 3 and 4, a successor State falling under article 31 may, by making a notification, establish its status as a contracting State to a multilateral treaty which is not in force if, at the date of the succession of States, any of the predecessor States was a contracting State to the treaty.

2. Subject to paragraphs 3 and 4, a successor State falling under article 31 may, by making a notification, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if, at that date, any of the predecessor States was a contracting State to the treaty.

3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

4. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may establish its status as a party or as a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

5. Any treaty to which the successor State becomes a contracting State or a party in conformity with paragraph 1 or 2 shall apply only in respect of the part of the territory of the successor State in respect of which consent to be bound by the treaty had been given prior to the date of the succession of States unless:

(a) in the case of a multilateral treaty not falling within the category mentioned in article 17, paragraph 3, the successor State indicates in its notification made under paragraph 1 or 2 that the treaty shall apply in respect of its entire territory; or

(b) in the case of a multilateral treaty falling within the category mentioned in article 17, paragraph 3, the successor State and all the parties or, as the case may be, all the contracting States otherwise agree.

6. Paragraph 5 (a) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Article 33. Effects of a uniting of States in respect of treaties signed  
by a predecessor State subject to ratification,  
acceptance or approval

1. Subject to paragraphs 2 and 3, if before the date of the succession of States one of the predecessor States had signed a multilateral treaty subject to ratification, acceptance or approval, a successor State falling under article 31 may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

2. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

3. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may become a party or a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

4. Any treaty to which the successor State becomes a party or a contracting State in conformity with paragraph 1 shall apply only in respect of the part of the territory of the successor State in respect of which the treaty was signed by one of the predecessor States unless:

(a) in the case of a multilateral treaty not falling within the category mentioned in article 17, paragraph 3, the successor State when ratifying, accepting or approving the treaty gives notice that the treaty shall apply in respect of its entire territory; or

(b) in the case of a multilateral treaty falling within the category mentioned in article 17, paragraph 3, the successor State and all the parties or, as the case may be, all the contracting States otherwise agree.

5. Paragraph 4 (a) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Article 34. Succession of States in cases of separation  
of parts of a State

1. When a part or parts of the territory of a State separate to form one or more States, whether or not the predecessor State continues to exist:

(a) any treaty in force at the date of the succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed;

(b) any treaty in force at the date of the succession of States in respect only of that part of the territory of the predecessor State which has become a successor State continues in force in respect of that successor State alone.

2. Paragraph 1 does not apply if:

(a) the States concerned otherwise agree; or

(b) it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Article 35. Position if a State continues after separation  
of part of its territory

When, after separation of any part of the territory of a State, the predecessor State continues to exist, any treaty which at the date of the succession of States was in force in respect of the predecessor State continues in force in respect of its remaining territory unless:

(a) the States concerned otherwise agree;

(b) it is established that the treaty related only to the territory which has separated from the predecessor State; or

(c) it appears from the treaty or is otherwise established that the application of the treaty in respect of the predecessor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Article 36. Participation in treaties not in force  
at the date of the succession of States in cases   
of separation of parts of a State

1. Subject to paragraphs 3 and 4, a successor State falling under article 34, paragraph 1, may, by making a notification, establish its status as a contracting State to a multilateral treaty which is not in force if, at the date of the succession of States, the predecessor State was a contracting State to the treaty in respect of the territory to which the succession of States relates.

2. Subject to paragraphs 3 and 4, a successor State falling under article 34, paragraph 1, may, by making a notification, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if at that date the predecessor State was a contracting State to the treaty in respect of the territory to which the succession of States relates.

3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

4. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may establish its status as a party or as a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

Article 37. Participation in cases of separation of parts of a State  
in treaties signed by the predecessor State subject to  
ratification, acceptance or approval

1. Subject to paragraphs 2 and 3, if before the date of the succession of States the predecessor State had signed a multilateral treaty subject to ratification, acceptance or approval and the treaty, if it had been in force at that date, would have applied in respect of the territory to which the succession of States relates, a successor State falling under article 34, paragraph 1, may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

2. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

3. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may become a party or a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

Article 38. Notifications

1. Any notification under articles 31, 32 or 36 shall be made in writing.

2. If the notification is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

3. Unless the treaty otherwise provides, the notification shall:

(a) be transmitted by the successor State to the depositary, or, if there is no depositary, to the parties or the contracting States;

(b) be considered to be made by the successor State on the date on which it is received by the depositary or, if there is no depositary, on the date on which it is received by all the parties or, as the case may be, by all the contracting States.

4. Paragraph 3 does not affect any duty that the depositary may have, in accordance with the treaty or otherwise, to inform the parties or the contracting States of the notification or any communication made in connection therewith by the successor State.

5. Subject to the provisions of the treaty, such notification or communication shall be considered as received by the State for which it is intended only when the latter State has been informed by the depositary.

Part V. Miscellaneous Provisions

Article 39. Cases of State responsibility and outbreak of hostilities

The provisions of the present Convention shall not prejudge any question that may arise in regard to the effects of a succession of States in respect of a treaty from the international responsibility of a State or from the outbreak of hostilities between States.

Article 40. Cases of military occupation

The provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty from the military occupation of a territory.

Part VI. Settlement of Disputes

Article 41. Consultation and negotiation

If a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they shall, upon the request of any of them, seek to resolve it by a process of consultation and negotiation.

Article 42. Conciliation

If the dispute is not resolved within six months of the date on which the request referred to in article 41 has been made, any party to the dispute may submit it to the conciliation procedure specified in the Annex to the present Convention by submitting a request to that effect to the Secretary-General of the United Nations and informing the other party or parties to the dispute of the request.

Article 43. Judicial settlement and arbitration

Any State at the time of signature or ratification of the present Convention or accession thereto or at any time thereafter, may, by notification to the depositary, declare that, where a dispute has not been resolved by the application of the procedures referred to in articles 41 and 42, that dispute may be submitted for a decision to the International Court of Justice by a written application of any party to the dispute, or in the alternative to arbitration, provided that the other party to the dispute has made a like declaration.

Article 44. Settlement by common consent

Notwithstanding articles 41, 42 and 43, if a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they may by common consent agree to submit it to the International Court of Justice, or to arbitration, or to any other appropriate procedure for the settlement of disputes.

Article 45. Other provisions in force for the settlement of disputes

Nothing in articles 41 to 44 shall affect the rights or obligations of the Parties to the present Convention under any provisions in force binding them with regard to the settlement of disputes.

Part VII. Final Provisions

*Artic*l*e 46.*Signature

The present Convention shall be open for signature by all States until 28 February 1979 at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 31 August 1979, at United Nations Headquarters in New York.

Article 47. Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48. Accession

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49. Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the fifteenth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 50. Authentic texts

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Done at Vienna this twenty-third day of August, one thousand nine hundred and seventy-eight.

Annex

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a Party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 42, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

(b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the appointment of the last of them, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty  
days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any Party to the present Convention to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

J. Vienna Convention on Succession of States in Respect of State Property, Archives and Debts

Vienna Convention on Succession of States in respect  
of State Property, Archives and Debts.  
Done at Vienna, on 8 April 1983[[897]](#footnote-897)

The States Parties to the present Convention,

Considering the profound transformation of the international community brought about by the decolonization process,

Considering also that other factors may lead to cases of succession of States in the future,

Convinced, in these circumstances, of the need for the codification and progressive development of the rules relating to succession of States in respect of State property, archives and debts as a means for ensuring greater juridical security in international relations,

Noting that the principles of free consent, good faith and pacta sunt servanda are universally recognized,

Emphasizing the importance of the codification and progressive development of international law which is of interest to the international community as a whole and of special importance for the strengthening of peace and international cooperation,

Believing that questions relating to succession of States in respect of State property, archives and debts are of special importance to all States,

Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force, and of universal respect for, and observance of, human rights and fundamental freedoms for all,

Recalling that respect for the territorial integrity and political independence of any State is required by the Charter of the United Nations,

Bearing in mind the provisions of the Vienna Convention on the Law of Treaties of 1969 and the Vienna Convention on Succession of States in Respect of Treaties of 1978,

Affirming that matters not regulated by the present Convention continue to be governed by the rules and principles of general international law,

Have agreed as follows:

Part I. General Provisions

Article 1. Scope of the present Convention

The present Convention applies to the effects of a succession of States in respect of State property, archives and debts.

Article 2. Use of terms

1. For the purposes of the present Convention:

(a) “succession of States” means the replacement of one State by another in the responsibility for the international relations of territory;

(b) “predecessor State” means the State which has been replaced by another State on the occurrence of a succession of States;

(c) “successor State” means the State which has replaced another State on the occurrence of a succession of States;

(d) “date of the succession of States” means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates;

(e) “newly independent State” means a successor State the territory of which, immediately before the date of the succession of States, was a dependent territory for the international relations of which the predecessor State was responsible;

(f) “third State” means any State other than the predecessor State or the successor State.

2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

Article 3. Cases of succession of States covered  
by the present Convention

The present Convention applies only to the effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations.

Article 4. Temporal application of the present Convention

1. Without prejudice to the application of any of the rules set forth in the present Convention to which the effects of a succession of States would be subject under international law independently of the Convention, the Convention applies only in respect of a succession of States which has occurred after the entry into force of the Convention except as may be otherwise agreed.

2. A successor State may, at the time of expressing its consent to be bound by the present Convention or at any time thereafter, make a declaration that it will apply the provisions of the Convention in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other contracting State or State Party to the Convention which makes a declaration accepting the declaration of the successor State. Upon the entry into force of the Convention as between the States making the declarations or upon the making of the declaration of acceptance, whichever occurs later, the provisions of the Convention shall apply to the effects of the succession of States as from the date of that succession of States.

3. A successor State may at the time of signing or of expressing its consent to be bound by the present Convention make a declaration that it will apply the provisions of the Convention provisionally in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other signatory or contracting State which makes a declaration accepting the declaration of the successor State; upon the making of the declaration of acceptance, those provisions shall apply provisionally to the effects of the succession of States as between those two States as from the date of that succession of States.

4. Any declaration made in accordance with paragraph 2 or 3 shall be contained in a written notification communicated to the depositary, who shall inform the Parties and the States entitled to become Parties to the present Convention of the communication to him of that notification and of its terms.

Article 5. Succession in respect of other matters

Nothing in the present Convention shall be considered as prejudging in any respect any question relating to the effects of a succession of States in respect of matters other than those provided for in the present Convention.

Article 6. Rights and obligations of natural or juridical persons

Nothing in the present Convention shall be considered as prejudging in any respect any question relating to the rights and obligations of natural or juridical persons.

Part II. State Property

Section 1. Introduction

Article 7. Scope of the present Part

The articles in the present Part apply to the effects of a succession of States in respect of State property of the predecessor State.

Article 8. State property

For the purposes of the articles in the present Part, “State property of the predecessor State” means property, rights and interests which, at the date of the succession of States, were, according to the internal law of the predecessor State, owned by that State.

Article 9. Effects of the passing of State property

The passing of State property of the predecessor State entails the extinction of the rights of that State and the arising of the rights of the successor State to the State property which passes to the successor State, subject to the provisions of the articles in the present Part.

Article 10. Date of the passing of State property

Unless otherwise agreed by the States concerned or decided by an appropriate international body, the date of the passing of State property of the predecessor State is that of the succession of States.

Article 11. Passing of State property without compensation

Subject to the provisions of the articles in the present Part and unless otherwise agreed by the States concerned or decided by an appropriate international body, the passing of State property of the predecessor State to the successor State shall take place without compensation.

Article 12. Absence of effect of a succession of States on  
the property of a third State

A succession of States shall not as such affect property, rights and interests which, at the date of the succession of States, are situated in the territory of the predecessor State and which, at that date, are owned by a third State according to the internal law of the predecessor State.

Article 13. Preservation and safety of State property

For the purpose of the implementation of the provisions of the articles in the present Part, the predecessor State shall take all measures to prevent damage or destruction to State property which passes to the successor State in accordance with those provisions.

Section 2. Provisions concerning specific  
categories of succession of States

Article 14. Transfer of part of the territory of a State

1. When part of the territory of a State is transferred by that State to another State, the passing of State property of the predecessor State to the successor State is to be settled by agreement between them.

2. In the absence of such an agreement:

(a) immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State;

(b) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State.

Article 15. Newly independent State

1. When the successor State is a newly independent State:

(a) immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State;

(b) immovable property, having belonged to the territory to which the succession of States relates, situated outside it and having become State property of the predecessor State during the period of dependence, shall pass to the successor State;

(c) immovable State property of the predecessor State other than that mentioned in subparagraph (b) and situated outside the territory to which the succession of States relates, to the creation of which the dependent territory has contributed, shall pass to the successor State in proportion to the contribution of the dependent territory;

(d) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State;

(e) movable property, having belonged to the territory to which the succession of States relates and having become State property of the predecessor State during the period of dependence, shall pass to the successor State;

(f) movable State property of the predecessor State, other than the property mentioned in subparagraphs (d) and (e), to the creation of which the dependent territory has contributed, shall pass to the successor State in proportion to the contribution of the dependent territory.

2. When a newly independent State is formed from two or more dependent territories, the passing of the State property of the predecessor State or States to the newly independent State shall be determined in accordance with the provisions of paragraph 1.

3. When a dependent territory becomes part of the territory of a State, other than the State which was responsible for its international relations, the passing of the State property of the predecessor State to the successor State shall be determined in accordance with the provisions of paragraph 1.

4. Agreements concluded between the predecessor State and the newly independent State to determine succession to State property of the predecessor State otherwise than by the application of paragraphs 1 to 3 shall not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources.

Article 16. Uniting of States

When two or more States unite and so form one successor State, the State property of the predecessor States shall pass to the successor State.

Article 17. Separation of part or parts of the territory of a State

1. When part or parts of the territory of a State separate from that State and form a successor State, and unless the predecessor State and the successor State otherwise agree:

(a) immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State;

(b) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State;

(c) movable State property of the predecessor State, other than that mentioned in subparagraph (b), shall pass to the successor State in an equitable proportion.

2. Paragraph 1 applies when part of the territory of a State separates from that State and unites with another State.

3. The provisions of paragraphs 1 and 2 are without prejudice to any question of equitable compensation as between the predecessor State and the successor State that may arise as a result of a succession of States.

Article 18. Dissolution of a State

1. When a State dissolves and ceases to exist and the parts of the territory of the predecessor State form two or more successor States, and unless the successor States concerned otherwise agree:

(a) immovable State property of the predecessor State shall pass to the successor State in the territory of which it is situated;

(b) immovable State property of the predecessor State situated outside its territory shall pass to the successor States in equitable proportions;

(c) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territories to which the succession of States relates shall pass to the successor State concerned;

(d) movable State property of the predecessor State, other than that mentioned in subparagraph (c), shall pass to the successor States in equitable proportions.

2. The provisions of paragraph 1 are without prejudice to any question of equitable compensation among the successor States that may arise as a result of a succession of States.

Part III. State archives

Section 1. Introduction

Article 19. Scope of the present Part

The articles in the present Part apply to the effects of a succession of States in respect of State archives of the predecessor State.

Article 20. State archives

For the purposes of the articles in the present Part, “State archives of the predecessor State” means all documents of whatever date and kind, produced or received by the predecessor State in the exercise of its functions which, at the date of the succession of States, belonged to the predecessor State according to its internal law and were preserved by it directly or under its control as archives for whatever purpose.

Article 21. Effects of the passing of State archives

The passing of State archives of the predecessor State entails the extinction of the rights of that State and the arising of the rights of the successor State to the State archives which pass to the successor State, subject to the provisions of the articles in the present Part.

Article 22. Date of the passing of State archives

Unless otherwise agreed by the States concerned or decided by an appropriate international body, the date of the passing of State archives of the predecessor State is that of the succession of States.

Article 23. Passing of State archives without compensation

Subject to the provisions of the articles in the present Part and unless otherwise agreed by the States concerned or decided by an appropriate international body, the passing of State archives of the predecessor State to the successor State shall take place without compensation.

Article 24. Absence of effect of a succession of States on  
the archives of a third State

A succession of States shall not as such affect archives which, at the date of the succession of States, are situated in the territory of the predecessor State and which, at that date, are owned by a third State according to the internal law of the predecessor State.

Article 25. Preservation of the integral character of  
groups of State archives

Nothing in the present Part shall be considered as prejudging in any respect any question that might arise by reason of the preservation of the integral character of groups of State archives of the predecessor State.

Article 26. Preservation and safety of State archives

For the purpose of the implementation of the provisions of the articles in the present Part, the predecessor State shall take all measures to prevent damage or destruction to State archives which pass to the successor State in accordance with those provisions.

Section 2. Provisions concerning specific   
categories of succession of States

Article 27. Transfer of part of the territory of a State

1. When part of the territory of a State is transferred by that State to another State, the passing of State archives of the predecessor State to the successor State is to be settled by agreement between them.

2. In the absence of such an agreement:

(a) the part of State archives of the predecessor State, which for normal administration of the territory to which the succession of States relates should be at the disposal of the State to which the territory concerned is transferred, shall pass to the successor State;

(b) the part of State archives of the predecessor State, other than the part mentioned in subparagraph (a), that relates exclusively or principally to the territory to which the succession of States relates, shall pass to the successor State.

3. The predecessor State shall provide the successor State with the best available evidence from its State archives which bears upon title to the territory of the transferred territory or its boundaries, or which is necessary to clarify the meaning of documents of State archives of the predecessor State which pass to the successor State pursuant to other provisions of the present article.

4. The predecessor State shall make available to the successor State, at the request and at the expense of that State, appropriate reproductions of its State archives connected with the interests of the transferred territory.

5. The successor State shall make available to the predecessor State, at the request and at the expense of that State, appropriate reproductions of State archives of the predecessor State which have passed to the successor State in accordance with paragraph 1 or 2.

Article 28. Newly independent State

1. When the successor State is a newly independent State:

(a) archives having belonged to the territory to which the succession of States relates and having become State archives of the predecessor State during the period of dependence shall pass to the newly independent State;

(b) the part of State archives of the predecessor State, which for normal administration of the territory to which the succession of States relates should be in that territory, shall pass to the newly independent State;

(c) the part of State archives of the predecessor State, other than the parts mentioned in subparagraphs (a) and (b), that relates exclusively or principally to the territory to which the succession of States relates, shall pass to the newly independent State.

2. The passing or the appropriate reproduction of parts of the State archives of the predecessor State, other than those mentioned in paragraph 1, of interest to the territory to which the succession of States relates, shall be determined by agreement between the predecessor State and the newly independent State in such a manner that each of those States can benefit as widely and equitably as possible from those parts of the State archives of the predecessor State.

3. The predecessor State shall provide the newly independent State with the best available evidence from its State archives which bears upon title to the territory of the newly independent State or its boundaries, or which is necessary to clarify the meaning of documents of States archives of the predecessor State which pass to the newly independent State pursuant to other provisions of the present article.

4. The predecessor State shall cooperate with the successor State in efforts to recover any archives which, having belonged to the territory to which the succession of States relates, were dispersed during the period of dependence.

5. Paragraphs 1 to 4 apply when a newly independent State is formed from two or more dependent territories.

6. Paragraphs 1 to 4 apply when a dependent territory becomes part of the territory of a State other than the State which was responsible for its international relations.

7. Agreements concluded between the predecessor State and the newly independent State in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history, and to their cultural heritage.

Article 29. Uniting of States

When two or more States unite and so form one successor State, the State archives of the predecessor States shall pass to the successor State.

Article 30. Separation of part or parts of the territory of a State

1. When part or parts of the territory of a State separate from that State and form a State, and unless the predecessor State and the successor State otherwise agree:

(a) the part of State archives of the predecessor State, which for normal administration of the territory to which the succession of States relates should be in that territory, shall pass to the successor State;

(b) the part of State archives of the predecessor State, other than the part mentioned in subparagraph (a), that relates directly to the territory to which the succession of States relates, shall pass to the successor State.

2. The predecessor State shall provide the successor State with the best available evidence from its State archives which bears upon title to the territory of the successor State or its boundaries, or which is necessary to clarify the meaning of documents of State archives of the predecessor State which pass to the successor State pursuant to other provisions of the present article.

3. Agreements concluded between the predecessor State and the successor State in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history and to their cultural heritage.

4. The predecessor and successor States shall, at the request and at the expense of one of them or on an exchange basis, make available appropriate reproductions of their State archives connected with the interests of their respective territories.

5. The provisions of paragraphs 1 to 4 apply when part of the territory of a State separates from that State and unites with another State.

Article 31. Dissolution of a State

1. When a State dissolves and ceases to exist and the parts of the territory of the predecessor State form two or more successor States, and unless the successor States concerned otherwise agree:

(a) the part of the State archives of the predecessor State which should be in the territory of a successor State for normal administration of its territory shall pass to that successor State;

(b) the part of the State archives of the predecessor State, other than the part mentioned in subparagraph (a), that relates directly to the territory of a successor State shall pass to that successor State.

2. The State archives of the predecessor State other than those mentioned in paragraph 1 shall pass to the successor States in an equitable manner, taking into account all relevant circumstances.

3. Each successor State shall provide the other successor State or States with the best available evidence from its part of the State archives of the predecessor State which bears upon title to the territories or boundaries of that other successor State or States, or which is necessary to clarify the meaning of documents of State archives of the predecessor State which pass to that State or States pursuant to other provisions of the present article.

4. Agreements concluded between the successor States concerned in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history and to their cultural heritage.

5. Each successor State shall make available to any other successor State, at the request and at the expense of that State or on an exchange basis, appropriate reproductions of its part of the State archives of the predecessor State connected with the interests of the territory of that other successor State.

Part IV. State Debts

Section 1. Introduction

Article 32. Scope of the present Part

The articles in the present Part apply to the effects of a succession of States in respect of State debts.

Article 33. State debt

For the purposes of the articles in the present Part, “State debt” means any financial obligation of a predecessor State arising in conformity with international law towards another State, an international organization or any other subject of international law.

Article 34. Effects of the passing of State debts

The passing of State debts entails the extinction of the obligations of the predecessor State and the arising of the obligations of the successor State in respect of the State debts which pass to the successor State, subject to the provisions of the articles in the present Part.

Article 35. Date of the passing of State debts

Unless otherwise agreed by the States concerned or decided by an appropriate international body, the date of the passing of State debts of the predecessor State is that of the succession of States.

Article 36. Absence of effect of a succession of States on creditors

A succession of States does not as such affect the rights and obligations of creditors.

Section 2. Provisions concerning specific categories  
of succession of States

Article 37. Transfer of part of the territory of a State

1. When part of the territory of a State is transferred by that State to another State, the passing of the State debt of the predecessor State to the successor State is to be settled by agreement between them.

2. In the absence of such an agreement, the State debt of the predecessor State shall pass to the successor State in an equitable proportion, taking into account, in particular, the property, rights and interests which pass to the successor State in relation to that State debt.

Article 38. Newly independent State

1. When the successor State is a newly independent State, no State debt of the predecessor State shall pass to the newly independent State, unless an agreement between them provides otherwise in view of the link between the State debt of the predecessor State connected with its activity in the territory to which the succession of States relates and the property, rights and interests which pass to the newly independent State.

2. The agreement referred to in paragraph 1 shall not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources, nor shall its implementation endanger the fundamental economic equilibria of the newly independent State.

Article 39. Uniting of States

When two or more States unite and so form one successor State, the State debt of the predecessor States shall pass to the successor State.

Article 40. Separation of part or parts of the territory of a State

1. When part or parts of the territory of a State separate from that State and form a State, and unless the predecessor State and the successor State otherwise agree, the State debt of the predecessor State shall pass to the successor State in an equitable proportion, taking into account, in particular, the property, rights and interests which pass to the successor State in relation to that State debt.

2. Paragraph 1 applies when part of the territory of a State separates from that State and unites with another State.

Article 41. Dissolution of a State

When a State dissolves and ceases to exist and the parts of the territory of the predecessor State form two or more successor States, and unless the successor States otherwise agree, the State debt of the predecessor State shall pass to the successor States in equitable proportions, taking into account, in particular, the property, rights and interests which pass to the successor States in relation to that State debt.

Part V. Settlement of Disputes

Article 42. Consultation and negotiation

If a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they shall, upon the request of any of them, seek to resolve it by a process of consultation and negotiation.

Article 43. Conciliation

If the dispute is not resolved within six months of the date on which the request referred to in article 42 has been made, any party to the dispute may submit it to the conciliation procedure specified in the Annex to the present Convention by submitting a request to that effect to the Secretary-General of the United Nations and informing the other party or parties to the dispute of the request.

Article 44. Judicial settlement and arbitration

Any State at the time of signature or ratification of the present Convention or accession thereto or at any time thereafter, may, by notification to the depositary, declare that, where a dispute has not been resolved by the application of the procedures referred to in articles 42 and 43, that dispute may be submitted for a decision to the International Court of Justice by a written application of any party to the dispute, or in the alternative to arbitration, provided that the other party to the dispute has made a like declaration.

Article 45. Settlement by common consent

Notwithstanding articles 42, 43 and 44, if a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they may by common consent agree to submit it to the International Court of Justice, or to arbitration, or to any other appropriate procedure for the settlement of disputes.

Article 46. Other provisions in force for the settlement of disputes

Nothing in articles 42 to 45 shall affect the rights or obligations of the Parties to the present Convention under any provisions in force binding them with regard to the settlement of disputes.

Part VI. Final Provisions

Article 47. Signature

The present Convention shall be open for signature by all States until 31 December 1983 at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 June 1984, at United Nations Headquarters in New York.

Article 48. Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 49. Accession

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 50. Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the fifteenth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 51. Authentic texts

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Done at Vienna, this eighth day of April, one thousand nine hundred and eighty-three.

Annex

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a Party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 43, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

(b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the appointment of the last of them, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any Party to the present Convention to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

K. Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations

Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. Done at Vienna, on 21 March 1986[[898]](#footnote-898)\*

The Parties to the present Convention,

Considering the fundamental role of treaties in the history of international relations,

Recognizing the consensual nature of treaties and their ever-increasing importance as a source of international law,

Noting that the principles of free consent and of good faith and the pacta sunt servanda rule are universally recognized,

Affirming the importance of enhancing the process of codification and progressive development of international law at a universal level,

Believing that the codification and progressive development of the rules relating to treaties between States and international organizations or between international organizations are means of enhancing legal order in international relations and of serving the purposes of the United Nations,

Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedoms for all,

Bearing in mind the provisions of the Vienna Convention on the Law of Treaties of 1969,

Recognizing the relationship between the law of treaties between States and the law of treaties between States and international organizations or between international organizations,

Considering the importance of treaties between States and international organizations or between international organizations as a useful means of developing international relations and ensuring conditions for peaceful cooperation among nations, whatever their constitutional and social systems,

Having in mind the specific features of treaties to which international organizations are parties as subjects of international law distinct from States,

Noting that international organizations possess the capacity to conclude treaties, which is necessary for the exercise of their functions and the fulfilment of their purposes,

Recognizing that the practice of international organizations in concluding treaties with States or between themselves should be in accordance with their constituent instruments,

Affirming that nothing in the present Convention should be interpreted as affecting those relations between an international organization and its members which are regulated by the rules of the organization,

Affirming also that disputes concerning treaties, like other international disputes, should be settled, in conformity with the Charter of the United Nations, by peaceful means and in conformity with the principles of justice and international law,

Affirming also that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

Have agreed as follows:

Part I. Introduction

Article 1. Scope of the present Convention

The present Convention applies to:

(a) treaties between one or more States and one or more international organizations, and

(b) treaties between international organizations.

Article 2. Use of terms

1. For the purposes of the present Convention:

(a) “treaty” means an international agreement governed by international law and concluded in written form:

(i) between one or more States and one or more international organizations; or

(ii) between international organizations,

whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(b) “ratification” means the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(b bis) “act of formal confirmation” means an international act corresponding to that of ratification by a State, whereby an international organization establishes on the international plane its consent to be bound by a treaty;

(b ter) “acceptance,” “approval” and “accession” mean in each case the international act so named whereby a State or an international organization establishes on the international plane its consent to be bound by a treaty;

(c) “full powers” means a document emanating from the competent authority of a State or from the competent organ of an international organization designating a person or persons to represent the State or the organization for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State or of the organization to be bound by a treaty, or for accomplishing any other act with respect to a treaty;

(d) “reservation” means a unilateral statement, however phrased or named, made by a State or by an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that organization;

(e) “negotiating State” and “negotiating organization” mean respectively:

(i) a State, or

(ii) an international organization,

which took part in the drawing up and adoption of the text of the treaty;

(f) “contracting State” and “contracting organization” mean respectively:

(i) a State, or

(ii) an international organization,

which has consented to be bound by the treaty, whether or not the treaty has entered into force;

(g) “party” means a State or an international organization which has consented to be bound by the treaty and for which the treaty is in force;

(h) “third State” and “third organization” mean respectively:

(i) a State, or

(ii) an international organization,

not a party to the treaty;

(i) “international organization” means an intergovernmental organization;

(j) “rules of the organization” means, in particular, the constituent instruments, decisions and resolutions adopted in accordance with them, and established practice of the organization.

2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State or in the rules of any international organization.

Article 3. International agreements not within the scope of  
the present Convention

The fact that the present Convention does not apply:

(i) to international agreements to which one or more States, one or more international organizations and one or more subjects of international law other than States or organizations are parties;

(ii) to international agreements to which one or more international organizations and one or more subjects of international law other than States or organizations are parties;

(iii) to international agreements not in written form between one or more States and one or more international organizations, or between international organizations; or

(iv) to international agreements between subjects of international law other than States or international organizations;

shall not affect:

(a) the legal force of such agreements;

(b) the application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;

(c) the application of the Convention to the relations between States and international organizations or to the relations of organizations as between themselves, when those relations are governed by international agreements to which other subjects of international law are also parties.

Article 4. Non-retroactivity of the present Convention

Without prejudice to the application of any rules set forth in the present Convention to which treaties between one or more States and one or more international organizations or between international organizations would be subject under international law independently of the Convention, the Convention applies only to such treaties concluded after the entry into force of the present Convention with regard to those States and those organizations.

*Arti*c*le 5.*Treaties constituting international organizations and treaties adopted within an international organization

The present Convention applies to any treaty between one or more States and one or more international organizations which is the constituent instrument of an international organization and to any treaty adopted within an international organization, without prejudice to any relevant rules of the organization.

Part II. Conclusion and Entry into Force of Treaties

Section 1. Conclusion of treaties

Article 6. Capacity of international organizations   
to conclude treaties

The capacity of an international organization to conclude treaties is governed by the rules of that organization.

Article 7. Full powers

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:

(a) that person produces appropriate full powers; or

(b) it appears from practice or from other circumstances that it was the intention of the States and international organizations concerned to consider that person as representing the State for such purposes without having to produce full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty between one or more States and one or more international organizations;

(b) representatives accredited by States to an international conference, for the purpose of adopting the text of a treaty between States and international organizations;

(c) representatives accredited by States to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that organization or organ;

(d) heads of permanent missions to an international organization, for the purpose of adopting the text of a treaty between the accrediting States and that organization.

3. A person is considered as representing an international organization for the purpose of adopting or authenticating the text of a treaty, or expressing the consent of that organization to be bound by a treaty, if:

(a) that person produces appropriate full powers; or

(b) it appears from the circumstances that it was the intention of the States and international organizations concerned to consider that person as representing the organization for such purposes, in accordance with the rules of the organization, without having to produce full powers.

Article 8. Subsequent confirmation of an act performed  
without authorization

An act relating to the conclusion of a treaty performed by a person who cannot be considered under article 7 as authorized to represent a State or an international organization for that purpose is without legal effect unless afterwards confirmed by that State or that organization.

Article 9. Adoption of the text

1. The adoption of the text of a treaty takes place by the consent of all the States and international organizations or, as the case may be, all the organizations participating in its drawing up except as provided in paragraph 2.

2. The adoption of the text of a treaty at an international conference takes place in accordance with the procedure agreed upon by the participants in that conference. If, however, no agreement is reached on any such procedure, the adoption of the text shall take place by the vote of two thirds of the participants present and voting unless by the same majority they shall decide to apply a different rule.

Article 10. Authentication of the text

1. The text of a treaty between one or more States and one or more international organizations is established as authentic and definitive:

(a) by such procedure as may be provided for in the text or agreed upon by the States and organizations participating in its drawing up; or

(b) failing such procedure, by the signature, signature ad referendum or initialling by the representatives of those States and those organizations of the text of the treaty or of the Final Act of a conference incorporating the text.

2. The text of a treaty between international organizations is established as authentic and definitive:

(a) by such procedure as may be provided for in the text or agreed upon by the organizations participating in its drawing up; or

(b) failing such procedure, by the signature, signature ad referendum or initialling by the representatives of those States and those organizations of the text of the treaty or of the Final Act of a conference incorporating the text.

Article 11. Means of expressing consent to be bound by a treaty

1. The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.

2. The consent of an international organization to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, act of formal confirmation, acceptance, approval or accession, or by any other means if so agreed.

Article 12. Consent to be bound by a treaty expressed by signature

1. The consent of a State or of an international organization to be bound by a treaty is expressed by the signature of the representative of that State or of that organization when:

(a) the treaty provides that signature shall have that effect;

(b) it is otherwise established that the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations were agreed that signature should have that effect; or

(c) the intention of the State or organization to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.

2. For the purposes of paragraph 1:

(a) the initialling of a text constitutes a signature of the treaty when it is established that the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations so agreed;

(b) the signature ad referendum of a treaty by the representative of a State or an international organization, if confirmed by his State or organization, constitutes a full signature of the treaty.

Article 13. Consent to be bound by a treaty expressed by  
an exchange of instruments constituting a treaty

The consent of States or of international organizations to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

(a) the instruments provide that their exchange shall have that effect; or

(b) it is otherwise established that those States and those organizations or, as the case may be, those organizations were agreed that the exchange of instruments should have that effect.

Article 14. Consent to be bound by a treaty expressed by ratification,  
act of formal confirmation, acceptance or approval

1. The consent of a State to be bound by a treaty is expressed by ratification when:

(a) the treaty provides for such consent to be expressed by means of ratification;

(b) it is otherwise established that the negotiating States and negotiating organizations were agreed that ratification should be required;

(c) the representative of the State has signed the treaty subject to ratification; or

(d) the intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

2. The consent of an international organization to be bound by a treaty is expressed by an act of formal confirmation when:

(a) the treaty provides for such consent to be expressed by means of an act of formal confirmation;

(b) it is otherwise established that the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations were agreed that an act of formal confirmation should be required;

(c) the representative of the organization has signed the treaty subject to an act of formal confirmation; or

(d) the intention of the organization to sign the treaty subject to an act of formal confirmation appears from the full powers of its representative or was expressed during the negotiation.

3. The consent of a State or of an international organization to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification or, as the case may be, to an act of formal confirmation.

Article 15. Consent to be bound by a treaty expressed by accession

The consent of a State or of an international organization to be bound by a treaty is expressed by accession when:

(a) the treaty provides that such consent may be expressed by that State or that organization by means of accession;

(b) it is otherwise established that the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations were agreed that such consent may be expressed by that State or that organization by means of accession; or

(c) all the parties have subsequently agreed that such consent may be expressed by that State or that organization by means of accession.

Article 16. Exchange or deposit of instruments of ratification,  
 formal confirmation, acceptance, approval or accession

1. Unless the treaty otherwise provides, instruments of ratification, instruments relating to an act of formal confirmation or instruments of acceptance, approval or accession establish the consent of a State or of an international organization to be bound by a treaty between one or more States and one or more international organizations upon:

(a) their exchange between the contracting States and contracting organizations;

(b) their deposit with the depositary; or

(c) their notification to the contracting States and to the contracting organizations or to the depositary, if so agreed.

2. Unless the treaty otherwise provides, instruments relating to an act of formal confirmation or instruments of acceptance, approval or accession establish the consent of an international organization to be bound by a treaty between international organizations upon:

(a) their exchange between the contracting organizations;

(b) their deposit with the depositary; or

(c) their notification to the contracting organizations or to the depositary, if so agreed.

Article 17. Consent to be bound by part of a treaty and choice  
of differing provisions

1. Without prejudice to articles 19 to 23, the consent of a State or of an international organization to be bound by part of a treaty is effective only if the treaty so permits, or if the contracting States and contracting organizations or, as the case may be, the contracting organizations so agree.

2. The consent of a State or of an international organization to be bound by a treaty which permits a choice between differing provisions is effective only if it is made clear to which of the provisions the consent relates.

Article 18. Obligation not to defeat the object and purpose of  
a treaty prior to its entry into force

A State or an international organization is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

(a) that State or that organization has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, act of formal confirmation, acceptance or approval, until that State or that organization shall have made its intention clear not to become a party to the treaty; or

(b) that State or that organization has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

Section 2. Reservations

Article 19. Formulation of reservations

A State or an international organization may, when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) the reservation is prohibited by the treaty;

(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

Article 20. Acceptance of and objection to reservations

1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the contracting States and contracting organizations or, as the case may be, by the contracting organizations unless the treaty so provides.

2. When it appears from the limited number of the negotiating States and negotiating organizations or, as the case may be, of the negotiating organizations and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.

4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

(a) acceptance of a reservation by a contracting State or by a contracting organization constitutes the reserving State or international organization a party to the treaty in relation to the accepting State or organization if or when the treaty is in force for the reserving State or organization and for the accepting State or organization;

(b) an objection by a contracting State or by a contracting organization to a reservation does not preclude the entry into force of the treaty as between the objecting State or international organization and the reserving State or organization unless a contrary intention is definitely expressed by the objecting State or organization;

(c) an act expressing the consent of a State or of an international organization to be bound by the treaty and containing a reservation is effective as soon as at least one contracting State or one contracting organization has accepted the reservation.

5. For the purposes of paragraphs 2 and 4, and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State or an international organization if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

Article 21. Legal effects of reservations and   
of objections to reservations

1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:

(a) modifies for the reserving State or international organization in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(b) modifies those provisions to the same extent for that other party in its relations with the reserving State or international organization.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty inter se.

3. When a State or an international organization objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State or organization, the provisions to which the reservation relates do not apply as between the reserving State or organization and the objecting State or organization to the extent of the reservation.

Article 22. Withdrawal of reservations and of objections to reservations

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State or of an international organization which has accepted the reservation is not required for its withdrawal.

2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.

3. Unless the treaty otherwise provides, or it is otherwise agreed:

(a) the withdrawal of a reservation becomes operative in relation to a contracting State or a contracting organization only when notice of it has been received by that State or that organization;

(b) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State or international organization which formulated the reservation.

Article 23. Procedure regarding reservations

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and contracting organizations and other States and international organizations entitled to become parties to the treaty.

2. If formulated when signing the treaty subject to ratification, act of formal confirmation, acceptance or approval, a reservation must be formally confirmed by the reserving State or international organization when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.

3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.

4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

Section 3. Entry into force and provisional  
 application of treaties

Article 24. Entry into force

1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations may agree.

2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States and negotiating organizations or, as the case may be, all the negotiating organizations.

3. When the consent of a State or of an international organization to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State or that organization on that date, unless the treaty otherwise provides.

4. The provisions of a treaty regulating the authentication of its text, the establishment of consent to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.

Article 25. Provisional application

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:

(a) the treaty itself so provides; or

(b) the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations have in some other manner so agreed.

2. Unless the treaty otherwise provides or the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State or an international organization shall be terminated if that State or that organization notifies the States and organizations with regard to which the treaty is being applied provisionally of its intention not to become a party to the treaty.

Part III. Observance, Application and   
Interpretation of Treaties

Section 1. Observance of treaties

Article 26. Pacta sunt servanda

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Article 27. Internal law of States, rules of international  
organizations and observance of treaties

1. A State party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform the treaty.

2. An international organization party to a treaty may not invoke the rules of the organization as justification for its failure to perform the treaty.

3. The rules contained in the preceding paragraphs are without prejudice to article 46.

Section 2. Application of treaties

Article 28. Non-retroactivity of treaties

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

Article 29. Territorial scope of treaties

Unless a different intention appears from the treaty or is otherwise established, a treaty between one or more States and one or more international organizations is binding upon each State party in respect of its entire territory.

Article 30. Application of successive treaties relating to  
the same subject matter

1. The rights and obligations of States and international organizations parties to successive treaties relating to the same subject matter shall be determined in accordance with the following paragraphs.

2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies to the extent that its provisions are compatible with those of the later treaty.

4. When the parties to the later treaty do not include all the parties to the earlier one:

(a) as between two parties, each of which is a party to both treaties, the same rule applies as in paragraph 3;

(b) as between a party to both treaties and a party to only one of the treaties, the treaty to which both are parties governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State or for an international organization from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards a State or an organization under another treaty.

6. The preceding paragraphs are without prejudice to the fact that, in the event of a conflict between obligations under the Charter of the United Nations and obligations under a treaty, the obligations under the Charter shall prevail.

Section 3. Interpretation of treaties

Article 31. General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32. Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or

(b) leads to a result which is manifestly absurd or unreasonable.

Article 33. Interpretation of treaties authenticated in two  
or more languages

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.

3. The terms of a treaty are presumed to have the same meaning in each authentic text.

4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

Section 4. Treaties and third States or  
third organizations

Article 34. General rule regarding third States   
and third organizations

A treaty does not create either obligations or rights for a third State or a third organization without the consent of that State or that organization.

Article 35. Treaties providing for obligations for third States  
or third organizations

An obligation arises for a third State or a third organization from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State or the third organization expressly accepts that obligation in writing. Acceptance by the third organization of such an obligation shall be governed by the rules of that organization.

Article 36. Treaties providing for rights for third States  
or third organizations

1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.

2. A right arises for a third organization from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third organization, or to a group of international organizations to which it belongs, or to all organizations, and the third organization assents thereto. Its assent shall be governed by the rules of the organization.

3. A State or an international organization exercising a right in accordance with paragraph 1 or 2 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.

Article 37. Revocation or modification of obligations or rights  
of third States or third organizations

1. When an obligation has arisen for a third State or a third organization in conformity with article 35, the obligation may be revoked or modified only with the consent of the parties to the treaty and of the third State or the third organization, unless it is established that they had otherwise agreed.

2. When a right has arisen for a third State or a third organization in conformity with article 36, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State or the third organization.

3. The consent of an international organization party to the treaty or of a third organization, as provided for in the foregoing paragraphs, shall be governed by the rules of that organization.

Article 38. Rules in a treaty becoming binding on third States or  
 third organizations through international custom

Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State or a third organization as a customary rule of international law, recognized as such.

Part IV. Amendment and Modification of Treaties

Article 39. General rule regarding the amendment of treaties

1. A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except insofar as the treaty may otherwise provide.

2. The consent of an international organization to an agreement provided for in paragraph 1 shall be governed by the rules of that organization.

Article 40. Amendment of multilateral treaties

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.

2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States and all the contracting organizations, each one of which shall have the right to take part in:

(a) the decision as to the action to be taken in regard to such proposal;

(b) the negotiation and conclusion of any agreement for the amendment of the treaty.

3. Every State or international organization entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.

4. The amending agreement does not bind any State or international organization already a party to the treaty which does not become a party to the amending agreement; article 30, paragraph 4 (b), applies in relation to such State or organization.

5. Any State or international organization which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State or that organization:

(a) be considered as a party to the treaty as amended; and

(b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.

Article 41. Agreements to modify multilateral treaties  
 between certain of the parties only

1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:

(a) the possibility of such a modification is provided for by the treaty; or

(b) the modification in question is not prohibited by the treaty and:

(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

(ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.

2. Unless in a case falling under paragraph 1 (a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.

Part V. Invalidity, Termination and Suspension   
of the Operation of Treaties

Section 1. General provisions

Article 42. Validity and continuance in force of treaties

1. The validity of a treaty or of the consent of a State or an international organization to be bound by a treaty may be impeached only through the application of the present Convention.

2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.

Article 43. Obligations imposed by international law  
independently of a treaty

The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present Convention or of the provisions of the treaty, shall not in any way impair the duty of any State or of any international organization to fulfil any obligation embodied in the treaty to which that State or that organization would be subject under international law independently of the treaty.

Article 44. Separability of treaty provisions

1. A right of a party, provided for in a treaty or arising under article 56, to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.

2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present Convention may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in article 60.

3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where:

(a) the said clauses are separable from the remainder of the treaty with regard to their application;

(b) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and

(c) continued performance of the remainder of the treaty would not be unjust.

4. In cases falling under articles 49 and 50, the State or international organization entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or, subject to paragraph 3, to the particular clauses alone.

5. In cases falling under articles 51, 52 and 53, no separation of the provisions of the treaty is permitted.

Article 45. Loss of a right to invoke a ground for invalidating,  
terminating, withdrawing from or suspending  
the operation of a treaty

1. A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:

(a) it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or

(b) it must by reason of its conduct be considered as having acquiesced in the validity of the treaty or in its maintenance in force or in operation, as the case may be.

2. An international organization may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:

(a) it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or

(b) it must by reason of the conduct of the competent organ be considered as having renounced the right to invoke that ground.

Section 2. Invalidity of treaties

Article 46. Provisions of internal law of a State and rules of  
an international organization regarding  
competence to conclude treaties

1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. An international organization may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of the rules of the organization regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of fundamental importance.

3. A violation is manifest if it would be objectively evident to any State or any international organization conducting itself in the matter in accordance with the normal practice of States and, where appropriate, of international organizations and in good faith.

Article 47. Specific restrictions on authority to express   
the consent of a State or an international organization

If the authority of a representative to express the consent of a State or of an international organization to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating the consent expressed by him unless the restriction was notified to the negotiating States and negotiating organizations prior to his expressing such consent.

Article 48. Error

1. A State or an international organization may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State or that organization to exist at the time when the treaty was concluded and formed an essential basis of the consent of that State or that organization to be bound by the treaty.

2. Paragraph 1 shall not apply if the State or international organization in question contributed by its own conduct to the error or if the circumstances were such as to put that State or that organization on notice of a possible error.

3. An error relating only to the wording of the text of a treaty does not affect its validity; article 80 then applies.

Article 49. Fraud

A State or an international organization induced to conclude a treaty by the fraudulent conduct of a negotiating State or a negotiating organization may invoke the fraud as invalidating its consent to be bound by the treaty.

Article 50. Corruption of a representative of a State  
or of an international organization

A State or an international organization the expression of whose consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by a negotiating State or a negotiating organization may invoke such corruption as invalidating its consent to be bound by the treaty.

Article 51. Coercion of a representative of a State or  
of an international organization

The expression by a State or an international organization of consent to be bound by a treaty which has been procured by the coercion of the representative of that State or that organization through acts or threats directed against him shall be without any legal effect.

Article 52. Coercion of a State or of an international  
organization by the threat or use of force

A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

Article 53. *Treaties conflicting with a peremptory norm of  
general international law (*jus cogens*)*

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

Section 3. Termination and suspension of the  
 operation of treaties

Article 54. Termination of or withdrawal from a treaty under its provisions or by consent of the parties

The termination of a treaty or the withdrawal of a party may take place:

(a) in conformity with the provisions of the treaty; or

(b) at any time by consent of all the parties after consultation with the contracting States and contracting organizations.

Article 55. Reduction of the parties to a multilateral treaty below  
the number necessary for its entry into force

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.

Article 56. Denunciation of or withdrawal from a treaty containing  
no provision regarding termination, denunciation or withdrawal

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

(a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or

(b) a right of denunciation or withdrawal may be implied by the nature of the treaty.

2. A party shall give not less than twelve months’ notice of its intention to denounce or withdraw from a treaty under paragraph 1.

Article 57. Suspension of the operation of a treaty under   
its provisions or by consent of the parties

The operation of a treaty in regard to all the parties or to a particular party may be suspended:

(a) in conformity with the provisions of the treaty; or

(b) at any time by consent of all the parties after consultation with the contracting States and contracting organizations.

Article 58. Suspension of the operation of a multilateral treaty  
by agreement between certain of the parties only

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if:

(a) the possibility of such a suspension is provided for by the treaty; or

(b) the suspension in question is not prohibited by the treaty and:

(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

(ii) is not incompatible with the object and purpose of the treaty.

2. Unless in a case falling under paragraph 1 (a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of those provisions of the treaty the operation of which they intend to suspend.

Article 59. Termination or suspension of the operation of a treaty  
implied by conclusion of a later treaty

1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject matter and:

(a) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty; or

(b) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

Article 60. Termination or suspension of the operation of a treaty  
as a consequence of its breach

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles:

(a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:

(i) in the relations between themselves and the defaulting State or international organization; or

(ii) as between all the parties;

(b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State or international organization;

(c) any party other than the defaulting State or international organization to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of this article, consists in:

(a) a repudiation of the treaty not sanctioned by the present Convention; or

(b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.

Article 61. Supervening impossibility of performance

1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.

2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

Article 62. Fundamental change of circumstances

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

(a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty between two or more States and one or more international organizations if the treaty establishes a boundary.

3. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

4. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.

Article 63. Severance of diplomatic or consular relations

The severance of diplomatic or consular relations between States Parties to a treaty between two or more States and one or more international organizations does not affect the legal relations established between those States by the treaty except insofar as the existence of diplomatic or consular relations is indispensable for the application of the treaty.

Article 64. *Emergence of a new peremptory norm of general  
international law (*jus cogens*)*

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

Section 4. Procedure

Article 65. Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension   
of the operation of a treaty

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 67 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

4. The notification or objection made by an international organization shall be governed by the rules of that organization.

5. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

6. Without prejudice to article 45, the fact that a State or an international organization has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

Article 66. Procedures for judicial settlement,   
arbitration and conciliation

1. If, under paragraph 3 of article 65, no solution has been reached within a period of twelve months following the date on which the objection was raised, the procedures specified in the following paragraphs shall be followed.

2. With respect to a dispute concerning the application or the interpretation of article 53 or 64:

(a) if a State is a party to the dispute with one or more States, it may, by a written application, submit the dispute to the International Court of Justice for a decision;

(b) if a State is a party to the dispute to which one or more international organizations are parties, the State may, through a Member State of the United Nations if necessary, request the General Assembly or the Security Council or, where appropriate, the competent organ of an international organization which is a party to the dispute and is authorized in accordance with Article 96 of the Charter of the United Nations, to request an advisory opinion of the International Court of Justice in accordance with Article 65 of the Statute of the Court;

(c) if the United Nations or an international organization that is authorized in accordance with Article 96 of the Charter of the United Nations is a party to the dispute, it may request an advisory opinion of the International Court of Justice in accordance with Article 65 of the Statute of the Court;

(d) if an international organization other than those referred to in subparagraph (c) is a party to the dispute, it may, through a Member State of the United Nations, follow the procedure specified in subparagraph (b);

(e) the advisory opinion given pursuant to subparagraph (b), (c) or (d) shall be accepted as decisive by all the parties to the dispute concerned;

(f) if the request under subparagraph (b), (c) or (d) for an advisory opinion of the Court is not granted, any one of the parties to the dispute may, by written notification to the other party or parties, submit it to arbitration in accordance with the provisions of the Annex to the present Convention.

3. The provisions of paragraph 2 apply unless all the parties to a dispute referred to in that paragraph by common consent agree to submit the dispute to an arbitration procedure, including the one specified in the Annex to the present Convention.

4. With respect to a dispute concerning the application or the interpretation of any of the articles in Part V, other than articles 53 and 64, of the present Convention, any one of the parties to the dispute may set in motion the conciliation procedure specified in the Annex to the Convention by submitting a request to that effect to the Secretary-General of the United Nations.

Article 67. Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty

1. The notification provided for under article 65, paragraph 1, must be made in writing.

2. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 65 shall be carried out through an instrument communicated to the other parties. If the instrument emanating from a State is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers. If the instrument emanates from an international organization, the representative of the organization communicating it may be called upon to produce full powers.

Article 68. Revocation of notifications and instruments   
provided for in articles 65 and 67

A notification or instrument provided for in articles 65 or 67 may be revoked at any time before it takes effect.

Section 5. Consequences of the invalidity, termination   
or suspension of the operation of a treaty

Article 69. Consequences of the invalidity of a treaty

1. A treaty the invalidity of which is established under the present Convention is void. The provisions of a void treaty have no legal force.

2. If acts have nevertheless been performed in reliance on such a treaty:

(a) each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed;

(b) acts performed in good faith before the invalidity was invoked are not rendered unlawful by reason only of the invalidity of the treaty.

3. In cases falling under articles 49, 50, 51 or 52, paragraph 2 does not apply with respect to the party to which the fraud, the act of corruption or the coercion is imputable.

4. In the case of the invalidity of the consent of a particular State or a particular international organization to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State or that organization and the parties to the treaty.

Article 70. Consequences of the termination of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:

(a) releases the parties from any obligation further to perform the treaty;

(b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

2. If a State or an international organization denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State or that organization and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

Article 71. Consequences of the invalidity of a treaty which   
conflicts with a peremptory norm of general international law

1. In the case of a treaty which is void under article 53 the parties shall:

(a) eliminate as far as possible the consequences of any act performed in reliance on any provision which conflicts with the peremptory norm of general international law; and

(b) bring their mutual relations into conformity with the peremptory norm of general international law.

2. In the case of a treaty which becomes void and terminates under article 64, the termination of the treaty:

(a) releases the parties from any obligation further to perform the treaty;

(b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination; provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

Article 72. Consequences of the suspension   
of the operation of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present Convention:

(a) releases the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of the suspension;

(b) does not otherwise affect the legal relations between the parties established by the treaty.

2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty.

Part VI. Miscellaneous provisions

Article 73. Relationship to the Vienna Convention   
on the Law of Treaties

As between States Parties to the Vienna Convention on the Law of Treaties of 1969, the relations of those States under a treaty between two or more States and one or more international organizations shall be governed by that Convention.

Article 74. Questions not prejudged by the present Convention

1. The provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty between one or more States and one or more international organizations from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States.

2. The provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty from the international responsibility of an international organization, from the termination of the existence of the organization or from the termination of participation by a State in the membership of the organization.

3. The provisions of the present Convention shall not prejudge any question that may arise in regard to the establishment of obligations and rights for States members of an international organization under a treaty to which that organization is a party.

Article 75. Diplomatic and consular relations and  
the conclusion of treaties

The severance or absence of diplomatic or consular relations between two or more States does not prevent the conclusion of treaties between two or more of those States and one or more international organizations. The conclusion of such a treaty does not in itself affect the situation in regard to diplomatic or consular relations.

Article 76. Case of an aggressor State

The provisions of the present Convention are without prejudice to any obligation in relation to a treaty between one or more States and one or more international organizations which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State’s aggression.

Part VII. Depositaries, notifications, correctons  
and registration

Article 77. Depositaries of treaties

1. The designation of the depositary of a treaty may be made by the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization.

2. The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a State or an international organization and a depositary with regard to the performance of the latter’s functions shall not affect that obligation.

Article 78. Functions of depositaries

1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States and contracting organizations or, as the case may be, by the contracting organizations, comprise in particular:

(a) keeping custody of the original text of the treaty and of any full powers delivered to the depositary;

(b) preparing certified copies of the original text and preparing any further text of the treaty in such additional languages as may be required by the treaty and transmitting them to the parties and to the States and international organizations entitled to become parties to the treaty;

(c) receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;

(d) examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the State or international organization in question;

(e) informing the parties and the States and international organizations entitled to become parties to the treaty of acts, notifications and communications relating to the treaty;

(f) informing the States and international organizations entitled to become parties to the treaty when the number of signatures or of instruments of ratification, instruments relating to an act of formal confirmation, or of instruments of acceptance, approval or accession required for the entry into force of the treaty has been received or deposited;

(g) registering the treaty with the Secretariat of the United Nations;

(h) performing the functions specified in other provisions of the present Convention.

2. In the event of any difference appearing between a State or an international organization and the depositary as to the performance of the latter’s functions, the depositary shall bring the question to the attention of:

(a) the signatory States and organizations and the contracting States and contracting organizations; or

(b) where appropriate, the competent organ of the international organization concerned.

Article 79. Notifications and communications

Except as the treaty or the present Convention otherwise provide, any notification or communication to be made by any State or any international organization under the present Convention shall:

(a) if there is no depositary, be transmitted direct to the States and organizations for which it is intended, or if there is a depositary, to the latter;

(b) be considered as having been made by the State or organization in question only upon its receipt by the State or organization to which it was transmitted or, as the case may be, upon its receipt by the depositary;

(c) if transmitted to a depositary, be considered as received by the State or organization for which it was intended only when the latter State or organization has been informed by the depositary in accordance with article 78, paragraph 1(e).

Article 80. Correction of errors in texts or   
in certified copies of treaties

1. Where, after the authentication of the text of a treaty, the signatory States and international organizations and the contracting States and contracting organizations are agreed that it contains an error, the error shall, unless those States and organizations decide upon some other means of correction, be corrected:

(a) by having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;

(b) by executing or exchanging an instrument or instruments setting out the correction which it has been agreed to make; or

(c) by executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

2. Where the treaty is one for which there is a depositary, the latter shall notify the signatory States and international organizations and the contracting States and contracting organizations of the error and of the proposal to correct it and shall specify an appropriate time limit within which objection to the proposed correction may be raised. If, on the expiry of the time limit:

(a) no objection has been raised, the depositary shall make and initial the correction in the text and shall execute a procés-verbal of the rectification of the text and communicate a copy of it to the parties and to the States and organizations entitled to become parties to the treaty;

(b) an objection has been raised, the depositary shall communicate the objection to the signatory States and organizations and to the contracting States and contracting organizations.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory States and international organizations and the contracting States and contracting organizations agree should be corrected.

4. The corrected text replaces the defective text ab initio, unless the signatory States and international organizations and the contracting States and contracting organizations otherwise decide.

5. The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

6. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a procés-verbal specifying the rectification and communicate a copy of it to the signatory States and international organizations and to the contracting States and contracting organizations.

Article 81. Registration and publication of treaties

1. Treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication.

2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the preceding paragraph.

part viii. final provisions

Article 82. Signature

The present Convention shall be open for signature until 31 December 1986 at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 June 1987, at United Nations Headquarters, New York by:

(a) all States;

(b) Namibia, represented by the United Nations Council for Namibia;

(c) international organizations invited to participate in the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations.

Article 83. Ratification or act of formal confirmation

The present Convention is subject to ratification by States and by Namibia, represented by the United Nations Council for Namibia, and to acts of formal confirmation by international organizations. The instruments of ratification and those relating to acts of formal confirmation shall be deposited with the Secretary-General of the United Nations.

Article 84. Accession

1. The present Convention shall remain open for accession by any State, by Namibia, represented by the United Nations Council for Namibia, and by any international organization which has the capacity to conclude treaties.

2. An instrument of accession of an international organization shall contain a declaration that it has the capacity to conclude treaties.

3. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 85. Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession by States or by Namibia, represented by the United Nations Council for Namibia.

2. For each State or for Namibia, represented by the United Nations Council for Namibia, ratifying or acceding to the Convention after the condition specified in paragraph 1 has been fulfilled, the Convention shall enter into force on the thirtieth day after deposit by such State or by Namibia of its instrument of ratification or accession.

3. For each international organization depositing an instrument relating to an act of formal confirmation or an instrument of accession, the Convention shall enter into force on the thirtieth day after such deposit, or at the date the Convention enters into force pursuant to paragraph 1, whichever is later.

Article 86. Authentic texts

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized by their respective Governments, and duly authorized representatives of the United Nations Council for Namibia and of international organizations have signed the present Convention.

DONE at Vienna, this twenty-first day of March one thousand nine hundred and eighty-six.

Annex. arbitration and conciliation procedures established in application of article 66

i. establishment of the arbitral tribunal or conciliation commission

1. A list consisting of qualified jurists, from which the parties to a dispute may choose the persons who are to constitute an arbitral tribunal or, as the case may be, a conciliation commission, shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations and every Party to the present Convention shall be invited to nominate two persons, and the names of the persons so nominated shall constitute the list, a copy of which shall be transmitted to the President of the International Court of Justice. The term of office of a person on the list, including that of any person nominated to fill a casual vacancy, shall be five years and may be renewed. A person whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraphs.

2. When notification has been made under article 66, paragraph 2, subparagraph (f), or agreement on the procedure in the present Annex has been reached under paragraph 3, the dispute shall be brought before an arbitral tribunal. When a request has been made to the Secretary-General under article 66, paragraph 4, the Secretary-General shall bring the dispute before a conciliation commission. Both the arbitral tribunal and the conciliation commission shall be constituted as follows:

The States, international organizations or, as the case may be, the States and organizations which constitute one of the parties to the dispute shall appoint by common consent:

(a) one arbitrator or, as the case may be, one conciliator, who may or may not be chosen from the list referred to in paragraph 1; and

(b) one arbitrator or, as the case may be, one conciliator, who shall be chosen from among those included in the list and shall not be of the nationality of any of the States or nominated by any of the organizations which constitute that party to the dispute, provided that a dispute between two international organizations is not considered by nationals of one and the same State.

The States, international organizations or, as the case may be, the States and organizations which constitute the other party to the dispute shall appoint two arbitrators or, as the case may be, two conciliators, in the same way. The four persons chosen by the parties shall be appointed within sixty days following the date on which the other party to the dispute receives notification under article 66, paragraph 2, subparagraph (f), or on which the agreement on the procedure in the present Annex under paragraph 3 is reached, or on which the Secretary-General receives the request for conciliation.

The four persons so chosen shall, within sixty days following the date of the last of their own appointments, appoint from the list a fifth arbitrator or, as the case may be, conciliator, who shall be chairman.

If the appointment of the chairman, or any of the arbitrators or, as the case may be, conciliators, has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General of the United Nations within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute. If the United Nations is a party or is included in one of the parties to the dispute, the Secretary-General shall transmit the above-mentioned request to the President of the International Court of Justice, who shall perform the functions conferred upon the Secretary-General under this subparagraph.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

The appointment of arbitrators or conciliators by an international organization provided for in paragraphs 1 and 2 shall be governed by the rules of that organization.

ii. functioning of the arbitral tribunal

3. Unless the parties to the dispute otherwise agree, the Arbitral Tribunal shall decide its own procedure, assuring to each party to the dispute a full opportunity to be heard and to present its case.

4. The Arbitral Tribunal, with the consent of the parties to the dispute, may invite any interested State or international organization to submit to it its views orally or in writing.

5. Decisions of the Arbitral Tribunal shall be adopted by a majority vote of the members. In the event of an equality of votes, the vote of the Chairman shall be decisive.

6. When one of the parties to the dispute does not appear before the Tribunal or fails to defend its case, the other party may request the Tribunal to continue the proceedings and to make its award. Before making its award, the Tribunal must satisfy itself not only that it has jurisdiction over the dispute but also that the claim is well founded in fact and law.

7. The award of the Arbitral Tribunal shall be confined to the subject matter of the dispute and state the reasons on which it is based. Any member of the Tribunal may attach a separate or dissenting opinion to the award.

8. The award shall be final and without appeal. It shall be complied with by all parties to the dispute.

9. The Secretary-General shall provide the Tribunal with such assistance and facilities as it may require. The expenses of the Tribunal shall be borne by the United Nations.

iii.  functioning of the conciliation commission

10. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

11. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

12. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

13. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

14. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

L. convention on the law of the non-navigational uses of international watercourses

Convention on the Law of the Non-navigational Uses of  
International Watercourses. Adopted by the  
General Assembly of the United Nations on 21 May 1997[[899]](#footnote-899)

The Parties to the present Convention,

Conscious of the importance of international watercourses and the non-navigational uses thereof in many regions of the world,

Having in mind Article 13, paragraph 1 (a), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Considering that successful codification and progressive development of rules of international law regarding non-navigational uses of international watercourses would assist in promoting and implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations,

Taking into account the problems affecting many international watercourses resulting from, among other things, increasing demands and pollution,

Expressing the conviction that a framework convention will ensure the utilization, development, conservation, management and protection of international watercourses and the promotion of the optimal and sustainable utilization thereof for present and future generations,

Affirming the importance of international cooperation and good-neighbourliness in this field,

Aware of the special situation and needs of developing countries,

Recalling the principles and recommendations adopted by the United Nations Conference on Environment and Development of 1992 in the Rio Declaration and Agenda 21,

Recalling also the existing bilateral and multilateral agreements regarding the non-navigational uses of international watercourses,

Mindful of the valuable contribution of international organizations, both governmental and non-governmental, to the codification and progressive development of international law in this field,

Appreciative of the work carried out by the International Law Commission on the law of the non-navigational uses of international watercourses,

Bearing in mind United Nations General Assembly resolution 49/52 of 9 December 1994,

Have agreed as follows:

part i. introduction

Article 1. Scope of the present Convention

1. The present Convention applies to uses of international watercourses and of their waters for purposes other than navigation and to measures of protection, preservation and management related to the uses of those watercourses and their waters.

2. The uses of international watercourses for navigation is not within the scope of the present Convention except insofar as other uses affect navigation or are affected by navigation.

Article 2. Use of terms

For the purposes of the present Convention:

(a) “Watercourse” means a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus;

(b) “International watercourse” means a watercourse, parts of which are situated in different States;

(c) “Watercourse State” means a State Party to the present Convention in whose territory part of an international watercourse is situated, or a Party that is a regional economic integration organization, in the territory of one or more of whose Member States part of an international watercourse is situated;

(d) “Regional economic integration organization” means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.

Article 3. Watercourse agreements

1. In the absence of an agreement to the contrary, nothing in the present Convention shall affect the rights or obligations of a watercourse State arising from agreements in force for it on the date on which it became a party to the present Convention.

2. Notwithstanding the provisions of paragraph 1, parties to agreements referred to in paragraph 1 may, where necessary, consider harmonizing such agreements with the basic principles of the present Convention.

3. Watercourse States may enter into one or more agreements, hereinafter referred to as “watercourse agreements,” which apply and adjust the provisions of the present Convention to the characteristics and uses of a particular international watercourse or part thereof.

4. Where a watercourse agreement is concluded between two or more watercourse States, it shall define the waters to which it applies. Such an agreement may be entered into with respect to an entire international watercourse or any part thereof or a particular project, programme or use except insofar as the agreement adversely affects, to a significant extent, the use by one or more other watercourse States of the waters of the watercourse, without their express consent.

5. Where a watercourse State considers that adjustment and application of the provisions of the present Convention is required because of the characteristics and uses of a particular international watercourse, watercourse States shall consult with a view to negotiating in good faith for the purpose of concluding a watercourse agreement or agreements.

6. Where some but not all watercourse States to a particular international watercourse are parties to an agreement, nothing in such agreement shall affect the rights or obligations under the present Convention of watercourse States that are not parties to such an agreement.

Article 4. Parties to watercourse agreements

1. Every watercourse State is entitled to participate in the negotiation of and to become a party to any watercourse agreement that applies to the entire international watercourse, as well as to participate in any relevant consultations.

2. A watercourse State whose use of an international watercourse may be affected to a significant extent by the implementation of a proposed watercourse agreement that applies only to a part of the watercourse or to a particular project, programme or use is entitled to participate in consultations on such an agreement and, where appropriate, in the negotiation thereof in good faith with a view to becoming a party thereto, to the extent that its use is thereby affected.

part ii. general principles

Article 5. Equitable and reasonable utilization and participation

1. Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse.

2. Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both the right to utilize the watercourse and the duty to cooperate in the protection and development thereof, as provided in the present Convention.

Article 6. Factors relevant to equitable and reasonable utilization

1. Utilization of an international watercourse in an equitable and reasonable manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including:

(a) Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;

(b) The social and economic needs of the watercourse States concerned;

(c) The population dependent on the watercourse in each watercourse State;

(d) The effects of the use or uses of the watercourses in one watercourse State on other watercourse States;

(e) Existing and potential uses of the watercourse;

(f) Conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect;

(g) The availability of alternatives, of comparable value, to a particular planned or existing use.

2. In the application of article 5 or paragraph 1 of this article, watercourse States concerned shall, when the need arises, enter into consultations in a spirit of cooperation.

3. The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is a reasonable and equitable use, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.

Article 7. Obligation not to cause significant harm

1. Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States.

2. Where significant harm nevertheless is caused to another watercourse State, the States whose use causes such harm shall, in the absence of agreement to such use, take all appropriate measures, having due regard for the provisions of articles 5 and 6, in consultation with the affected State, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation.

Article 8. General obligation to cooperate

1. Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection of an international watercourse.

2. In determining the manner of such cooperation, watercourse States may consider the establishment of joint mechanisms or commissions, as deemed necessary by them, to facilitate cooperation on relevant measures and procedures in the light of experience gained through cooperation in existing joint mechanisms and commissions in various regions.

Article 9. Regular exchange of data and information

1. Pursuant to article 8, watercourse States shall on a regular basis exchange readily available data and information on the condition of the watercourse, in particular that of a hydrological, meteorological, hydrogeological and ecological nature and related to the water quality as well as related forecasts.

2. If a watercourse State is requested by another watercourse State to provide data or information that is not readily available, it shall employ its best efforts to comply with the request but may condition its compliance upon payment by the requesting State of the reasonable costs of collecting and, where appropriate, processing such data or information.

3. Watercourse States shall employ their best efforts to collect and, where appropriate, to process data and information in a manner which facilitates its utilization by the other watercourse States to which it is communicated.

Article 10. Relationship between different kinds of uses

1. In the absence of agreement or custom to the contrary, no use of an international watercourse enjoys inherent priority over other uses.

2. In the event of a conflict between uses of an international watercourse, it shall be resolved with reference to articles 5 to 7, with special regard being given to the requirements of vital human needs.

part iii. planned measures

Article 11. Information concerning planned measures

Watercourse States shall exchange information and consult each other and, if necessary, negotiate on the possible effects of planned measures on the condition of an international watercourse.

Article 12. Notification concerning planned measures with  
possible adverse effects

Before a watercourse State implements or permits the implementation of planned measures which may have a significant adverse effect upon other watercourse States, it shall provide those States with timely notification thereof. Such notification shall be accompanied by available technical data and information, including the results of any environmental impact assessment, in order to enable the notified States to evaluate the possible effects of the planned measures.

Article 13. Period for reply to notification

Unless otherwise agreed:

(a) A watercourse State providing a notification under article 12 shall allow the notified States a period of six months within which to study and evaluate the possible effects of the planned measures and to communicate the findings to it;

(b) This period shall, at the request of a notified State for which the evaluation of the planned measures poses special difficulty, be extended for a period of six months.

Article 14. Obligations of the notifying State  
during the period for reply

During the period referred to in article 13, the notifying State:

(a) Shall cooperate with the notified States by providing them, on request, with any additional data and information that is available and necessary for an accurate evaluation; and

(b) Shall not implement or permit the implementation of the planned measures without the consent of the notified States.

Article 15. Reply to notification

The notified States shall communicate their findings to the notifying State as early as possible within the period applicable pursuant to article 13. If a notified State finds that implementation of the planned measures would be inconsistent with the provisions of articles 5 or 7, it shall attach to its finding a documented explanation setting forth the reasons for the finding.

Article 16. Absence of reply to notification

1. If, within the period applicable pursuant to article 13, the notifying State receives no communication under article 15, it may, subject to its obligations under articles 5 and 7, proceed with the implementation of the planned measures, in accordance with the notification and any other data and information provided to the notified States.

2. Any claim to compensation by a notified State which has failed to reply within the period applicable pursuant to article 13 may be offset by the costs incurred by the notifying State for action undertaken after the expiration of the time for a reply which would not have been undertaken if the notified State had objected within that period.

Article 17. Consultations and negotiations concerning planned measures

1. If a communication is made under article 15 that implementation of the planned measures would be inconsistent with the provisions of article 5 or 7, the notifying State and the State making the communication shall enter into consultations and, if necessary, negotiations with a view to arriving at an equitable resolution of the situation.

2. The consultations and negotiations shall be conducted on the basis that each State must in good faith pay reasonable regard to the rights and legitimate interests of the other State.

3. During the course of the consultations and negotiations, the notifying State shall, if so requested by the notified State at the time it makes the communication, refrain from implementing or permitting the implementation of the planned measures for a period of six months unless otherwise agreed.

Article 18. Procedures in the absence of notification

1. If a watercourse State has reasonable grounds to believe that another watercourse State is planning measures that may have a significant adverse effect upon it, the former State may request the latter to apply the provisions of article 12. The request shall be accompanied by a documented explanation setting forth its grounds.

2. In the event that the State planning the measures nevertheless finds that it is not under an obligation to provide a notification under article 12, it shall so inform the other State, providing a documented explanation setting forth the reasons for such finding. If this finding does not satisfy the other State, the two States shall, at the request of that other State, promptly enter into consultations and negotiations in the manner indicated in paragraphs 1 and 2 of article 17.

3. During the course of the consultations and negotiations, the State planning the measures shall, if so requested by the other State at the time it requests the initiation of consultations and negotiations, refrain from implementing or permitting the implementation of those measures for a period of six months unless otherwise agreed.

Article 19. Urgent implementation of planned measures

1. In the event that the implementation of planned measures is of the utmost urgency in order to protect public health, public safety or other equally important interests, the State planning the measures may, subject to articles 5 and 7, immediately proceed to implementation, notwithstanding the provisions of article 14 and paragraph 3 of article 17.

2. In such case, a formal declaration of the urgency of the measures shall be communicated without delay to the other watercourse States referred to in article 12 together with the relevant data and information.

3. The State planning the measures shall, at the request of any of the States referred to in paragraph 2, promptly enter into consultations and negotiations with it in the manner indicated in paragraphs 1 and 2 of article 17.

part iv. protection, preservation and management

Article 20. Protection and preservation of ecosystems

Watercourse States shall, individually and, where appropriate, jointly, protect and preserve the ecosystems of international watercourses.

Article 21. Prevention, reduction and control of pollution

1. For the purpose of this article, “pollution of an international watercourse” means any detrimental alteration in the composition or quality of the waters of an international watercourse which results directly or indirectly from human conduct.

2. Watercourse States shall, individually and, where appropriate, jointly, prevent, reduce and control the pollution of an international watercourse that may cause significant harm to other watercourse States or to their environment, including harm to human health or safety, to the use of the waters for any beneficial purpose or to the living resources of the watercourse. Watercourse States shall take steps to harmonize their policies in this connection.

3. Watercourse States shall, at the request of any of them, consult with a view to arriving at mutually agreeable measures and methods to prevent, reduce and control pollution of an international watercourse, such as:

(a) Setting joint water quality objectives and criteria;

(b) Establishing techniques and practices to address pollution from point and non-point sources;

(c) Establishing lists of substances the introduction of which into the waters of an international watercourse is to be prohibited, limited, investigated or monitored.

Article 22. Introduction of alien or new species

Watercourse States shall take all measures necessary to prevent the introduction of species, alien or new, into an international watercourse which may have effects detrimental to the ecosystem of the watercourse resulting in significant harm to other watercourse States.

Article 23. Protection and preservation of the marine environment

Watercourse States shall, individually and, where appropriate, in cooperation with other States, take all measures with respect to an international watercourse that are necessary to protect and preserve the marine environment, including estuaries, taking into account generally accepted international rules and standards.

Article 24. Management

1. Watercourse States shall, at the request of any of them, enter into consultations concerning the management of an international watercourse, which may include the establishment of a joint management mechanism.

2. For the purposes of this article, “management” refers, in particular, to:

(a) Planning the sustainable development of an international watercourse and providing for the implementation of any plans adopted; and

(b) Otherwise promoting the rational and optimal utilization, protection and control of the watercourse.

Article 25. Regulation

1. Watercourse States shall cooperate, where appropriate, to respond to needs or opportunities for regulation of the flow of the waters of an international watercourse.

2. Unless otherwise agreed, watercourse States shall participate on an equitable basis in the construction and maintenance or defrayal of the costs of such regulation works as they may have agreed to undertake.

3. For the purposes of this article, “regulation” means the use of hydraulic works or any other continuing measure to alter, vary or otherwise control the flow of the waters of an international watercourse.

Article 26. Installations

1. Watercourse States shall, within their respective territories, employ their best efforts to maintain and protect installations, facilities and other works related to an international watercourse.

2. Watercourse States shall, at the request of any of them which has reasonable grounds to believe that it may suffer significant adverse effects, enter into consultations with regard to:

(a) The safe operation and maintenance of installations, facilities or other works related to an international watercourse; and

(b) The protection of installations, facilities or other works from wilful or negligent acts or the forces of nature.

part v.  harmful conditions and emergency situations

Article 27. Prevention and mitigation of harmful conditions

Watercourse States shall, individually and, where appropriate, jointly, take all appropriate measures to prevent or mitigate conditions related to an international watercourse that may be harmful to other watercourse States, whether resulting from natural causes or human conduct, such as flood or ice conditions, water-borne diseases, siltation, erosion, salt-water intrusion, drought or desertification.

Article 28. Emergency situations

1. For the purposes of this article, “emergency” means a situation that causes, or poses an imminent threat of causing, serious harm to watercourse States or other States and that results suddenly from natural causes, such as floods, the breaking up of ice, landslides or earthquakes, or from human conduct, such as industrial accidents.

2. A watercourse State shall, without delay and by the most expeditious means available, notify other potentially affected States and competent international organizations of any emergency originating within its territory.

3. A watercourse State within whose territory an emergency originates shall, in cooperation with potentially affected States and, where appropriate, competent international organizations, immediately take all practicable measures necessitated by the circumstances to prevent, mitigate and eliminate harmful effects of the emergency.

4. When necessary, watercourse States shall jointly develop contingency plans for responding to emergencies, in cooperation, where appropriate, with other potentially affected States and competent international organizations.

part vi. miscellaneous provisions

Article 29. International watercourses and installations  
in time of armed conflict

International watercourses and related installations, facilities and other works shall enjoy the protection accorded by the principles and rules of international law applicable in international and non-international armed conflict and shall not be used in violation of those principles and rules.

Article 30. Indirect procedures

In cases where there are serious obstacles to direct contacts between watercourse States, the States concerned shall fulfil their obligations of cooperation provided for in the present Convention, including exchange of data and information, notification, communication, consultations and negotiations, through any indirect procedure accepted by them.

Article 31. Data and information vital to national   
defence or security

Nothing in the present Convention obliges a watercourse State to provide data or information vital to its national defence or security. Nevertheless, that State shall cooperate in good faith with the other watercourse States with a view to providing as much information as possible under the circumstances.

Article 32. Non-discrimination

Unless the watercourse States concerned have agreed otherwise for the protection of the interests of persons, natural or juridical, who have suffered or are under a serious threat of suffering significant transboundary harm as a result of activities related to an international watercourse, a watercourse State shall not discriminate on the basis of nationality or residence or place where the injury occurred, in granting to such persons, in accordance with its legal system, access to judicial or other procedures, or a right to claim compensation or other relief in respect of significant harm caused by such activities carried on in its territory.

Article 33. Settlement of disputes

1. In the event of a dispute between two or more parties concerning the interpretation or application of the present Convention, the parties concerned shall, in the absence of an applicable agreement between them, seek a settlement of the dispute by peaceful means in accordance with the following provisions.

2. If the parties concerned cannot reach agreement by negotiation requested by one of them, they may jointly seek the good offices of, or request mediation or conciliation by, a third party, or make use, as appropriate, of any joint watercourse institutions that may have been established by them or agree to submit the dispute to arbitration or to the International Court of Justice.

3. Subject to the operation of paragraph 10, if after six months from the time of the request for negotiations referred to in paragraph 2, the parties concerned have not been able to settle their dispute through negotiation or any other means referred to in paragraph 2, the dispute shall be submitted, at the request of any of the parties to the dispute, to impartial fact-finding in accordance with paragraphs 4 to 9, unless the parties otherwise agree.

4. A Fact-finding Commission shall be established, composed of one member nominated by each party concerned and in addition a member not having the nationality of any of the parties concerned chosen by the nominated members who shall serve as Chairman.

5. If the members nominated by the parties are unable to agree on a Chairman within three months of the request for the establishment of the Commission, any party concerned may request the Secretary-General of the United Nations to appoint the Chairman who shall not have the nationality of any of the parties to the dispute or of any riparian State of the watercourse concerned. If one of the parties fails to nominate a member within three months of the initial request pursuant to paragraph 3, any other party concerned may request the Secretary-General of the United Nations to appoint a person who shall not have the nationality of any of the parties to the dispute or of any riparian State of the watercourse concerned. The person so appointed shall constitute a single-member Commission.

6. The Commission shall determine its own procedure.

7. The parties concerned have the obligation to provide the Commission with such information as it may require and, on request, to permit the Commission to have access to their respective territory and to inspect any facilities, plant, equipment, construction or natural feature relevant for the purpose of its inquiry.

8. The Commission shall adopt its report by a majority vote, unless it is a single-member Commission, and shall submit that report to the parties concerned setting forth its findings and the reasons therefor and such recommendations as it deems appropriate for an equitable solution of the dispute, which the parties concerned shall consider in good faith.

9. The expenses of the Commission shall be borne equally by the parties concerned.

10. When ratifying, accepting, approving or acceding to the present Convention, or at any time thereafter, a party which is not a regional economic integration organization may declare in a written instrument submitted to the depositary that, in respect of any dispute not resolved in accordance with paragraph 2, it recognizes as compulsory ipso facto, and without special agreement in relation to any party accepting the same obligation:

(a) Submission of the dispute to the International Court of Justice; and/or

(b) Arbitration by an arbitral tribunal established and operating, unless the parties to the dispute otherwise agreed, in accordance with the procedure laid down in the annex to the present Convention.

A party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with subparagraph (b).

part vii. final clauses

Article 34. Signature

The present Convention shall be open for signature by all States and by regional economic integration organizations from 21 May 1997 until 20 May 2000 at United Nations Headquarters in New York.

Article 35. Ratification, acceptance, approval or accession

1. The present Convention is subject to ratification, acceptance, approval or accession by States and by regional economic integration organizations. The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.

2. Any regional economic integration organization which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.

3. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Secretary-General of the United Nations of any substantial modification in the extent of their competence.

Article 36. Entry into force

1. The present Convention shall enter into force on the ninetieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State or regional economic integration organization that ratifies, accepts or approves the Convention or accedes thereto after the deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.

3. For the purposes of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States.

Article 37. Authentic texts

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Convention.

DONE at New York, this twenty-first day of May one thousand nine hundred and ninety-seven.

annex. arbitration

Article 1

Unless the parties to the dispute otherwise agree, the arbitration pursuant to article 33 of the Convention shall take place in accordance with articles 2 to 14 of the present annex.

Article 2

The claimant party shall notify the respondent party that it is referring a dispute to arbitration pursuant to article 33 of the Convention. The notification shall state the subject matter of arbitration and include, in particular, the articles of the Convention, the interpretation or application of which are at issue. If the parties do not agree on the subject matter of the dispute, the arbitral tribunal shall determine the subject matter.

Article 3

1. In disputes between two parties, the arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the Chairman of the tribunal. The latter shall not be a national of one of the parties to the dispute or of any riparian State of the watercourse concerned, nor have his or her usual place of residence in the territory of one of these parties or such riparian State, nor have dealt with the case in any other capacity.

2. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.

3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

Article 4

1. If the Chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the President of the International Court of Justice shall, at the request of a party, designate the Chairman within a further two-month period.

2. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the President of the International Court of Justice, who shall make the designation within a further two-month period.

Article 5

The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention and international law.

Article 6

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

Article 7

The arbitral tribunal may, at the request of one of the parties, recommend essential interim measures of protection.

Article 8

1. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

(a) Provide it with all relevant documents, information and facilities; and

(b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

2. The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

Article 9

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties.

Article 10

Any party that has an interest of a legal nature in the subject matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

Article 11

The tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.

Article 12

Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

Article 13

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

Article 14

1. The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time limit for a period which should not exceed five more months.

2. The final decision of the arbitral tribunal shall be confined to the subject matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

3. The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

4. Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either party for decision to the arbitral tribunal which rendered it.

M. united nations Convention on Jurisdictional Immunities of States and Their Property

United Nations Convention on Jurisdictional Immunities  
of States and Their Property. Adopted by the General Assembly on 2 December 2004[[900]](#footnote-900)

The States Parties to the present Convention,

Considering that the jurisdictional immunities of States and their property are generally accepted as a principle of customary international law,

Having in mind the principles of international law embodied in the Charter of the United Nations,

Believing that an international convention on the jurisdictional immunities of States and their property would enhance the rule of law and legal certainty, particularly in dealings of States with natural or juridical persons, and would contribute to the codification and development of international law and the harmonization of practice in this area,

Taking into account developments in State practice with regard to the jurisdictional immunities of States and their property,

Affirming that the rules of customary international law continue to govern matters not regulated by the provisions of the present Convention,

Have agreed as follows:

Part I. Introduction

Article 1. Scope of the present Convention

The present Convention applies to the immunity of a State and its property from the jurisdiction of the courts of another State.

Article 2. Use of terms

1. For the purposes of the present Convention:

(a) “court” means any organ of a State, however named, entitled to exercise judicial functions;

(b) “State” means:

(i) the State and its various organs of government;

(ii) constituent units of a federal State or political subdivisions of the State, which are entitled to perform acts in the exercise of sovereign authority, and are acting in that capacity;

(iii) agencies or instrumentalities of the State or other entities, to the extent that they are entitled to perform and are actually performing acts in the exercise of sovereign authority of the State;

(iv) representatives of the State acting in that capacity;

(c) “commercial transaction” means:

(i) any commercial contract or transaction for the sale of goods or supply of services;

(ii) any contract for a loan or other transaction of a financial nature, including any obligation of guarantee or of indemnity in respect of any such loan or transaction;

(iii) any other contract or transaction of a commercial, industrial, trading or professional nature, but not including a contract of employment of persons.

2. In determining whether a contract or transaction is a “commercial transaction” under paragraph 1 (c), reference should be made primarily to the nature of the contract or transaction, but its purpose should also be taken into account if the parties to the contract or transaction have so agreed, or if, in the practice of the State of the forum, that purpose is relevant to determining the non-commercial character of the contract or transaction.

3. The provisions of paragraphs 1 and 2 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in other international instruments or in the internal law of any State.

Article 3. Privileges and immunities not affected   
by the present Convention

1. The present Convention is without prejudice to the privileges and immunities enjoyed by a State under international law in relation to the exercise of the functions of:

(a) its diplomatic missions, consular posts, special missions, missions to international organizations or delegations to organs of international organizations or to international conferences; and

(b) persons connected with them.

2. The present Convention is without prejudice to privileges and immunities accorded under international law to heads of State ratione personae.

3. The present Convention is without prejudice to the immunities enjoyed by a State under international law with respect to aircraft or space objects owned or operated by a State.

Article 4. Non-retroactivity of the present Convention

Without prejudice to the application of any rules set forth in the present Convention to which jurisdictional immunities of States and their property are subject under international law independently of the present Convention, the present Convention shall not apply to any question of jurisdictional immunities of States or their property arising in a proceeding instituted against a State before a court of another State prior to the entry into force of the present Convention for the States concerned.

Part II. General principles

Article 5. State immunity

A State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State subject to the provisions of the present Convention.

Article 6. Modalities for giving effect to State immunity

1. A State shall give effect to State immunity under article 5 by refraining from exercising jurisdiction in a proceeding before its courts against another State and to that end shall ensure that its courts determine on their own initiative that the immunity of that other State under article 5 is respected.

2. A proceeding before a court of a State shall be considered to have been instituted against another State if that other State:

(a) is named as a party to that proceeding; or

(b) is not named as a party to the proceeding but the proceeding in effect seeks to affect the property, rights, interests or activities of that other State.

Article 7. Express consent to exercise of jurisdiction

1. A State cannot invoke immunity from jurisdiction in a proceeding before a court of another State with regard to a matter or case if it has expressly consented to the exercise of jurisdiction by the court with regard to the matter or case:

(a) by international agreement;

(b) in a written contract; or

(c) by a declaration before the court or by a written communication in a specific proceeding.

2. Agreement by a State for the application of the law of another State shall not be interpreted as consent to the exercise of jurisdiction by the courts of that other State.

Article 8. Effect of participation in a proceeding before a court

1. A State cannot invoke immunity from jurisdiction in a proceeding before a court of another State if it has:

(a) itself instituted the proceeding; or

(b) intervened in the proceeding or taken any other step relating to the merits. However, if the State satisfies the court that it could not have acquired knowledge of facts on which a claim to immunity can be based until after it took such a step, it can claim immunity based on those facts, provided it does so at the earliest possible moment.

2. A State shall not be considered to have consented to the exercise of jurisdiction by a court of another State if it intervenes in a proceeding or takes any other step for the sole purpose of:

(a) invoking immunity; or

(b) asserting a right or interest in property at issue in the proceeding.

3. The appearance of a representative of a State before a court of another State as a witness shall not be interpreted as consent by the former State to the exercise of jurisdiction by the court.

4. Failure on the part of a State to enter an appearance in a proceeding before a court of another State shall not be interpreted as consent by the former State to the exercise of jurisdiction by the court.

Article 9. Counterclaims

1. A State instituting a proceeding before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of any counterclaim arising out of the same legal relationship or facts as the principal claim.

2. A State intervening to present a claim in a proceeding before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of any counterclaim arising out of the same legal relationship or facts as the claim presented by the State.

3. A State making a counterclaim in a proceeding instituted against it before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of the principal claim.

Part III. Proceedings in which State immunity   
cannot be invoked

Article 10. Commercial transactions

1. If a State engages in a commercial transaction with a foreign natural or juridical person and, by virtue of the applicable rules of private international law, differences relating to the commercial transaction fall within the jurisdiction of a court of another State, the State cannot invoke immunity from that jurisdiction in a proceeding arising out of that commercial transaction.

2. Paragraph 1 does not apply:

(a) in the case of a commercial transaction between States; or

(b) if the parties to the commercial transaction have expressly agreed otherwise.

3. Where a State enterprise or other entity established by a State which has an independent legal personality and is capable of:

(a) suing or being sued; and

(b) acquiring, owning or possessing and disposing of property, including property which that State has authorized it to operate or manage, is involved in a proceeding which relates to a commercial transaction in which that entity is engaged, the immunity from jurisdiction enjoyed by that State shall not be affected.

Article 11. Contracts of employment

1. Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to a contract of employment between the State and an individual for work performed or to be performed, in whole or in part, in the territory of that other State.

2. Paragraph 1 does not apply if:

(a) the employee has been recruited to perform particular functions in the exercise of governmental authority;

(b) the employee is:

(i) a diplomatic agent, as defined in the Vienna Convention on Diplomatic Relations of 1961;

(ii) a consular officer, as defined in the Vienna Convention on Consular Relations of 1963;

(iii) a member of the diplomatic staff of a permanent mission to an international organization or of a special mission, or is recruited to represent a State at an international conference; or

(iv) any other person enjoying diplomatic immunity;

(c) the subject-matter of the proceeding is the recruitment, renewal of employment or reinstatement of an individual;

(d) the subject-matter of the proceeding is the dismissal or termination of employment of an individual and, as determined by the head of State, the head of Government or the Minister for Foreign Affairs of the employer State, such a proceeding would interfere with the security interests of that State;

(e) the employee is a national of the employer State at the time when the proceeding is instituted, unless this person has the permanent residence in the State of the forum; or

(f) the employer State and the employee have otherwise agreed in writing, subject to any considerations of public policy conferring on the courts of the State of the forum exclusive jurisdiction by reason of the subject-matter of the proceeding.

Article 12. Personal injuries and damage to property

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to pecuniary compensation for death or injury to the person, or damage to or loss of tangible property, caused by an act or omission which is alleged to be attributable to the State, if the act or omission occurred in whole or in part in the territory of that other State and if the author of the act or omission was present in that territory at the time of the act or omission.

Article 13. Ownership, possession and use of property

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the determination of:

(a) any right or interest of the State in, or its possession or use of, or any obligation of the State arising out of its interest in, or its possession or use of, immovable property situated in the State of the forum;

(b) any right or interest of the State in movable or immovable property arising by way of succession, gift or bona vacantia; or

(c) any right or interest of the State in the administration of property, such as trust property, the estate of a bankrupt or the property of a company in the event of its winding up.

Article 14. Intellectual and industrial property

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to:

(a) the determination of any right of the State in a patent, industrial design, trade name or business name, trademark, copyright or any other form of intellectual or industrial property which enjoys a measure of legal protection, even if provisional, in the State of the forum; or

(b) an alleged infringement by the State, in the territory of the State of the forum, of a right of the nature mentioned in subparagraph (a) which belongs to a third person and is protected in the State of the forum.

Article 15. Participation in companies or other collective bodies

1. A State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to its participation in a company or other collective body, whether incorporated or unincorporated, being a proceeding concerning the relationship between the State and the body or the other participants therein, provided that the body:

(a) has participants other than States or international organizations; and

(b) is incorporated or constituted under the law of the State of the forum or has its seat or principal place of business in that State.

2. A State can, however, invoke immunity from jurisdiction in such a proceeding if the States concerned have so agreed or if the parties to the dispute have so provided by an agreement in writing or if the instrument establishing or regulating the body in question contains provisions to that effect.

Article 16. Ships owned or operated by a State

1. Unless otherwise agreed between the States concerned, a State which owns or operates a ship cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the operation of that ship if, at the time the cause of action arose, the ship was used for other than government non-commercial purposes.

2. Paragraph 1 does not apply to warships, or naval auxiliaries, nor does it apply to other vessels owned or operated by a State and used, for the time being, only on government non-commercial service.

3. Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the carriage of cargo on board a ship owned or operated by that State if, at the time the cause of action arose, the ship was used for other than government non-commercial purposes.

4. Paragraph 3 does not apply to any cargo carried on board the ships referred to in paragraph 2, nor does it apply to any cargo owned by a State and used or intended for use exclusively for government non-commercial purposes.

5. States may plead all measures of defence, prescription and limitation of liability which are available to private ships and cargoes and their owners.

6. If in a proceeding there arises a question relating to the government and non-commercial character of a ship owned or operated by a State or cargo owned by a State, a certificate signed by a diplomatic representative or other competent authority of that State and communicated to the court shall serve as evidence of the character of that ship or cargo.

Article 17. Effect of an arbitration agreement

If a State enters into an agreement in writing with a foreign natural or juridical person to submit to arbitration differences relating to a commercial transaction, that State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to:

(a) the validity, interpretation or application of the arbitration agreement;

(b) the arbitration procedure; or

(c) the confirmation or the setting aside of the award, unless the arbitration agreement otherwise provides.

Part IV. State immunity from measures of constraint in connection with proceedings before a court

Article 18. State immunity from pre-judgment   
measures of constraint

No pre-judgment measures of constraint, such as attachment or arrest, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

(a) the State has expressly consented to the taking of such measures as indicated:

(i) by international agreement;

(ii) by an arbitration agreement or in a written contract; or

(iii) by a declaration before the court or by a written communication after a dispute between the parties has arisen; or

(b) the State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding.

Article 19. State immunity from  
 post-judgment measures of constraint

No post-judgment measures of constraint, such as attachment, arrest or execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

(a) the State has expressly consented to the taking of such measures as indicated:

(i) by international agreement;

(ii) by an arbitration agreement or in a written contract; or

(iii) by a declaration before the court or by a written communication after a dispute between the parties has arisen; or

(b) the State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding; or

(c) it has been established that the property is specifically in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the State of the forum, provided that post-judgment measures of constraint may only be taken against property that has a connection with the entity against which the proceeding was directed.

Article 20. Effect of consent to jurisdiction   
to measures of constraint

Where consent to the measures of constraint is required under articles 18 and 19, consent to the exercise of jurisdiction under article 7 shall not imply consent to the taking of measures of constraint.

Article 21. Specific categories of property

1. The following categories, in particular, of property of a State shall not be considered as property specifically in use or intended for use by the State for other than government non-commercial purposes under article 19, subparagraph (c):

(a) property, including any bank account, which is used or intended for use in the performance of the functions of the diplomatic mission of the State or its consular posts, special missions, missions to international organizations or delegations to organs of international organizations or to international conferences;

(b) property of a military character or used or intended for use in the performance of military functions;

(c) property of the central bank or other monetary authority of the State;

(d) property forming part of the cultural heritage of the State or part of its archives and not placed or intended to be placed on sale;

(e) property forming part of an exhibition of objects of scientific, cultural or historical interest and not placed or intended to be placed on sale.

2. Paragraph 1 is without prejudice to article 18 and article 19, subparagraphs (a) and (b).

Part V. Miscellaneous provisions

Article 22. Service of process

1. Service of process by writ or other document instituting a proceeding against a State shall be effected:

(a) in accordance with any applicable international convention binding on the State of the forum and the State concerned; or

(b) in accordance with any special arrangement for service between the claimant and the State concerned, if not precluded by the law of the State of the forum; or

(c) in the absence of such a convention or special arrangement:

(i) by transmission through diplomatic channels to the Ministry of Foreign Affairs of the State concerned; or

(ii) by any other means accepted by the State concerned, if not precluded by the law of the State of the forum.

2. Service of process referred to in paragraph 1 (c) (i) is deemed to have been effected by receipt of the documents by the Ministry of Foreign Affairs.

3. These documents shall be accompanied, if necessary, by a translation into the official language, or one of the official languages, of the State concerned.

4. Any State that enters an appearance on the merits in a proceeding instituted against it may not thereafter assert that service of process did not comply with the provisions of paragraphs 1 and 3.

Article 23. Default judgment

1. A default judgment shall not be rendered against a State unless the court has found that:

(a) the requirements laid down in article 22, paragraphs 1 and 3, have been complied with;

(b) a period of not less than four months has expired from the date on which the service of the writ or other document instituting a proceeding has been effected or deemed to have been effected in accordance with article 22, paragraphs 1 and 2; and

(c) the present Convention does not preclude it from exercising jurisdiction.

2. A copy of any default judgment rendered against a State, accompanied if necessary by a translation into the official language or one of the official languages of the State concerned, shall be transmitted to it through one of the means specified in article 22, paragraph 1, and in accordance with the provisions of that paragraph.

3. The time-limit for applying to have a default judgment set aside shall not be less than four months and shall begin to run from the date on which the copy of the judgment is received or is deemed to have been received by the State concerned.

Article 24. Privileges and immunities during court proceedings

1. Any failure or refusal by a State to comply with an order of a court of another State enjoining it to perform or refrain from performing a specific act or to produce any document or disclose any other information for the purposes of a proceeding shall entail no consequences other than those which may result from such conduct in relation to the merits of the case. In particular, no fine or penalty shall be imposed on the State by reason of such failure or refusal.

2. A State shall not be required to provide any security, bond or deposit, however described, to guarantee the payment of judicial costs or expenses in any proceeding to which it is a respondent party before a court of another State.

Part VI. Final clauses

Article 25. Annex

The annex to the present Convention forms an integral part of the Convention.

Article 26. Other international agreements

Nothing in the present Convention shall affect the rights and obligations of States Parties under existing international agreements which relate to matters dealt with in the present Convention as between the parties to those agreements.

Article 27. Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of the present Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which cannot be settled through negotiation within six months shall, at the request of any of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of, or accession to, the present Convention, declare that it does not consider itself bound by paragraph 2. The other States Parties shall not be bound by paragraph 2 with respect to any State Party which has made such a declaration.

4. Any State Party that has made a declaration in accordance with paragraph 3 may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

Article 28. Signature

The present Convention shall be open for signature by all States until 17 January 2007, at United Nations Headquarters, New York.

Article 29. Ratification, acceptance, approval or accession

1. The present Convention shall be subject to ratification, acceptance or approval.

2. The present Convention shall remain open for accession by any State.

3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.

Article 30. Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the present Convention after the deposit of the thirtieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 31. Denunciation

1. Any State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations. The present Convention shall, however, continue to apply to any question of jurisdictional immunities of States or their property arising in a proceeding instituted against a State before a court of another State prior to the date on which the denunciation takes effect for any of the States concerned.

3. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in the present Convention to which it would be subject under international law independently of the present Convention.

Article 32. Depositary and notifications

1. The Secretary-General of the United Nations is designated the depositary of the present Convention.

2. As depositary of the present Convention, the Secretary-General of the United Nations shall inform all States of the following:

(a) signatures of the present Convention and the deposit of instruments of ratification, acceptance, approval or accession or notifications of denunciation, in accordance with articles 29 and 31;

(b) the date on which the present Convention will enter into force, in accordance with article 30;

(c) any acts, notifications or communications relating to the present Convention.

Article 33. Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention are equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention opened for signature at United Nations Headquarters in New York on 17 January 2005.

Annex to the Convention

Understandings with respect to certain provisions  
of the Convention

The present annex is for the purpose of setting out understandings relating to the provisions concerned.

With respect to article 10

The term “immunity” in article 10 is to be understood in the context of the present Convention as a whole.

Article 10, paragraph 3, does not prejudge the question of “piercing the corporate veil”, questions relating to a situation where a State entity has deliberately misrepresented its financial position or subsequently reduced its assets to avoid satisfying a claim, or other related issues.

With respect to article 11

The reference in article 11, paragraph 2 (d), to the “security interests” of the employer State is intended primarily to address matters of national security and the security of diplomatic missions and consular posts.

Under article 41 of the 1961 Vienna Convention on Diplomatic Relations and article 55 of the 1963 Vienna Convention on Consular Relations, all persons referred to in those articles have the duty to respect the laws and regulations, including labour laws, of the host country. At the same time, under article 38 of the 1961 Vienna Convention on Diplomatic Relations and article 71 of the 1963 Vienna Convention on Consular Relations, the receiving State has a duty to exercise its jurisdiction in such a manner as not to interfere unduly with the performance of the functions of the mission or the consular post.

With respect to articles 13 and 14

The expression “determination” is used to refer not only to the ascertainment or verification of the existence of the rights protected, but also to the evaluation or assessment of the substance, including content, scope and extent, of such rights.

With respect to article 17

The expression “commercial transaction” includes investment matters.

With respect to article 19

The expression “entity” in subparagraph (c) means the State as an independent legal personality, a constituent unit of a federal State, a subdivision of a State, an agency or instrumentality of a State or other entity, which enjoys independent legal personality.

The words “property that has a connection with the entity” in subparagraph (c) are to be understood as broader than ownership or possession.

Article 19 does not prejudge the question of “piercing the corporate veil”, questions relating to a situation where a State entity has deliberately misrepresented its financial position or subsequently reduced its assets to avoid satisfying a claim, or other related issues.

SELECTED BIBLIOGRAPHY

Yearbooks of the International Law Commission

a The Yearbooks have been issued in the six official languages of the United Nations (Arabic, Chinese, English, French, Russian and Spanish) unless otherwise indicated.

b The 1994 and subsequent Yearbooks in Chinese have not been published as of 31 January 2007.

c The Yearbook was available only in French and Russian, as of 31 January 2007. Part One of volume II of the 1996 and subsequent Yearbooks containing the documents of the forty-eighth and subsequent sessions have not been published as of the same date

g Studies of a substantive nature undertaken by the Secretariat for the International Law Commission. For a complete list of all documents, including notes, proposals, bibli­ographies, memoranda and studies submitted by the Secretariat (organized by topic), see the online Analytical Guide to the Work of the International Law Commission (acces­sible at <http://www.un.org/law/ilc/>). Studies undertaken by the Codification Division, including in its capacity as Secretariat of the International Law Commission, published as part of the United Nations Legislative Series, are also listed below.

Studies undertaken by the Secretarial

The practice of the United Nations specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities: study prepared by the Secretariat (1967)

Status, privileges and immunities of international organizations, their officials, experts, etc.

The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency Addendum) concerning their status, privileges and immunities: supplementary study prepared by the Secretariat (1985)

Succession of States and Governments

The succession of States in relation to A/CN.4/149 and 1962, vol.II

membership in the United Nations: Add.1 memorandum prepared by the Secretariat (1962)

Succession of States in relation to A/CN.4/150 1962, vol.II

general multilateral treaties of which the Secretary-General is the depositary: memorandum prepared by the Secretariat (1962)

Digest of the decisions of interna- A/CN.4/151 1962, vol.II

tional tribunals relating to State succession: study prepared by the Secretariat (1962)

Digest of decisions of national courts A/CN.4/157 1963, vol.II

relating to succession of States and Governments: study prepared by the Secretariat (1963)

Succession of States in respect of Treaties

Succession of States to multilateral A/CN.4/200 and 1968, vol.II

treaties: studies prepared by the Corr.1 and Add.1

Secretariat (1968) and 2

Succession of States to multilateral treaties: sixth study prepared by the Secretariat (1969)

Succession of States to multilateral treaties: seventh study prepared by the Secretariat (1970)

Succession of States in respect of bilateral treaties: study prepared by the Secretariat (1970)

Supplement to the "Digest of the Decisions of international tribunals relating to State succession" (1970)

Succession of States in respect of bilateral treaties: Second and third studies prepared by the Secretariat [Air transport agreements and Trade agreements] (1971)

Supplement to Materials on succession A/CN.4/263 of States, prepared by the Secretariat (mimeograph)m(1972)

Succession of States in respect of Matters other than Treaties

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See United Nations publication, Sales No.: E/F.68.V.5.

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Question of treaties concluded between States and international organizations or between two or more international organizations: working paper submitted by the Secretary-General, (1971)

Possibilities of participation by the United Nations in international agreements on behalf of a territory: study prepared by the Secretariat (1974)

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Legal Problems relating to the utiliza­tion and use of international rivers: report by the Secretary-General (1974)

Legal problems relating to the non-navigational uses of international watercourses: supplementary report by the Secretary-General (1974)

Nationality in relation to the Succession of States

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State Responsibility

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Supplement, prepared by the Secretariat, to the "Digest of the decisions of international tribunals relating to State responsibility" (1969)

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"Force majeure" and "fortuitous event" as circumstances precluding wrongfulness: survey of State prac­tice, international judicial decisions and doctrine: study prepared by the Secretariat (1978)

International Liability for Injurious Consequences arising out of Acts not Prohibited by International Law

Survey of State Practice relevant to international liability for injurious consequences arising out of acts Addendum) not prohibited by international law, prepared by the Secretariat (1985)

Survey of liability regimes relevant to the topic of international liability for injurious consequences arising out of acts not prohibited by inter­national law: study prepared by the

Secretariat (1995)

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The effect of armed conflict on treaties: an examination of practice and doctrine: memorandum prepared by the Secretariat (2005)

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Future work in the field of the codification and progressive development of international law: working paper prepared by the Secretariat (1962)

Review of the Commission's programme of work and of the topics recommended or suggested for inclusion in the programme: work­ing paper prepared by the Secre­tariat (1970)

Survey of international law: working Paper prepared by the Secretary-General (1971)

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United Nations publication

Laws and regulation on the regime of the high seas:

vol. I (1951) ST/LEG/SER.B/1

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Laws and practices concerning the conclusion of treaties (1952)

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Laws and regulations on the regime of the territorial sea (1957)

Laws and regulations regarding diplo­matic and consular privileges and immunities (1958)

Legislative texts and treaty provisions concerning the legal status, privi­leges and immunities of interna­tional organizations (1960)

Legislative texts and treaty provisions concerning the utilization of inter­national rivers for other purposes than navigation (1963)

Materials on succession of States (1968)

National legislation and treaties relat­ing to the territorial sea, the con­tiguous zone, the continental shelf, the high seas and to fishing and conservation of the living resources of the sea (1970)

National legislation and treaties relat­ing to the law of the sea (1974)

United Nations Legislative Series

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National legislation and treaties relat­ing to the law of the sea (1980)

Materials on jurisdictional immuni­ties of States and their property (1981)

Review of the multilateral treaty-mak­ing process (1983)

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National laws and regulations on the prevention and suppression of international terrorism (Part II (M-Z)) (2005)

Official Records of the General Assembly

Sixth Committee (summary records of the meetings of the Sixth (Legal) Com­mittee of the General Assembly, issued for each of the Assembly's sessions).

Annexes (containing the report of the Sixth Committee and other relevant documents covering its work at each Assembly session).

Supplements (issued for each Assembly session, containing the report of the International Law Commission to the General Assembly covering the work of each of the Commission's sessions. The Commission's reports to the Assembly also appear in the Yearbook of the International Law Commission, 1949, and in volume II of each succeeding Yearbook).

Resolutions (the resolutions adopted at each session of the General Assembly, issued as a supplement to the Official Records of each session).

Official Records of Conferences

Official Records of the United Nations Conference on the Law of the Sea, Geneva, 24 February-27 April 1958, vol. I, Preparatory Documents; vol. II, Plenary Meetings; vol. III, First Committee (Territorial Sea and Contigu­ous Zone); vol. IV, Second Committee (High Seas: General Regime); vol. V, Third Committee (High Seas: Fishing, Conservation of Living Resources); vol. VI, Fourth Committee (Continental Shelf); vol. VII, Fifth Commit­tee (Question of Free Access to the Sea of Land-Locked Countries) (A/ CONF.13/37-43, United Nations publication, Sales No. 58.V.4).

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62.X.1).

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64.X.1).

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Also available online (<http://untreaty.un.org/>) and on CD-ROM.

Statement of Treaties and International Agreements,p current as of December 2006 (ST/LEG/SER.A/718).

Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties (ST/LEG/8) (United Nations publication, Sales No. 94.V.15).

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Judicial Decisions, Arbitral Awards and Related Publications

Reports of Judgments, Advisory Opinions and Orders of the International Court of Justice, 1947-2003.

Summary of Judgments, Advisory Opinions and Orders of the International Court of Justice, covering the period from 1948 until 1991 (ST/LEG/SER.F/1) (United Nations publication, Sales No. 92.V.5).

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Summary of Judgments, Advisory Opinions and Orders of the International Court of Justice, covering the period from 1997 until 2002 (ST/LEG/SER. F/1/Add.2) (United Nations publication, Sales No. 03.V.12).

Reports of International Arbitral Awards, issued in twenty-five volumes, cov­ering selected awards handed down since 1895.

Yearbooks and Guides to the Practice of the United Nations

United Nations Yearbooks, covering the period from the United Nations

inception until 2004. Yearbooks of the International Court of Justice, covering the period from 1946-1947 until 2002-2003.

United Nations Juridical Yearbooks containing the documentary materials concerning the United Nations and the intergovernmental organizations in relation with it, 1962-1998q, and Cumulative Index (Parts I-III, covering volumes up to 1990). .

Repertory of Practice of United Nations Organs, and its Supplements. Repertoire of the Practice of the Security Council, and its Supplements.

p Issued monthly pursuant to the Regulations to give effect to article 102 of the Char­ter of the United Nations, adopted by the General Assembly in resolution 97 (I) of 14 December 1946, and as modified by resolutions 364 B (IV) of 1 December 1949, 482 (V) of 12 December 1950 and 33/141 A of 18 December 1978. See too resolution 52/153 of 15 December 1997. Available online at <http://untreaty.un.org/>.

q The United Nations Juridical Yearbooks have been published in all languages as of 1998 (except for the 1998 United Nations Juridical Yearbook in French). In addition the 1999 United Nations Juridical Yearbook has been published in Spanish, Russian, Arabic and Chinese and the 2000 United Nations Juridical Yearbook in Spanish only.

Publications relating to the Work of the International Law Commission

International Law Commission—A Guide to the Documents 1949-1969 (ST/GENEVA/LIB/SER.B/Ref.2).

Analytical Guide to the Work of the International Law Commission, 1949­1997 (ST/LEG/GUIDE/1) (United Nations publication, Sales No. 98.V.10).r

The International Law Commission Fifty Years After: An Evaluation (United Nations publication, Sales No. 00.V.3).

Making Better International Law: the International Law Commission at 50 (United Nations publication, Sales No. 98.V.5).

International Law on the Eve of the Twenty-first Century: Views from the International Law Commission (United Nations publication, Sales No.97.V.4).

Relevant Web Sites

<http://www.un.org/law/ilc>

<http://www.un.org/law/lindex.htm>

<http://www.un.org/law/cod/sixth>

<http://untreaty.un.org/>

Official web site of the International Law Commission maintained by the Codification Division of the Office of Legal Affairs of the United Nations Secretariat.

Official web site of the Codification Division of the Office of Legal Affairs of the United Nations Secretariat.

Official web site of the Sixth Commit­tee of the United Nations General Assembly maintained by the Codification Division of the Office of Legal Affairs of the United Nations Secretariat.

United Nations Treaty Collection maintained by the Treaty Section of the Office of Legal Affairs of the United Nations Secretariat.

r The Analytical Guide to the Work of the International Law Commission is updated electronically on the website of the International Law Commission, see [http://](NULL) [www.un.org/law/ilc/](http://www.un.org/law/ilc/).

| **Yearbooks of the International Law Commission** | | | |
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| Yearbook | Title | Document | United Nations publication Sales No. |
| 1949a | Summary records and documents of the first session | A/CN.4/SER.A/1949 | 1957.V.1 |
| 1950, vol. I | Summary records of the second session | A/CN.4/SER.A/1950 | 1957.V.3., vol. I |
| 1950,  vol. II | Documents of the second session | A/CN.4/SER.A/1950/ Add.1 | 1957.V.3, vol. II |
| 1951, vol. I | Summary records of the third session | A/CN.4/SER.A/1951 | 1957.V.6, vol. I |
| 1951,  vol. II | Documents of the third session | A/CN.4/SER.A/1951/ Add.1 | 1957.V.6, vol. II |
| 1952, vol. I | Summary records of the fourth session | A/CN.4/SER.A/1952 | 58.V.5, vol. I |
| 1952,  vol. II | Documents of the fourth session | A/CN.4/SER.A/1952/Add.1 | 58.V.5, vol. II |
| 1953, vol. I | Summary records of the fifth session | A/CN.4/SER.A/1953 | 59.V.4, vol. I |
| 1953,  vol. II | Documents of the fifth session | A/CN.4/SER.A/1953/Add.1 | 59.V.4, vol. II |
| 1954, vol. I | Summary records of the sixth session | A/CN.4/SER.A/1954 | 59.V.7, vol. I |
| 1954,  vol. II | Documents of the sixth session | A/CN.4/SER.A/1954/Add.1 | 59.V.7, vol. II |
| 1955, vol. I | Summary records of the seventh session | A/CN.4/SER.A/1955 | 60.V.3, vol. I |
| 1955,  vol. II | Documents of the seventh session | A/CN.4/SER.A/1955/Add.1 | 60.V.3, vol. II |
| 1956, vol. I | Summary records of the eighth session | A/CN.4/SER.A/1956 | 1956.V.3, vol. I |
| 1956,  vol. II | Documents of the eighth session | A/CN.4/SER.A/1956/Add.1 | 1956.V.3, vol. II |
| 1957, vol. I | Summary records of the ninth session | A/CN.4/SER.A/1957 | 1957.V.5, vol. I |
| 1957,  vol. II | Documents of the ninth session | A/CN.4/SER.A/1957/Add.1 | 1957.V.5, vol. II |
| 1958, vol. I | Summary records of the tenth session | A/CN.4/SER.A/1958 | 58.V.1, vol. I |
| 1958,  vol. II | Documents of the tenth session | A/CN.4/SER.A/1958/Add.1 | 58.V.1, vol. II |
| 1959, vol. I | Summary records of the eleventh session | A/CN.4/SER.A/1959 | 59.V.1, vol. I |
| 1959,  vol. II | Documents of the eleventh session | A/CN.4/SER.A/1959/Add.1 | 59.V.1, vol. II |
| 1960, vol. I | Summary records of the twelfth session | A/CN.4/SER.A/1960 | 60.V.1, vol. I |
| 1960,  vol. II | Documents of the twelfth session | A/CN.4/SER.A/1960/Add.1 | 60.V.1, vol. II |
| 1961, vol. I | Summary records of the thirteenth session | A/CN.4/SER.A/1961 | 61.V.1, vol. I |
| 1961,  vol. II | Documents of the thirteenth session | A/CN.4/SER.A/1961/Add.1 | 61.V.1, vol. II |
| 1962, vol. I | Summary records of the fourteenth session | A/CN.4/SER.A/1962 | 62.V.4 |
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| 1963, vol. I | Summary records of the fifteenth session | A/CN.4/SER.A/1963 | 63.V.1 |
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| 1965, vol. I | Summary records of the first part of the seventeenth session | A/CN.4/SER.A/1965 | 66.V.1 |
| 1965,  vol. II | Documents of the first part of the seventeenth session | A/CN.4/SER.A/1965/Add.1 | 66.V.2 |
| 1966,  vol. I (Part I) | Summary records of the second part of the seventeenth session | A/CN.4/SER.A/1966 | 67.V.1 (Part I) |
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| 1967, vol. I | Summary records of the nineteenth session | A/CN.4/SER.A/1967 | 68.V.1 |
| 1967,  vol. II | Documents of the nineteenth session | A/CN.4/SER.A/1967/Add.1 | 68.V.2 |
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| 1969, vol. I | Summary records of the twenty-first session | A/CN.4/SER.A/1969 | 70.V.7 |
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| 1970, vol. I | Summary records of the twenty-second session | A/CN.4/SER.A/1970 | 71.V.6 |
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| 1972,  vol. II | Documents of the twenty-fourth session | A/CN.4/SER.A/1972/Add.1 | 73.V.5 |
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| 1973,  vol. II | Documents of the twenty-fifth session | A/CN.4/SER.A/1973/Add.1 | 74.V.5 |
| 1974, vol. I | Summary records of the twenty-sixth session | A/CN.4/SER.A/1974 | 75.V.6 |
| 1974,  vol. II (Part One) | Documents of the twenty-sixth session | A/CN.4/SER.A/1974/Add.1 (Part 1) | 75.V.7 (Part I) |
| 1974,  vol. II (Part Two) | Report of the Secretary-General on the legal problems relating to the utilization and use of international rivers and documents of the twenty-sixth session | A/CN.4/SER.A/1974/Add.1 (Part 2) | 75.V.7 (Part II) |
| 1975, vol. I | Summary records of the twenty-seventh session | A/CN.4/SER.A/1975 | 76.V.3 |
| 1975,  vol. II | Documents of the twenty-seventh session | A/CN.4/SER.A/1975/Add.1 | 76.V.4 |
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| 1976,  vol. II (Part One) | Documents of the twenty-eighth session | A/CN.4/SER.A/1976/Add.1 (Part 1) | 77.V.5 (Part I) |
| 1976,  vol. II (Part Two) | Report of the Commission to the General Assembly on the work of its twenty-eighth session | A/CN.4/SER.A/1976/Add.1 (Part 2) | 77.V.5 (Part II) |
| 1977, vol. I | Summary records of the twenty-ninth session | A/CN.4/SER.A/1977 | 78.V.1 |
| 1977,  vol. II (Part One) | Documents of the twenty-ninth session | A/CN.4/SER.A/1977/Add.1 (Part 1) | 78.V.2 (Part I) |
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| 1982, vol. I | Summary records of the meetings of the thirty-fourth session | A/CN.4/SER.A/1982 | 83.V.2 |
| 1982,  vol. II (Part One) | Documents of the thirty-fourth session | A/CN.4/SER.A/1982/Add.1 (Part 1) | 83.V.3 (Part I) |
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Reports of International Arbitral Awards, issued in twenty-five volumes, covering selected awards handed down since 1895.

Yearbooks and Guides to the Practice of the United Nations

United Nations Yearbooks, covering the period from the United Nations inception until 2004.

Yearbooks of the International Court of Justice, covering the period from  
1946–1947 until 2002–2003.

United Nations Juridical Yearbooks containing the documentary materials concerning the United Nations and the intergovernmental organizations in relation with it, 1962–1998q, and Cumulative Index (Parts I-III, covering volumes up to 1990).

Repertory of Practice of United Nations Organs, and its Supplements.

Repertoire of the Practice of the Security Council, and its Supplements.

Publications relating to the Work of the International Law Commission

International Law Commission—A Guide to the Documents 1949–1969 (ST/GENEVA/LIB/SER.B/Ref.2).

Analytical Guide to the Work of the International Law Commission, 1949–1997 (ST/LEG/GUIDE/1) (United Nations publication, Sales No. 98.V.10).r

The International Law Commission Fifty Years After: An Evaluation (United Nations publication, Sales No. 00.V.3).

Making Better International Law: the International Law Commission at 50 (United Nations publication, Sales No. 98.V.5).

International Law on the Eve of the Twenty-first Century: Views from the International Law Commission (United Nations publication, Sales No. 97.V.4).

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| Relevant Web Sites |  |
| http://www.un.org/law/ilc | Official web site of the International Law Commission maintained by the Codification Division of the Office of Legal Affairs of the United Nations Secretariat. |
| http://www.un.org/law/lindex.htm | Official web site of the Codification Division of the Office of Legal Affairs of the United Nations Secretariat. |
| http://www.un.org/law/cod/sixth | Official web site of the Sixth Committee of the United Nations General Assembly maintained by the Codification Division of the Office of Legal Affairs of the United Nations Secretariat. |
| http://untreaty.un.org/ | United Nations Treaty Collection maintained by the Treaty Section of the Office of Legal Affairs of the United Nations Secretariat. |
| http://www.un.org/Depts/los | Official web site of the Oceans and Law of the Sea maintained by the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations Secretariat. |
| http://www.icj-cij.org | Official web site of the International Court of Justice. |
| http://www.icc.int | Official web site of the International Criminal Court. |

1. Final reports by the Commission to the General Assembly on a topic or sub-topic that did not contain draft articles (e.g., reservations to multilateral conventions), contained draft articles that were superceded by the Commission’s later work (draft articles on arbitral procedure) or were to be regarded as suggestions (present statelessness) are not reproduced in the annexes. In addition, the Rome Statute of the International Criminal Court is not reproduced in the annexes since it was adopted on the basis of the text of the Preparatory Committee for an International Criminal Court which was a further elaboration of the Commission’s draft Statute for an International Criminal Court. The latter is reproduced because of its historical significance and its relevance as part of the legislative history of the Rome Statute of the International Criminal Court. [↑](#footnote-ref-1)
2. In his Principles of International Law (written in the period 1786–1789), Bentham envisaged that an international code, which should be based on a detailed application of his principle of utility to the relations between nations, would not fail to provide a scheme for an everlasting peace. However, he made little effort to base his plans for such a code upon the existing law of nations. [↑](#footnote-ref-2)
3. See document A/AC.10/25, “Note on the private codification of public international law.” [↑](#footnote-ref-3)
4. See documents A/AC.10/5, “Historical survey of the development of international law and its codification by international conferences”; and A/AC.10/8, “Outline of the codification of international law in the inter-American system with special reference to the methods of codification.” [↑](#footnote-ref-4)
5. For the text of the Conventions, see United Nations, Treaty Series, vol. 75, p. 2. For the text of the Protocols, see ibid., vol. 1125, pp. 3 and 609. [↑](#footnote-ref-5)
6. Third Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem, of 8 December 2005. Entry into force on 14 January 2007. The text of the protocol is deposited with the Federal Department of Foreign Affairs of Switzerland. [↑](#footnote-ref-6)
7. See the Final Act of the Peace Conference of 1907, in J. B. Scott, The Hague Peace Conferences of 1899 and 1907 (1909), vol. II, pp. 289–291. [↑](#footnote-ref-7)
8. League of Nations, Official Journal, Special Supplement, No. 21, p. 10. [↑](#footnote-ref-8)
9. Ibid., No. 53, p. 9. [↑](#footnote-ref-9)
10. On 12 April 1930, the Conference adopted the following instruments:

    1. Convention on certain questions relating to the conflict of nationality laws (League of Nations, Treaty Series, vol. 179, p. 89);

    2. Protocol relating to military obligations in certain cases of double nationality (ibid., vol. 178, p. 227);

    3. Protocol relating to a certain case of statelessness (ibid., vol. 179, p. 115);

    4. Special Protocol concerning statelessness (League of Nations document C.27.M.16.1931.V).

     Except for No.4, the above instruments have been in force since 1937. [↑](#footnote-ref-10)
11. League of Nations, Official Journal, Special Supplement, No. 92, p. 9. [↑](#footnote-ref-11)
12. See Documents of the United Nations Conference on International Organization, San Francisco, 1945, vol. III, documents 1 and 2; vol. VIII, document 1151; and vol. IX, documents 203, 416, 507, 536, 571, 792, 795 and 848. [↑](#footnote-ref-12)
13. See Official Records of the General Assembly, Second Session, Sixth Committee, Annex 1. [↑](#footnote-ref-13)
14. See the discussion on the methods of work in relation to the progressive development and codification of international law, at pp. 44-45 below. [↑](#footnote-ref-14)
15. The Sixth Committee is the main committee of the General Assembly of the United Nations which is entrusted with the consideration of legal issues. See Rules of Procedure of the General Assembly, rule 98 (document A/520/Rev.15/Amend.2). Relevant information and documentation may be found on the official web site of the Sixth Committee. See www.un.org/law/cod/sixth. [↑](#footnote-ref-15)
16. See Official Records of the General Assembly, Second Session, Sixth Committee, Annex 1g. [↑](#footnote-ref-16)
17. See General Assembly resolutions 485 (V) of 12 December 1950, 984 (X) and 985 (X) of 3 December 1955, 1103 (XI) of 18 December 1956, 1647 (XVI) of 6 November 1961 and 36/39 of 18 November 1981. The amendments relate to the expenses to be paid to the members of the Commission, the location of the Commission’s meetings, the extension of the term of office of Commission members, the size of the Commission as well as the regional distribution of its membership (see pages 16, 58, 15, 14–15 and 10–11 respectively). In 1996, the Commission noted that its Statute, which was drafted shortly after the end of the Second World War, had never been the subject of a thorough review and revision. The Commission concluded that, on the whole, the Statute had been flexible enough to allow modifications in practice. At the same time, the Commission drew attention to some aspects of Statute which warranted review and revision as the Commission approach its fiftieth year. The Commission recommended that consideration be given to consolidating and updating the Commission’s Statute to coincide with the fiftieth anniversary of the Commission in 1999. See Yearbook of the International Law Commission, 1996, vol. II (Part Two), paras. 147 (a), 148 (s) and 241–243. [↑](#footnote-ref-17)
18. See *Yearbook of the International Law Commission, 1979,* vol. II (Part One), document A/CN.4/325, para. 102, and ibid., *1996,* vol. II (Part Two), paras. 156 and 157. [↑](#footnote-ref-18)
19. The Commission has not, however, always maintained a strict distinction between public and private international law, and has considered aspects of the latter category in some of its work. See, for example, its consideration of the topic “Jurisdictional immunities of States and their property.” [↑](#footnote-ref-19)
20. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), para. 155. [↑](#footnote-ref-20)
21. *Official Records of the General Assembly, Sixtieth Session, Supplement No. 10* (A/60/10), para. 500. [↑](#footnote-ref-21)
22. *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), para. 257. [↑](#footnote-ref-22)
23. See *Yearbook of the International Law Commission, 1974,* vol. II (Part One), document A/9610/Rev.1, para. 207. [↑](#footnote-ref-23)
24. While the membership of the Commission, since its inception, has been overwhelmingly male (the first female candidates were nominated at the 1961 and 1991 elections), the General Assembly elected the first two female members of the Commission in 2001. In 2006, three female members were elected. [↑](#footnote-ref-24)
25. In 1976, a Member State put forward the candidature of a staff member of the Office of the High Commissioner for Refugees for election to a vacancy in the International Law Commission. The question arose as to whether the election of a staff member to the Commission would be incompatible with the staff rules and regulations that govern the activities and conduct of an international civil servant. The Legal Counsel of the United Nations indicated that the election of a staff member to the Commission would be incompatible with the staff rules and regulations of the United Nations, in particular regulation 1.2 and rule 101.6 (e) (currently 101.2). The Legal Counsel added that a similar position was taken by the Office of Legal Affairs of the United Nations in a case involving membership in the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities. The question of incompatibility arose not under the provisions of the Commission’s Statute but rather from the provisions of the staff regulations and rules of the United Nations and the relevant practice. The staff member withdrew his candidature. In contrast, a staff member of a specialized agency was elected to the Commission by the General Assembly in 1991 and by the Commission in 2000 to fill a casual vacancy. A staff member of the World Bank was nominated for election to the Commission, in 2006, but was not elected. [↑](#footnote-ref-25)
26. See *Yearbook of the International Law Commission, 1974,* vol. II (Part One), document A/9610/Rev.1, para. 210. [↑](#footnote-ref-26)
27. See *Yearbook of the International Law Commission,* *1979,* vol. II (Part One), document A/CN.4/325, para. 4. [↑](#footnote-ref-27)
28. See *Yearbook of the International Law Commission,* *1974,* vol. II (Part One), document A/9610/Rev.1, para. 210. [↑](#footnote-ref-28)
29. The Statute does not address situations in which the nationality of a member of the Commission changes after the election. In one instance, the Commission had two members who both became nationals of the United Arab Republic after the first session of the quinquennium as a result of the formation of a union between Egypt and Syria on 22 February 1958, following the election of both members by the General Assembly in 1956. One of the members resigned. In another instance, the Commission had two members who both became nationals of Germany after the fourth session of the quinquennium as a result of the accession of the German Democratic Republic to the Federal Republic of Germany with effect from 3 October 1990, following the election of both members by the General Assembly in 1986. Both members continued to serve during the last year of the quinquennium and completed the term of office for which they were elected. Following the dissolution of Czechoslovakia into the Czech Republic and the Slovak Republic, as of 1 January 2003, the sitting member from Czechoslovakia continued to serve as a national of the Czech Republic. [↑](#footnote-ref-29)
30. As of 31 January 2007, there were 192 States Members of the United Nations. [↑](#footnote-ref-30)
31. See the report of the Committee on the Progressive Development of International Law and its Codification, *Official Records of the General Assembly, Second Session, Sixth Committee, Annex 1,* para. 5. [↑](#footnote-ref-31)
32. See document A/C.6/193, para. 7. [↑](#footnote-ref-32)
33. While “double” nominations (i.e. a Member State nominating two of its nationals) were common in the earlier elections of the Commission (in 1948, 1953, 1956, 1961, 1966, 1971 and 1976), this option has not been exercised since then. [↑](#footnote-ref-33)
34. In connection with the elections held in 1976, 1996, 2001 and 2006, the General Assembly decided to include the names of several individuals, whose nominations were received after the 1 June deadline, into a consolidated list of candidates for election to the Commission. See documents A/31/PV.60, A/51/PV.52, A/56/PV.31 and A/61/PV.41. [↑](#footnote-ref-34)
35. The General Assembly begins its regular session on the Tuesday of the third week in September, counting from the first week that contains at least one working day. Rule 1 of the Rules of Procedure of the General Assembly, document A/520/Rev.16. [↑](#footnote-ref-35)
36. See *Official Records of the General Assembly, Eleventh Session, Annexes,* agenda item 59, document A/3427, para. 13; and ibid.*, Sixteenth session, Annexes,* agenda item 17, document A/4779, paras. 4 and 5. [↑](#footnote-ref-36)
37. See *Official Records of the General Assembly, Sixteenth Session, Annexes,* agenda item 77, document A/4939, paras. 9–12; and document A/36/371, paras. 4–6. [↑](#footnote-ref-37)
38. General Assembly resolution 36/39 of 18 November 1981 provides that the members of the Commission shall be elected according to the following pattern: eight nationals from African States; seven nationals from Asian States; three nationals from Eastern European States; six nationals from Latin American States; eight nationals from Western European and other States; one national from African States or Eastern European States in rotation; and one national from Asian States or Latin American States in rotation. (The name of the regional group of Latin American States was subsequently changed to Latin American and Caribbean States. See United Nations Journals No. 88/19 of 1 February 1988, No. 88/23 of 5 February 1988 and 88/24 of 8 February 1988). The two rotational seats were allocated to a national of an Eastern European State and a national of a Latin American and Caribbean State at the election held in 2006. See document A/61/92, paras. 6–8, and General Assembly decision 61/411 of 16 November 2006. [↑](#footnote-ref-38)
39. Rule 92 of the Rules of Procedure of the General Assembly. The ballot paper is constituted of five sheets—one per regional group—containing the names of the candidates eligible for that round of balloting. Votes may only be cast for the candidates appearing on each sheet, and only up to the number of seats allocated to each region (i.e. a ballot containing less than that number would still be considered valid). A blank sheet is considered an abstention in relation to that regional group. A ballot containing more votes than the number of seats allocated to a regional group is considered invalid. [↑](#footnote-ref-39)
40. Rule 125 of the Rules of Procedure of the General Assembly. For purposes of the election of the International Law Commission, “present and voting” means the number of valid ballot papers cast by Member States less invalid ballots and abstentions. See rule 126 of the Rules of Procedure of the General Assembly, applied *mutatis mutandis.* [↑](#footnote-ref-40)
41. If more than one national of the same State receives a sufficient number of votes to be elected, then the candidate who receives the largest number of votes or, if the votes are equally divided, the elder or eldest candidate shall be elected (article 9, para. 2). This situation has never arisen in practice. [↑](#footnote-ref-41)
42. Under rule 94 of the Rules of Procedure of the General Assembly, applied *mutatis mutandis,* further rounds of balloting are restricted to the candidates having obtained the greatest number of votes in the previous ballot and to a number not more than twice the number of seats remaining to be filled. Multiple rounds were held only at the elections in 1948 (2 rounds, held at the 154th and 155th plenary meetings), 1953 (4 rounds, 453rd and 454th plenary meetings), 1991 (2 rounds, see document A/46/PV.47) and in 2001 (2 rounds, see document A/56/PV.39). [↑](#footnote-ref-42)
43. See rules 92–94 of the Rules of P rocedure of the General Assembly, applied *mutatis mutandis*. A second round of balloting was held at the 2001 election, restricted to the two candidates who were tied for the remaining seat in the Asian Group. The candidate from Iran (Islamic Rep. of) subsequently obtained the required majority and the greatest number of votes, and was accordingly elected. See document A/56/PV.39. The only other tie occurred in 1976, where two candidates were tied for the remaining seat in the Commission after the first round. The tie was broken through the withdrawal of one of the two candidates so as to honour a “gentleman’s agreement” concerning the regional distribution of seats. The President of the General Assembly promptly declared the remaining candidate as having been duly elected to the Commission. See document A/31/PV.38. [↑](#footnote-ref-43)
44. Elections to fill casual vacancies on the Commission were held at the sessions in: 1952, 1954, 1955, 1958, 1959, 1960, 1961, 1964, 1965, 1970, 1973, 1974, 1976, 1977, 1979, 1981, 1982, 1985, 1990, 1994, 1995, 1999, 2000, 2002, 2003 and 2006. [↑](#footnote-ref-44)
45. In some instances, the Commission member has given written notice of resignation usually in the form of a letter addressed to the Chairman and transmitted to the Chairman through the Secretary-General of the United Nations. This has often been the case when Commission members have been elected as judges of the International Court of Justice. Commission members have also submitted letters of resignation without indicating a reason. In other instances, the Commission has taken note of the factual events resulting in a vacancy and the Chairman has declared the existence of a vacancy. Even without an express determination by the Commission of the existence of a casual vacancy, the inclusion of such an item on the agenda adopted by the Commission may be seen as an implied determination by the Commission of the existence of a casual vacancy in the membership of the Commission at that particular session. No general rule or practice has developed in the context of the Commission as to the necessity to vacate a seat on the Commission upon election or appointment to another entity. The practice on this point has varied. For example, while in several instances, as mentioned above, Commission members have vacated their seats upon election to the International Court of Justice, a member who was elected to the International Tribunal for the Law of the Sea, as of 1 October 2005, continued to serve as a member of the International Law Commission for the remainder of his term (until the end of 2006). Generally, the propriety of a member retaining his or her seat on the Commission following election to another entity is governed by the conditions of service as an United Nations expert on mission (see document ST/SGB/2002/9); the rules or practice of the other entity; and the nature of the service in the other entity (for example, whether it is full-time or part-time). [↑](#footnote-ref-45)
46. This is the practice when a vacancy occurs before the session, as has often been the case. If a vacancy occurs during the session, the Commission may decide to include an item concerning filling a casual vacancy in the agenda for that session or defer action to the following session. [↑](#footnote-ref-46)
47. At the fourth session, in 1952, the three persons elected by the Commission to fill casual vacancies were each proposed by a Commission member. The elections were held at public meetings. See *Yearbook of the International Law Commission, 1952,* vol. I, 136th meeting, paras. 5 and 10, and 183rd meeting, para. 1. At the eleventh session, in 1959, candidates were proposed by Commission members during the election to fill a casual vacancy. In a private meeting at that session, the Commission noted that article 11 of the Statute concerning casual vacancies contains no reference to article 3 requiring nominations by Governments for regular elections and therefore decided that it could consider candidatures submitted by a member of the Commission. The election to fill the casual vacancy was held at a private meeting. At the thirty-seventh session, in 1985, one candidate was proposed by a Commission member. Another individual whose name was put forward by a Commission member sent a letter to the Legal Counsel requesting that his name be withdrawn. The individual’s name did not appear in the list of candidates. The election to fill casual vacancies was again held at a private meeting. [↑](#footnote-ref-47)
48. The practice of issuing a Secretariat list of candidates began in 1964. Prior to 1964, information on candidatures received was circulated to members of the Commission and an informal list of candidates was prepared by the Secretariat for consideration by Commission members. (At times, the members of the Commission were also informed of candidatures by oral statements made by the Commission’s Secretary.) In accordance with the decision of the Legal Counsel of the United Nations, Constantin A. Stavropoulos, in 1973, the Secretariat list of candidates contains the following information: names, nationalities and curricula vitae of candidates. The source of submission of the candidates is not indicated in the list. In accordance with the same decision, the Secretariat issues another document setting out the texts of communications received submitting or supporting candidatures in the form of a conference room document of the Commission restricted to Commission members. These communications are usually from Governments. In 1985, the Secretariat also published the text of a communication received from a member of the Commission submitting the name of a candidate. In some instances, information concerning the source of submission of candidates has been provided orally to Governments upon request prior to the election. In 1985, the Legal Counsel, Carl-August Fleischhauer, decided that the Secretariat could not follow this practice in a particular case because it was under a constraint of confidentiality due to the request of the member who had submitted the candidature not to disclose its source other than to Commission members prior to the election. [↑](#footnote-ref-48)
49. The list of candidates prepared by the Secretariat is for information purposes only and is not necessarily determinative of which names will appear on the ballot. For example, in advance of the 2002 election to fill a casual vacancy for a single seat the Secretariat issued an addendum to its previous note (announcing the vacancy, document A/CN.4/522) containing the name of a single candidate (document A/CN.4/522/Add.1). Subsequently, a further nomination was received shortly prior to the election. As there was no time to issue a further addendum, the second nomination was announced orally by the Chairman, and a copy of the communication was circulated to the members of the Commission. At the election, both names appeared on the ballot and the second candidate was subsequently elected. [↑](#footnote-ref-49)
50. There have been instances in which an individual, not a member of the Commission, has proposed himself or another person as a candidate for a casual vacancy. In 1959, a candidate was proposed by an individual who was not a member of the Commission. The Secretariat distributed informally the individual’s curriculum vitae. In a private meeting of the Commission, the Secretary indicated that “The Secretariat had to have some rule to guide it in preparing a list of candidates for the Commission, otherwise the Secretariat might well be embarrassed by a bombardment of candidates from all sources. In his view it was, therefore, desirable that either a government or a member of the Commission should propose a candidate.” At the same meeting, a member of the Commission proposed the individual as a candidate without committing his vote to the candidate. In 1976, the Legal Counsel received a letter from an individual requesting that his name be registered as a candidate for a vacancy and indicating that he would be proposed as a candidate by a particular member of the Commission. The individual’s name was added to the Secretariat list of candidates only after it was put forward by a Government. The Secretariat document circulated to Commission members contained the letter of the Government and not the personal letter of the individual. (There is no record of his name having been put forward by any Commission member.) [↑](#footnote-ref-50)
51. In practice, the Commission has held elections to fill casual vacancies arising before the opening of its session at various times. The Commission may hold an election to fill a casual vacancy arising during the session at a later time or at its next session. [↑](#footnote-ref-51)
52. This practice is similar to that of the General Assembly which holds elections by secret ballot. See rule 92 of the Rules of Procedure of the General Assembly. In 1979, the General Assembly decided that “The practice of dispensing with the secret ballot for elections to subsidiary organs when the number of candidates corresponds to the number of seats to be filled should become standard and the same practice should apply to the election of the President and Vice-Presidents of the General Assembly, unless a delegation specifically requests a vote on a given election.” See rules of procedure of the General Assembly, annex V, para. 16. The Commission considered the question of following this practice in filling casual vacancies in 1985 (in the context of the vacancy arising out of the election of Ni Jhengyu to the International Court of Justice), 1995, 2003 (for the casual vacancy arising out of the resignation of Robert Rosenstock) and in 2006. In the first instance, in 1985, the Commission nonetheless decided to proceed by secret ballot partly out of the concern that a distinction could be drawn between a member elected by acclamation and those elected by secret ballot (through which procedure three other members were elected at the same meeting to fill casual vacancies in another regional group). A similar approach was taken at the elections held at the 1999 and 2000 sessions, also involving several seats spanning more than one regional group, some of which only had one candidate, while others were contested by multiple candidates: a secret ballot was held (the possibility of an accalamation procedure was not considered). At the elections in 1995, 2003 and 2006, the Commission decided to follow the acclamation procedure where only one nomination had been received for one open seat and on the basis of a request (even if implicit, as was the case of the election in 1995), made from the floor, that resort to a secret ballot be dispensed with in favour of election by acclamation. [↑](#footnote-ref-52)
53. Before 1954, the Commission filled casual vacancies by election in public meetings after consideration of candidates in private meetings. Since 1954, it has been the Commission’s consistent practice to fill the vacancies by election (or in a few instances by acclamation) in private meetings (except in 1995 where a member was elected in a public meeting, See *Yearbook of the International Law Commission, 1995,* vol. I, 2378th meeting, paras. 7–9). There are no summary records of private meetings. [↑](#footnote-ref-53)
54. Although there is no requirement in the Statute that a candidate for a casual vacancy should be from the same regional group of its previous occupant, since the establishment of the regional group distribution in 1956, nominations to fill a casual vacancy have always been for individuals from the same regional group. Accordingly, article 11 has been applied as also being subject to article 9, paragraph 1, in that it has consistently been understood that the casual vacancy election procedure cannot be used to circumvent the regional group distribution most recently established by General Assembly resolution 36/39. The Secretariat notes announcing the casual vacancies at the 1985 and 1990 elections (documents A/CN.4/386 and A/CN.4/433, respectively) made this explicit by including a reference to the regional group distribution. This practice has been discontinued as compliance with the regional group distribution is now well established as a matter of practice. [↑](#footnote-ref-54)
55. In the early years, the Commission normally held a separate election for each vacancy in the alphabetical order of the name of the vacating member. In 1973, the Commission decided to vote together on two vacancies in the same regional group. The same practice was followed in 1985 with respect to three vacancies in the same regional group; a separate election was held to fill a single vacancy in a different regional group. The procedure was followed again in 2003 in relation to two vacancies in the Eastern European Group, which had arisen simultaneously. In contrast, two vacancies in another regional group arose at different times that year (one before and one during the second part of the session). Two separate elections were held to fill those vacancies. [↑](#footnote-ref-55)
56. See rule 125 of the Rules of Procedure of the General Assembly. [↑](#footnote-ref-56)
57. A blank ballot paper constitutes an abstention. [↑](#footnote-ref-57)
58. See rule 126 of the Rules of Procedure of the General Assembly. [↑](#footnote-ref-58)
59. See rule 132 of the Rules of Procedure of the General Assembly. [↑](#footnote-ref-59)
60. The Chairman’s announcement does not mention the results of the ballot or ballots taken at the private meeting nor make reference to the persons considered. No announcement is made until all vacancies have been filled. [↑](#footnote-ref-60)
61. General Assembly resolution 986 (X) of 3 December 1955. See also *Official Records of the General Assembly,* *Tenth Session, Annexes,* agenda item 50, document A/3028, paras. 21–26. [↑](#footnote-ref-61)
62. See *Yearbook of the International Law Commission, 1956,* vol. II, document A/3159, para. 38. See also *Official Records of the General Assembly,* *Eleventh Session, Annexes,* agenda item 53, document A/3520, paras. 94–100. [↑](#footnote-ref-62)
63. See article 2, paragraph 1, of the Statute. [↑](#footnote-ref-63)
64. See *Official Records of the General Assembly,* *Eleventh Session, Annexes,* agenda item 59, document A/3427; ibid., *Sixteenth Session, Annexes,* agenda item 77, document A/4939*;* and ibid., *Thirty-sixth Session, Plenary Meetings,* 63rd meeting, paras. 145–172, and ibid., *Annexes,* agenda item 137, document A/36/244and Add.1. [↑](#footnote-ref-64)
65. By resolution 486 (V) of 12 December 1950, the General Assembly extended the term of the Commission’s members elected in 1948 to five years. In 1955, the Commission recommended a formal amendment to article 10 of its Statute, to take effect from 1 January 1957, which was accepted by the General Assembly in resolution 985 (X) of 3 December 1955. Accordingly, elections have taken place in 1948, 1953, 1956, 1961, 1966, 1971, 1976, 1981, 1986, 1991, 1996, 2001 and 2006. [↑](#footnote-ref-65)
66. See *Yearbook of the International Law Commission, 1968,* vol. II, document A/7209/Rev.1, para. 98 (a). [↑](#footnote-ref-66)
67. See *Official Records of the General Assembly, Twenty-fourth Session, Annexes,* agenda items 86 and 94 *(b),* document A/7746, para. 117. [↑](#footnote-ref-67)
68. See the report of the Committee on the Progressive Development of International Law and its Codification, *Official Records of the General Assembly, Second Session, Sixth Committee, Annex 1,* para. 5 (d). [↑](#footnote-ref-68)
69. See *Yearbook of the International Law Commission,* *1979,* vol. II (Part One), document A/CN.4/325, para. 4. [↑](#footnote-ref-69)
70. As amended by General Assembly resolution 485 (V) of 12 December 1950. The members of the Commission were paid travel expenses and received a per diem allowance under article 13 of the Statute as originally adopted. In 1950, the General Assembly noted the inadequacy of the emoluments paid to Commission members and decided to amend this provision of the Statute to provide for the payment of travel expenses and a special allowance to Commission members bearing in mind the importance of the Commission’s work, the eminence of its members and the method of their election as well as considering the nature and scope of the Commission’s work which requires its members to devote considerable time in attendance at its necessarily long sessions. [↑](#footnote-ref-70)
71. The basic principle governing the payment of honorariums enunciated by the General Assembly in resolution 2489 (XXIII) of 21 December 1968 and reaffirmed in resolutions 3536 (XXX) of 17 December 1975 and 35/218 of 17 December 1980 was that neither a fee nor any other remuneration in addition to subsistence allowances at the standard rate would normally be paid to members of organs or subsidiary organs of the United Nations unless expressly decided upon by the General Assembly. Payment of honorariums to the members of the Commission was authorized by the General Assembly on an exceptional basis, with the rates being kept under review by the Secretary-General and occasionally revised. In 1981, the revised rates of honorariums payable to members of the Commission were as follows: Chairman—5,000; other members—3,000; and Special Rapporteurs who prepared reports between sessions—an additional 2,500 United States dollars. In 1998, the Secretary-General submitted a report indicating that the General Assembly might wish to consider increasing the rates of honorariums by 25 per cent, effective 1 January 1999 (document A/53/643). The General Assembly, in resolution 56/272 of 27 March 2002, decided to set at a level of one United States dollar per year the honorariums payable to the Commission, with a view to utilizing the savings to restore Internet services to permanent missions in New York, which were provided by the United Nations Secretariat but which were to be halted owing to budgetary constraints (see General Assembly resolution 56/254D of 27 March 2002). At its fifty-fourth session, in 2002, the Commission noted that resolution 56/272 was adopted after the election of its members by the General Assembly and that the decision was taken without consulting the Commission; considered that the decision was not consistent in procedure or substance with either the principles of fairness on which the United Nations conducts its affairs or with the spirit of service with which members of the Commission contribute their time and approach their work; stressed that the resolution especially affected Special Rapporteurs, particularly those from developing countries, by compromising support for their research work; and decided not to collect the honorariums due to concerns about the administrative costs involved in the payment of the symbolic honorariums (see *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10), paras. 525–531). The Commission continued this practice of not collecting the symbolic honorariums at its fifty-fifth to fifty-eighth sessions, from 2004 to 2006, respectively. The Chairman of the Commission sent a letter to the Chairman of the Sixth Committee bringing this matter to his attention (document A/C.6/57/INF/2). The Commission reiterated those concerns in the reports on its fifty-fifth to fifty-eighth sessions (see *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), para. 447, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10), para. 369, *Official Records of the General Assembly, Sixtieth Session, Supplement No. 10* (A/60/10), para. 501 and *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), para. 269). In 2006, the Commission urged the General Assembly to reconsider the matter, with a view to restoring the honorariums for Special Rapporteurs. [↑](#footnote-ref-71)
72. See *Yearbook of the International Law Commission, 1951,* vol. II, document A/1858, paras. 60–71. [↑](#footnote-ref-72)
73. See *Official Records of the General Assembly, Sixth Session, Annexes,* agenda item 49, document A/2088. [↑](#footnote-ref-73)
74. The members of the Commission would be entitled to the privileges and immunities of experts on mission when the Commission meets at the United Nations Headquarters in New York or in a Member State which is a party to the Convention on the Privileges and Immunities of the United Nations (article VI). United Nations, *Treaty Series,* vol. 1, pp. 15, 26. [↑](#footnote-ref-74)
75. See *Yearbook of the International Law Commission, 1978,* vol. II (Part Two), para. 199. [↑](#footnote-ref-75)
76. See *Yearbook of the International Law Commission, 1979,* vol. II (Part Two), paras. 11–13, and General Assembly resolution 34/141 of 17 December 1979. [↑](#footnote-ref-76)
77. Since 1974, the Commission has elected the Chairman of the Drafting Committee. Previously, the First Vice-Chairman of the Commission also served as Chairman of the Drafting Committee. See *Yearbook of the International Law Commission,* *1979,* vol. II (Part One), document A/CN.4/325, para. 45. [↑](#footnote-ref-77)
78. In accordance with the practice of the Commission, the posts of Chairman and the other four officers have been rotated among nationals of the various regional groups. [↑](#footnote-ref-78)
79. The functions of the Chairman are described in greater detail in rule 106 of the Rules of Procedure of the General Assembly. [↑](#footnote-ref-79)
80. See rule 105 of the Rules of Procedure of the General Assembly. [↑](#footnote-ref-80)
81. See *Yearbook of the International Law Commission, 1992,* vol. II (Part Two), para. 373 *(a).* [↑](#footnote-ref-81)
82. In the early years, the Planning Group was not always established and, when established, it met infrequently in the Enlarged Bureau, which reviewed its report. More recently, the Commission has adopted the practice of establishing the Planning Group more frequently, under the chairmanship of the First Vice-Chairman,and as a subsidiary body of the Commission to which it reports directly. [↑](#footnote-ref-82)
83. The Commission has decided that the commentaries to draft articles should be considered in plenary as soon as possible during each session and separately from the Commission’s annual report. See Yearbook of the International Law Commission, 1994, vol. II (Part Two), para. 399. Notwithstanding this, since the 1990’s, the practice of the Commission, largely for practical reasons, has been to consider and adopt commentaries as part of the process of the adoption of its annual report. [↑](#footnote-ref-83)
84. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), paras. 202 and 204. [↑](#footnote-ref-84)
85. See *Yearbook of the International Law Commission, 1987,* vol. II (Part Two), para. 239. [↑](#footnote-ref-85)
86. See also the discussion below of the possible role of the Special Rapporteur in this respect. [↑](#footnote-ref-86)
87. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), paras. 148 (i) and 202–211. [↑](#footnote-ref-87)
88. Under the “mini-debate” arrangement, the Chairman is authorized to deviate from the established list of speakers on a topic in order to allow members to respond to or comment on a statement made by a speaker in the “general debate.” The speaker whose statement gave rise to the “mini-debate” is usually afforded the opportunity to participate during, and to respond at the end of, the mini-debate. [↑](#footnote-ref-88)
89. See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10), para. 523. [↑](#footnote-ref-89)
90. See rule 60 of the Rules of Procedure of the General Assembly. [↑](#footnote-ref-90)
91. See *Yearbook of the International Law Commission, 1979,* vol. II (Part One), document A/CN.4/325, para. 8. [↑](#footnote-ref-91)
92. This is similar to the practice followed by the General Assembly. See rule 61 of the Rules of Procedure of the General Assembly. The summary records of the plenary meetings of the Commission are published in the Commission’s *Yearbook* (in volume I)*.* In addition, the major decisions taken in plenary are summarized in the relevant chapters of the Commission’s annual report to the General Assembly. See *Yearbook of the International Law Commission, 1979,* vol. II (Part One), document A/CN.4/325, para. 8. The annual report also contains a summary of the debate on each topic held in plenary, except when the Commission adopts draft articles and commentaries (which reflect the position of the entire Commission, and take precedence over the individual views of its members as reflected in the debate). [↑](#footnote-ref-92)
93. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), paras. 185–201. [↑](#footnote-ref-93)
94. In practice special rapporteurships tend to be distributed among members from different regions. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), paras. 185 and 186. The Commission has appointed one of its members to serve as Special Rapporteur for most of the topics on its agenda, with the exception of the appointment of two Special Rapporteurs for the topic “Question of international criminal jurisdiction,” one Special Rapporteur for the topics “Formulation of the Nürnberg principles” and “Draft Code of Offences,” and one Special Rapporteur for the topics “Regime of the high seas” and “Regime of territorial waters.” No Special Rapporteurs were appointed for the following topics: fundamental rights and duties of States; extended participation in general multilateral treaties concluded under the auspices of the League of Nations; question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law; review of the multilateral treaty-making process; and fragmentation of international law. In some instances, the Chairman of a Working Group has undertaken some of the functions typically performed by a Special Rapporteur. For example, the Chairman of the Study Group on the fragmentation of international law finalized a detailed study on the topic to serve as a companion document to a set of conclusions adopted by the Study Group. See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), para. 237. [↑](#footnote-ref-94)
95. The Special Rapporteur for State responsibility, Roberto Ago, resigned from the Commission upon his election to the International Court of Justice in 1978. The Chairman of the Commission sent a letter to the President of the Court requesting that Judge Ago continue to be available to the Commission in his private capacity in order to assist it in finalizing the first part of its draft on State responsibility. The Court acceded to the request in order to facilitate the Commission’s work on State responsibility on the understanding that Judge Ago would be available in an individual and personal capacity to assist the Commission in its consideration of the few remaining articles of a draft of which he himself had been the prime author; there was no question of his being appointed, designated or given any official title such as “expert consultant”; and priority would have to be given to his judicial duties. Mr. Ago attended the thirty-first and thirty-second sessions of the Commission, in 1979 and 1980, respectively. In 1979, he introduced to the Commission and commented on his eighth report. In 1980, he presented to the Commission the addendum to his eighth report. See *Yearbook of the International Law Commission,* *1979,* vol. II (Part Two), para. 69, and ibid., *1980,* vol. II (Part Two), para. 28. The Special Rapporteur for the law of the non-navigational uses of international watercourses, Stephen M. Schwebel, after his resignation from the Commission in 1981, continued and completed his research for the third report on the topic which he had begun to prepare prior to his resignation from the Commission. See *Yearbook of the International Law Commission,* *1982,* vol. II (Part Two), para. 251. Upon being appointed Director of the Codification Division (and Secretary of the Commission), Vaclav Mikulka, the Special Rapporteur for the topic of Nationality in relation to the succession of States, resigned from the Commission prior to its fifty-first session, in 1999. His analysis of the comments and observations of Governments on the draft articles on Nationality of natural persons in relation to the succession of States adopted on first reading, in 1997, was subsequently issued as a Secretariat memorandum (see document A/CN.4/497) which was submitted to the Commission at its 1999 session. See *Yearbook of the International Law Commission,* *1999,* vol. II (Part Two), para. 40. [↑](#footnote-ref-95)
96. See *Yearbook of the International Law Commission,* *1979,* vol. II (Part One), document A/CN.4/325, para. 104. [↑](#footnote-ref-96)
97. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), para. 188. The reports of the Special Rapporteurs are reproduced in the *Yearbook* of the Commission. [↑](#footnote-ref-97)
98. See *Yearbook of the International Law Commission, 1982,* vol. II (Part Two), para. 271. [↑](#footnote-ref-98)
99. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), paras. 148 *(f),* 189 and 190. The Commission has emphasized on several occasions the importance it attaches to the timely submission of reports by the Special Rapporteur in view of their processing and distribution and to allow members to study the reports in advance. See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 10* (A/60/10), para. 498 and *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), para. 262. On occasion, Special Rapporteur reports, or addenda thereto, are submitted during a session in response to a development in the debate. For example, in 2004, in response to a question that arose during the plenary debate, the Special Rapporteur on the topic “diplomatic protection” submitted a memorandum, which was subsequently issued as his sixth report, on the relevance of the “clean hands” doctrine to diplomatic protection. See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10), para. 54. [↑](#footnote-ref-99)
100. The Commission further recommended that the principle of a consultative group should be recognized, without any distinction being drawn between codification and progressive development, in any revision of the Statute. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), paras. 148 *(g)* and 191–195. The extent to which such mechanism is resorted to in practice depends on the Special Rapporteur, and, to some degree, on the complexity of the topic. Some Special Rapporteurs prefer to work on their own with minimal guidance. Other Special Rapporteurs do on occasion seek the input, even if informally, of some of their colleagues. In some instances such guidance is sought within the framework of “informal consultations.” For example, an informal consultation was held at the 2002 session to provide the Special Rapporteur for the topic “Diplomatic protection” with guidance on the question of the diplomatic protection of crews as well as that of corporations and shareholders. See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10), para. 113. In other instances such a consultative group is constituted in the more formal setting of a Working Group (as discussed in the next section). For example, in 2001, the Commission established a Working Group to provide the Special Rapporteur on State responsibility with guidance as to the approach to be taken in the commentaries to the draft articles on responsibility of States for internationally wrongful acts. See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10), para. 43. [↑](#footnote-ref-100)
101. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), para. 200 [↑](#footnote-ref-101)
102. See *Yearbook of the International Law Commission, 1995,* vol. II (Part Two), para. 508. The main function of a commentary is to explain the text itself, with appropriate references to key decisions, doctrine and State practice to indicate the extent to which the text reflects, develops or extends the law. Generally speaking it is not the function of such commentary to reflect disagreements on the text as adopted on second reading which can be done in the Commission in plenary at the time of final adoption of the text and reflected in the Commission’s report. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), para. 198. [↑](#footnote-ref-102)
103. See *Yearbook of the International Law Commission,* *1996,* vol. II (Part Two), para. 148 *(h).* [↑](#footnote-ref-103)
104. The Commission established a “study group” for the first time, at its fifty-fourth session, in 2002, for the topic “Fragmentation of international law” in recognition of the uniqueness of the topic which lent itself more to the undertaking of a research study, as opposed to the formulation of draft articles. See *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* (A/54/10), paras. 493 and 510. [↑](#footnote-ref-104)
105. In practice, “working groups,” “subcommittees” and “study groups” enjoy a more formal status, in terms of procedure, issuance of documentation, structure of the entity’s report to the Commission, than consultative groups which have included “informal consultations” for which, for example, linguistic interpretation services are not typically provided. See also the discussion at footnote 85. [↑](#footnote-ref-105)
106. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), para. 217. [↑](#footnote-ref-106)
107. The names of members of working groups of limited membership are listed in the report of the Commission on the session at which a group is established. [↑](#footnote-ref-107)
108. In most cases, the chairman of such a working group has been appointed subsequently by the Commission as the Special Rapporteur for the topic. [↑](#footnote-ref-108)
109. This type of group is envisaged with respect to progressive development in article 16 (*d*) and (*i*) of the Statute. [↑](#footnote-ref-109)
110. The Commission established two working groups on this topic in 2001. [↑](#footnote-ref-110)
111. This working group was established by the Planning Group of the Enlarged Bureau. [↑](#footnote-ref-111)
112. The Commission established two working groups on this topic in 2003. [↑](#footnote-ref-112)
113. These working groups have usually been chaired by the Special Rapporteur assigned to the topic, with some exceptions. For example, the Working Group established for the topic “Unilateral acts of States” was chaired by the Special Rapporteur in only three (1999–2001) of its eight years of existence. Indeed, for the last four years of its existence (2003–2006), the working group was, exceptionally, chaired by the Special Rapporteur for another topic, albeit not in that capacity. Likewise, the working groups on a draft statute for an international criminal court (in 1993 and 1994), and on shared natural resources (in 2005 and 2006), were also chaired by Commission members other than the relevant Special Rapporteur. [↑](#footnote-ref-113)
114. These working groups are usually of substantial size and no Special Rapporteur is appointed. [↑](#footnote-ref-114)
115. For instance, the working group that elaborated the statute for an international criminal court began by focusing on some basic propositions on which agreement could be reached, before even attempting to draft any articles. [↑](#footnote-ref-115)
116. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), para. 217. A distinction between the Drafting Committee and a Working Group also exists at the level of mandate and procedure. While the Drafting Committee focuses primarily on questions of drafting, working groups tend to enjoy broader mandates involving the consideration of matters of substance. At the level of procedure, the Drafting Committee follows a more formal procedure, involving the submission of a written report and a detailed oral statement by its Chairman. Working groups tend to adopt more flexible working methods, depending on the nature of the task at hand. Likewise, the reporting procedure for working groups is more flexible, with no requirement that they be in writing, nor that there be a detailed exposition of the decisions taken by the group. [↑](#footnote-ref-116)
117. For example, the first reading of the draft articles on the law of transboundary aquifers, adopted at the fifty-eighth session, in 2006, in the context of the topic “Shared natural resources,” was (owing to the technical nature of the topic) undertaken largely with the assistance of an open-ended working group *(see Part III.B, section 3).* [↑](#footnote-ref-117)
118. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), para. 218. [↑](#footnote-ref-118)
119. For example, at its fifty-fifth session, in 2003, the Commission established an open-ended Working Group for the topic “Responsibility of international organizations,” in order to consider draft article 2, as proposed by the Special Rapporteur. A revised draft of the provision, prepared by the Working Group, was subsequently referred to the Drafting Committee. See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), paras. 47–48. Likewise, the Drafting Committee on international liability for injurious consequences arising out of acts not prohibited by international law, established at the fifty-sixth session, in 2004, had before it a draft prepared by a Working Group established that session to consider the proposals of the Special Rapporteur. See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10), paras. 170–171. A similar function was performed by an open-ended informal consultation established at the fifty-second and fifty-third sessions, in 2000 and 2001, for the topic “Diplomatic protection,” in order to consider the Special Rapporteur’s proposals for specific draft articles. In both instances, it was the text formulated, or guidance developed, in the “informal consultation” which was referred to the Drafting Committee. See *Yearbook of the International Law Commission,* 2001, vol. II (Part Two), para. 412 and 495; and *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10), para. 166. [↑](#footnote-ref-119)
120. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), para. 219. The final outcome of work by a working group may be an oral report of the Chairman of the working group to the Commission in plenary which is reflected in the summary records or a written report issued as a document which may be included in the Commission’s report. [↑](#footnote-ref-120)
121. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), para. 148 (*k*). [↑](#footnote-ref-121)
122. 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. See *Yearbook of the International Law Commission, 1979,* vol. II (Part One), document A/CN.4/325, para. 45. [↑](#footnote-ref-122)
123. See *Yearbook of the International Law Commission, 1992,* vol. II (Part Two), para. 371; and ibid., *1996,* vol. II (Part Two), paras. 148 (*j*) and 214. [↑](#footnote-ref-123)
124. The practice of multilingual drafting, now customary in the Commission, as opposed to mere translation from the working language of the Special Rapporteur into the other working languages, frequently brings to light unsuspected questions of substance. This has added additional responsibilities to the work of the Drafting Committee. Upon completion of its work on a set of draft articles, members of the Drafting Committee from the various linguistic groups typically meet separately to align their respective linguistic texts with that of the authoritative version adopted by the Committee. [↑](#footnote-ref-124)
125. See *Yearbook of the International Law Commission, 1987,* vol. II (Part Two), para. 238. [↑](#footnote-ref-125)
126. See *Yearbook of the International Law Commission, 1987,* vol. II (Part Two), para. 237; and ibid., *1996,* vol. II (Part Two), para. 212. [↑](#footnote-ref-126)
127. See *Yearbook of the International Law Commission, 1958,* vol. II, document A/3859, para. 65. [↑](#footnote-ref-127)
128. See *Yearbook of the International Law Commission,* *1979,* vol. II (Part One), document A/CN.4/325, para. 47. In practice, members who joined the consensus in the Drafting Committee abstain from objecting to the draft articles during the plenary discussion. [↑](#footnote-ref-128)
129. See *Yearbook of the International Law Commission, 1987,* vol. II (Part Two), paras. 235–239. [↑](#footnote-ref-129)
130. There are no summary records of the meetings of the Drafting Committee which are not public meetings. However, the statement of the Chairman of the Drafting Committee is reflected in the summary records of the Commission which are published in the Commission’s *Yearbook.* [↑](#footnote-ref-130)
131. See *Yearbook of the International Law Commission, 1949,* Report to the General Assembly, para. 12. [↑](#footnote-ref-131)
132. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), paras. 148 (*b*) and 177. [↑](#footnote-ref-132)
133. Document A/CN.4/1 (United Nations publication, Sales No. 48.V.1) reissued under the symbol A/CN.4/1/Rev.1 (United Nations publication, Sales No. 48.V.1(1)). [↑](#footnote-ref-133)
134. See *Yearbook of the International Law Commission, 1968,* vol. II, document A/7209/Rev.1, annex; and ibid., *1970,* vol. II, document A/CN.4/230. [↑](#footnote-ref-134)
135. See *Yearbook of the International Law Commission, 1971,* vol. II (Part Two), document A/CN.4/245. [↑](#footnote-ref-135)
136. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), paras. 246–248 and annex II. [↑](#footnote-ref-136)
137. See *Yearbook of the International Law Commission, 1962,* vol. II, document A/5209, paras. 24–62; ibid., *1967,* vol. II, document A/6709/Rev.1, para. 49; ibid., *1968,* vol. II, document A/7209/Rev.1, paras. 95–101; ibid., *1969,* vol. II, document A/7610/Rev.1, para. 91; ibid., *1970,* vol. II, document A/8010/Rev.1, para. 87; ibid., *1971,* vol. II (Part One), document A/8410/Rev.1, paras. 119–128; ibid., *1972,* vol. II, document A/CN.4/254; ibid., *1973,* vol. II, document A/9010/Rev.1, paras. 134–176; ibid., *1977,* vol. II (Part Two), paras. 96–111; ibid., *1992,* vol. II (Part Two), paras. 368–370; ibid., *1995,* vol. II (Part Two), paras. 498–503; ibid., *1996,* vol. II (Part Two), paras. 244–248 and annex II; ibid., *1997,* vol. II (Part Two), para. 238; ibid., *1998,* vol. II (Part Two), paras. 551–554; i bid., *1999,* vol. II (Part Two), paras. 640–644; ibid., *2000,* vol. II (Part Two), paras. 726–733; *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10), paras. 517–521; ibid., *Fifty-ninth Session, Supplement No. 10* (A/59/10), paras. 362–364; ibid., *Sixtieth Session, Supplement No. 10* (A/60/10), para. 500; and , *Sixty-first Session, Supplement No. 10* (A/61/10), paras. 256–260. [↑](#footnote-ref-137)
138. For example, in resolution 54/111 of 9 December 1999, the General Assembly encouraged the Commission to proceed with the selection of new topics for its next quinquennium corresponding to the wishes and preoccupations of States and to present possible outlines and related information for new topics to facilitate decision thereon by the Assembly. [↑](#footnote-ref-138)
139. The Secretariat has, on occasion, submitted papers, both formal and informal, related to possible new topics for inclusion in the long-term programme of work, in accordance with article 17 of the Statute of the International Law Commission, following a request to do so. See, for example, *Official Records of the General Assembly, Sixty-First Session, Supplement No. 10* (A/61/10), para. 261. [↑](#footnote-ref-139)
140. The topics may be drawn from the list of possible future topics identified by the Commission in 1996 or suggested by members of the Commission. [↑](#footnote-ref-140)
141. See *Yearbook of the International Law Commission, 1992,* vol. II (Part Two), para. 369. [↑](#footnote-ref-141)
142. Since 1992, the following topics have been included in the Commission’s long-term programme of work: Law and practice relating to reservations to treaties (in 1993, see *Yearbook of the International Law Commission, 1993,* vol. II (Part Two), para. 427); State succession and its impact on the nationality of natural and legal persons (in 1993, ibid., para. 427); Diplomatic protection (in 1995, ibid., *1995,* vol. II (Part Two)*,* para. 501; Ownership and protection of wrecks beyond the limits of national maritime jurisdiction (in 1996, ibid., *1996,* vol. II (Part Two), para. 248); Unilateral acts of States (in 1996, ibid, para. 248); Responsibility of international organizations (in 2000, ibid., vol. II (Part Two), para. 729); Shared natural resources of States (in 2000, ibid., para. 729); Risks ensuing from fragmentation of international law (in 2000, ibid., para. 729); Effects of armed conflict on treaties (in 2000, ibid., para. 729); Expulsion of aliens (in 2000, ibid., para. 729); The obligation to extradite or prosecute (*aut dedere aut judicare*) (in 2004, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10), paras. 362–363); Immunity of State officials from foreign criminal jurisdiction (in 2006, Ibid., *Sixty-first session, Supplement No. 10* (A/61/10), para. 257); Jurisdictional immunity of State officials from foreign criminal jurisdiction (in 2006, ibid., para. 257); Protection of persons in the event of disasters (in 2006, ibid., para. 257); Protection of personal data in transborder flow of information (in 2006, ibid., para. 257); and Extraterritorial jurisdiction (in 2006, ibid., para. 257). [↑](#footnote-ref-142)
143. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), paras. 148 *(a)* and 165. For the consideration of the long-term programme of work in accordance with this procedure in subsequent years, see ibid.*, 1997,* vol. II (Part Two), para. 238; ibid., *1998,* vol. II (Part Two), paras. 551–554; ibid., 1999, vol. II (Part Two), para. 642; ibid., 2000, vol. II (Part Two), paras. 726–733; *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* (A/54/10), para. 642; ibid.*, Fifty-fifth Session, Supplement No. 10* (A/55/10), paras. 726–733; ibid., *Fifty-seventh Session, Supplement No. 10* (A/57/10), para. 521; ibid., *Fifty-eighth Session, Supplement No. 10* (A/58/10), para. 439; ibid., *Fifty-ninth Session, Supplement No. 10* (A/59/10), paras. 362–363, ibid., *Sixty-first Session, Supplement No. 10* (A/61/10), paras. 256–261. [↑](#footnote-ref-143)
144. See *Yearbook of the International Law Commission, 1997,* vol. II (Part Two), para. 238; ibid., *1998,* vol. II (Part Two), para. 553 and *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), para. 256. [↑](#footnote-ref-144)
145. Document A/CN.4/1 (United Nations publication, Sales No. 48.V.1) reissued under the symbol A/CN.4/1/Rev.1 (United Nations publication, Sales No. 48.V.1(1)). [↑](#footnote-ref-145)
146. At its fourth session, in 1952, the Commission decided, in accordance with a suggestion of the Special Rapporteur, to use the term “territorial sea” in lieu of “territorial waters.” [↑](#footnote-ref-146)
147. At its fifty-third session, in 2001, the Commission decided to amend the title of the topic to “Responsibility of States for internationally wrongful acts.” See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10), para. 68. In practice, the topic is still referred to by its previous title “State responsibility.” [↑](#footnote-ref-147)
148. The sub-topic was originally entitled “Succession of States in respect of rights and duties resulting from sources other than treaties.” The Commission adopted the new title to read as above at its twentieth session, in 1968. [↑](#footnote-ref-148)
149. The third sub-topic has never been the subject of substantive consideration by the Commission. [↑](#footnote-ref-149)
150. Included in the Commission’s long-term programme of work in 2006 (see footnote 142).. [↑](#footnote-ref-150)
151. See *Yearbook of the International Law Commission, 1949,* Report to the General Assembly, para. 23. [↑](#footnote-ref-151)
152. In resolution 1400 (XIV) of 21 November 1959, the General Assembly requested the Commission, as soon as it considered it advisable, to undertake the codification of the principles and rules of international law relating to the right of asylum. [↑](#footnote-ref-152)
153. See *Yearbook of the International Law Commission, 1960,* vol. II, document A/4425, para. 39. In 1967, the General Assembly adopted the Declaration on Territorial Asylum, General Assembly resolution 2312 (XXII) of 14 December 1967, taking into consideration the work of codification to be undertaken by the International Law Commission in accordance with General Assembly resolution 1400 (XIV). [↑](#footnote-ref-153)
154. See *Yearbook of the International Law Commission, 1977,* vol. II (Part Two), para. 109. Earlier that year, the United Nations Conference on Territorial Asylum, which had been convened by the Secretary-General, in consultation with the United Nations High Commissioner for Refugees, was held in Geneva, from 10 January to 4 February 1977, in accordance with General Assembly resolution 3456 (XXX) of 9 December 1975. The conference ended inconclusively. See *Yearbook of the United Nations,* vol. 31, 1977, pp.625–626. A recommendation by the Conference that the General Assembly, at its thirty-second session, consider the question of convening at an appropriate time a further session of the Conference (see document A/CONF.78/12, para. 25) was not acted upon. As regards the question of diplomatic asylum, the General Assembly, in resolution 3497 (XXX) of 15 December 1975, decided to give further consideration to the matter at a future session. [↑](#footnote-ref-154)
155. This topic was considered by the Commission in accordance with article 24 of its Statute. [↑](#footnote-ref-155)
156. This topic was originally entitled “Draft code of offences against the peace and security of mankind.” The Commission, at its thirty-ninth session, in 1987, recommended to the General Assembly that the title of the topic in English be amended to read as above in order to achieve greater uniformity and equivalence between different language versions. The General Assembly agreed with this recommendation in resolution 42/151 of 7 December 1987. [↑](#footnote-ref-156)
157. At its twentieth session, in 1968, the Commission decided to amend the title of the topic, without altering its meaning, by changing the word “intergovernmental” to “international.” [↑](#footnote-ref-157)
158. The Commission initially considered this subject under the topic of ad hoc diplomacy, following the submission of the Commission’s final draft on diplomatic intercourse and immunities in 1958 (*see pages 149 and 150*)*.* [↑](#footnote-ref-158)
159. This topic was preliminarily considered by the Commission under an agenda item entitled “Proposals on the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier.” [↑](#footnote-ref-159)
160. In resolution 32/48 of 8 December 1977, the Assembly requested the Secretary-General to prepare a report on the techniques and procedures used in the elaboration of multilateral treaties. Also in that resolution, the General Assembly, bearing in mind the important contribution of the Commission to the preparation of multilateral treaties, provided for the participation of the Commission in the review in question. The Commission was invited, as were Governments, to submit its observations on the subject for inclusion in the Secretary-General’s report. Pursuant to that invitation, the Commission considered the subject at its thirtieth and thirty-first sessions, in 1978 and 1979, respectively. See *Yearbook of the International Law Commission, 1979,* vol. II (Part Two), paras. 184–195. Its observations were transmitted to the Secretary-General in 1979 in the Commission’s document entitled “Report of the Working Group on review of the multilateral treaty-making process.” See *Yearbook of the International Law Commission, 1979,* vol. II (Part One), document A/CN.4/325. [↑](#footnote-ref-160)
161. This topic was originally entitled “The law and practice relating to reservations to treaties.” At its forty-seventh session, in 1995, the Commission concluded that the title of the topic should be amended to read as above. [↑](#footnote-ref-161)
162. The Commission’s study on the topic has proceeded under this title following the completion by the Commission of the preliminary study of the topic “State succession and its impact on the nationality of natural and legal persons” at its forty-eighth session, in 1996. [↑](#footnote-ref-162)
163. The topic was originally entitled “Risks ensuing from fragmentation of international law.” At its fifty-fourth session, in 2002, the Commission decided to change the title of the topic to read as above. [↑](#footnote-ref-163)
164. The topic was a follow-up to the topic of diplomatic intercourse and immunities. [↑](#footnote-ref-164)
165. The topic was a follow-up to the topic of the law of the sea. [↑](#footnote-ref-165)
166. The topic was also a follow-up to the topic of diplomatic intercourse and immunities. [↑](#footnote-ref-166)
167. The topic was a follow-up to the topic of the law of treaties. [↑](#footnote-ref-167)
168. The topic was also a follow-up to the topic of the law of treaties. [↑](#footnote-ref-168)
169. The topic was a follow-up to the topic of State responsibility. [↑](#footnote-ref-169)
170. This topic was referred to the Commission by the General Assembly for the further development and concretization of international diplomatic law (General Assembly resolutions 31/76 of 13 December 1976 and 33/139 and 33/140 of 19 December 1978). [↑](#footnote-ref-170)
171. The Commission undertook work on the topic “Reservations to treaties” in order to address the ambiguities and gaps in the provisions concerning reservations to treaties contained, in particular, in the Vienna Convention on the Law of Treaties which was based on the Commission’s earlier draft articles on the law of treaties. As regards the topic “Effects of armed conflicts on treaties”, on adopting the draft articles on the law of treaties, in 1966, the Commission was of the view that the case of the outbreak of hostilities between parties to a treaty was “wholly outside the scope of the general law of treaties to be codified in the present articles.” See *Yearbook of the International Law Commission, 1966,* vol. II, para. 38, commentary to article 69, para. (2). The same approach was later adopted in the Vienna Convention on the Law of Treaties (see annex V, section F), except that an express saving clause was included to the effect that “[t]he provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty from . . . the outbreak of hostilities between States” (article 73). [↑](#footnote-ref-171)
172. These topics were partially considered by the Commission in the course of its work on State responsibility. In addition, some aspects of the subject of responsibility of international organizations were examined in the course of the Commission’s work on the second part of the topic “Relations between States and international organizations,” dealing with the status, privileges and immunities of international organizations and their personnel. [↑](#footnote-ref-172)
173. This topic relates to some extent to the Commission’s previous work on the law of the non-navigational uses of international watercourses. [↑](#footnote-ref-173)
174. This issue had previously been considered by the Commission in the context of: the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law (Draft articles on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons, of 1972, draft article 6, see *Yearbook of the International Law Commission, 1972,* vol. II, chapter III.B); crimes against the peace and security of mankind (Draft code of crimes against the peace and security of mankind, draft article 9; see ibid.*, 1996,* vol. II (Part Two), para. 50) and the crimes within the jurisdiction of an international criminal court (Draft statute for an international criminal court, draft article 54; see ibid.*, 1994,* vol. II (Part Two), para. 91). [↑](#footnote-ref-174)
175. See *Yearbook of the International Law Commission, 1979,* vol. II (Part One), document A/CN.4/325, para. 57. [↑](#footnote-ref-175)
176. The topic *(23)* has never been the subject of substantive consideration by the Commission. See footnote 497. The work on the other two topics *(22)* and *(34)* was discontinued by the Commission before any final report was produced. [↑](#footnote-ref-176)
177. Document 848; II/2/46, *The United Nations Conference on International Organization,* [1945], vol. 9, pp. 177–178. [↑](#footnote-ref-177)
178. See the report of the Committee on the Progressive Development of International Law and its Codification, *Official Records of the General Assembly, Second Session, Sixth Committee, Annex 1,* para. 7. See also article 15 of the Statute of the Commission. [↑](#footnote-ref-178)
179. Such distinction between possible outcomes in the context of progressive development of international law, as opposed to its codification, has not always met with agreement in the Commission. See, for example, the debate, at the fifty-third session, in 2001, on the recommendation of the Commission to the General Assembly on the occasion of the adoption of the draft articles on responsibility of States for internationally wrongful acts. See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10), paras. 61–67. [↑](#footnote-ref-179)
180. See the report of the Committee on the Progressive Development of International Law and its Codification, *Official Records of the General Assembly, Second Session, Sixth Committee, Annex 1,* para. 7. [↑](#footnote-ref-180)
181. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), paras. 147 (a) and 156–159. [↑](#footnote-ref-181)
182. See *Yearbook of the International Law Commission, 1979,* vol. II (Part One), document A/CN.4/325, para. 13. [↑](#footnote-ref-182)
183. See *Yearbook of the International Law Commission, 1979,* vol. II (Part One), document A/CN.4/325, para. 16. [↑](#footnote-ref-183)
184. See *Yearbook of the International Law Commission, 1979,* vol. II (Part One), document A/CN.4/325, para. 22. [↑](#footnote-ref-184)
185. See *Yearbook of the International Law Commission,* *1979,* vol. II (Part One), document A/CN.4/325, para. 35. [↑](#footnote-ref-185)
186. For example, Governments may be requested to furnish the texts of laws, decrees, judicial decisions, treaties, diplomatic correspondence and other relevant documents under article 19 of the Statute. [↑](#footnote-ref-186)
187. See *Yearbook of the International Law Commission,* *1979,* vol. II (Part One), document A/CN.4/325, paras. 36–43. [↑](#footnote-ref-187)
188. At the Commission’s request or on his initiative, the Special Rapporteur’s initial presentation may be of a general and exploratory character, in the form of a working paper or preliminary report. See *Yearbook of the International Law Commission, 1979,* vol. II (Part One), document A/CN.4/325, para. 39. [↑](#footnote-ref-188)
189. The content of the commentary to draft articles is addressed in article 20 of the Statute. A distinction can be drawn between commentaries written on first reading, which may include minority views within the Commission, as well as a description of alternative solutions sought; and commentaries to draft articles adopted on second reading, which reflect only the decisions and positions taken by the Commission as a whole. [↑](#footnote-ref-189)
190. See *Yearbook of the International Law Commission*, *1979*, vol. II (Part One), document A/CN.4/325, paras. 44–49. [↑](#footnote-ref-190)
191. See *Yearbook of the International Law Commission,* *1958,* vol. II, document A/3859, paras. 60 and 61. [↑](#footnote-ref-191)
192. The commentaries are amended to explain the final version of the draft articles, including the solutions adopted with respect to any controversial issues, and updated to include the most recent precedents. [↑](#footnote-ref-192)
193. See *Yearbook of the International Law Commission*, *1979*, vol. II (Part One), document A/CN.4/325, paras. 50–56. [↑](#footnote-ref-193)
194. The General Assembly may refer drafts back to the Commission for reconsideration or redrafting under article 23, paragraph 2, of the Statute. The General Assembly took such action with respect to the draft articles on arbitral procedure submitted by the Commission to the General Assembly in 1953 (General Assembly resolution 989 (X) of 14 December 1955) as well as aspects of the draft articles on the jurisdictional immunities of States and their property (General Assembly, resolution 53/98 of 8 December 1998). [↑](#footnote-ref-194)
195. See, for instance, *Yearbook of the International Law Commission*, *1951,* vol. I. pp. 123 and 132–135; ibid., *1953,* vol. II, document A/2456, para. 54; ibid., *1956,* vol. II, document A/3159, paras. 25 and 26; ibid., *1961,* vol. II, document A/4843, para. 32; ibid., *1966,* vol. II, document A/6309/Rev.1, para. 35; ibid., *1967,* vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, para. 23; ibid., *1971,* vol. II (Part One), document A/8410/Rev.1, para. 50; ibid., *1974,* vol. II (Part One), document A/9610/Rev.1, para. 83; ibid., *1978,* vol. II (Part Two), para. 72; ibid., *1982,* vol. II (Part Two), para. 55 and ibid., *1996,* vol. II (Part Two), paras. 156 and 157. [↑](#footnote-ref-195)
196. These drafts, later included in the all-embracing draft on the law of the sea, became the basis for two conventions adopted by the first United Nations Conference on the Law of the Sea (1958). [↑](#footnote-ref-196)
197. The recommendation of the Commission was implicit in the identical provision of article 12 of the two draft conventions on the subject submitted to the General Assembly, which read: “The present Convention, having been approved by the General Assembly, shall . . . be open for signature . . . and shall be ratified.” [↑](#footnote-ref-197)
198. The Commission recommended to the General Assembly that appropriate measures be taken for the conclusion of a convention on special missions. [↑](#footnote-ref-198)
199. The Commission recommended that a convention be elaborated by the Assembly or an international conference of plenipotentiaries. [↑](#footnote-ref-199)
200. The Commission recommended that the General Assembly elaborate a convention. [↑](#footnote-ref-200)
201. With respect to the topic “Ways and means for making the evidence of customary international law more readily available,” no recommendation by the Commission in accordance with article 23, para. 1, of the Statute was required because of the nature of the work on the topic. [↑](#footnote-ref-201)
202. See, for example, the discussion at the Commission’s first session concerning the procedure to be followed in its work on the draft Declaration on Rights and Duties of States, in *Yearbook of the International Law Commission, 1949,* Report to the General Assembly, para. 53. The General Assembly, in taking note of the draft Declaration and in commending it to the continuing attention of Member States and jurists of all nations (resolution 375 (IV) of 6 December 1949), appeared to accept without question the thesis stated in the Commission’s report that it was within the competence of the Commission to adopt such procedure as it might deem conducive to the effectiveness of its work in respect of a special assignment even though such procedure differed from the procedures set forth in the Statute for progressive development or codification. See *Yearbook of the International Law Commission, 1949,* Report to the General Assembly, para. 53. See also *Yearbook of the International Law Commission, 1977,* vol. II (Part Two), paras. 116 and 117. [↑](#footnote-ref-202)
203. See *Yearbook of the International Law Commission*, *1979*, vol. II (Part One), document A/CN.4/325, paras. 57–61. [↑](#footnote-ref-203)
204. With respect to the draft Statute for an International Criminal Court submitted by the Commission to the General Assembly in 1994, the Commission recommended that the General Assembly convene an international conference of plenipotentiaries to study the draft Statute and to conclude a convention on the establishment of an international criminal court (*see page 111*). With respect to the draft Code of Crimes against the Peace and Security of Mankind submitted by the Commission to the General Assembly in 1996, the Commission recommended that the General Assembly select the most appropriate form which would ensure the widest possible acceptance of the draft Code (*see page 105*). [↑](#footnote-ref-204)
205. In this year, the Commission submitted its report containing the final text of the draft Statute for an International Criminal Court (*see page 111*). [↑](#footnote-ref-205)
206. At its twenty-ninth session, in 1977, the Commission, stated its intention to keep constantly under review the possibility of improving its method of work and procedures in the light of the specific features presented by the individual topics under consideration. See *Yearbook of the International Law Commission, 1977,* vol. II (Part Two), para. 120. This was reiterated at the Commission’s thirty-first session, in 1979, when the Commission conducted a comprehensive review of its methods of work, while preparing its observations on the item “Review of the multilateral treaty-making process,” as well as at its next session, in 1980. See *Yearbook of the International Law Commission, 1979,* vol. II (Part One), document A/CN.4/325, para. 16, and ibid., *1980,* vol. II (Part Two), para. 185, respectively. [↑](#footnote-ref-206)
207. See *Yearbook of the International Law Commission*, *1979*, vol. II (Part One), document A/CN.4/325, para. 16. However, in 1973, the Commission noted that “whatever improvements it may be possible to make in the methods of work of the Commission, it is clear that there is an inbuilt periodicity at work that places certain limits on the Commission’s ability to respond promptly to urgent requests.” See *Yearbook of the International Law Commission, 1973,* vol. II, document A/9010/Rev.1, para. 166. [↑](#footnote-ref-207)
208. Document A/CN.4/L.76. [↑](#footnote-ref-208)
209. See *Yearbook of the International Law Commission, 1958,* vol. II, document A/3859, paras. 59–62 and 65. [↑](#footnote-ref-209)
210. See *Yearbook of the International Law Commission, 1968,* vol. II, document A/7209/Rev.1, paras. 95–102 and annex. [↑](#footnote-ref-210)
211. See *Yearbook of the International Law Commission, 1968,* vol. II, document A/7209/Rev.1, para. 98. [↑](#footnote-ref-211)
212. See *Yearbook of the International Law Commission, 1975,* vol. II, document A/10010/ Rev.1, paras. 139–147. [↑](#footnote-ref-212)
213. See General Assembly resolution 3495 (XXX) of 15 December 1975. [↑](#footnote-ref-213)
214. As mentioned previously, the Commission’s current practice is to establish the Planning Group as a subsidiary body of the Commission (*see footnote 82*). [↑](#footnote-ref-214)
215. See *Yearbook of the International Law Commission, 1979*, vol. II (Part Two), paras. 184–195. [↑](#footnote-ref-215)
216. See *Yearbook of the International Law Commission, 1979*, vol. II (Part One), document A/CN.4/325. [↑](#footnote-ref-216)
217. See *Yearbook of the International Law Commission, 1987*, vol. II (Part Two), paras. 235–239. [↑](#footnote-ref-217)
218. See *Yearbook of the International Law Commission, 1992*, vol. II (Part Two), paras. 371 and 373. [↑](#footnote-ref-218)
219. See *Yearbook of the International Law Commission, 1995*, vol. II (Part Two), paras. 504–508. [↑](#footnote-ref-219)
220. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), paras. 142–243. [↑](#footnote-ref-220)
221. For the complete list of specific recommendations, see *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), para. 148. [↑](#footnote-ref-221)
222. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), paras. 148 *(1)* and 221. [↑](#footnote-ref-222)
223. See General Assembly resolution 52/156 of 15 December 1997. [↑](#footnote-ref-223)
224. See Rule 161 of the Rules of Procedure of the General Assembly. [↑](#footnote-ref-224)
225. See *Yearbook of the International Law Commission, 1949*, Report of the General Assembly, para. 5. [↑](#footnote-ref-225)
226. See *Yearbook of the International Law Commission, 1979*, vol. II (Part One), document A/CN.4/325, para. 7. [↑](#footnote-ref-226)
227. Similarly, while a topic may be on the programme of work of the Commission, it might not be on its agenda for the session in the hiatus following the adoption of draft articles on first reading when the draft articles are before Governments for their comments and observations. [↑](#footnote-ref-227)
228. See rule 51 of the Rules of Procedure of the General Assembly. [↑](#footnote-ref-228)
229. See *Yearbook of the International Law Commission, 1996*, vol. II (Part Two), para. 216. [↑](#footnote-ref-229)
230. See rule 106 of the Rules of Procedure of the General Assembly. [↑](#footnote-ref-230)
231. See *Yearbook of the International Law Commission*, *1979*, vol. II (Part One), document A/CN.4/325, para. 8. See also rules 108 (Quorum), 125 (Majority required) and 126 (Meaning of the phrase “members present and voting”) of the Rules of Procedure of the General Assembly. [↑](#footnote-ref-231)
232. See *Yearbook of the International Law Commission*, *1979*, vol. II (Part One), document A/CN.4/325, para. 8. [↑](#footnote-ref-232)
233. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), paras. 207–210. [↑](#footnote-ref-233)
234. The right to participate in a decision taken by a subsidiary body is limited to the members of that body. [↑](#footnote-ref-234)
235. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), para. 210. [↑](#footnote-ref-235)
236. See *Yearbook of the International Law Commission*, *1979*, vol. II (Part One), document A/CN.4/325, para. 65. [↑](#footnote-ref-236)
237. The recent practice of the Commission has been to provide a more concise description of the history of the consideration of each topic, in the introductory parts of the relevant chapters of its report. [↑](#footnote-ref-237)
238. See *Yearbook of the International Law Commission*, *1979*, vol. II (Part One), document A/CN.4/325, para. 66. [↑](#footnote-ref-238)
239. See pages 71-72. [↑](#footnote-ref-239)
240. The Commission’s report on its first session and as of its twenty-first session is published as *Supplement No. 10* of the *Official Records of the General Assembly*. The Commission’s report on its second session was published as *Supplement No. 12* and on its third to twentieth sessions as *Supplement No. 9* of the *Official Records of the General Assembly*. The report is subsequently published in the *Yearbook of the International Law* *Commission* (volume II, except for the *1949* *Yearbook* which consists of only one volume) together with a check-list of the documents issued during the session. [↑](#footnote-ref-240)
241. See *Yearbook of the International Law Commission*, *1979*, vol. II (Part One), document A/CN.4/325, para. 64. [↑](#footnote-ref-241)
242. The summary records of Commission meetings are provided in provisional form to its members and are published in final form in the *Yearbook of the International Law Commission.* [↑](#footnote-ref-242)
243. See General Assembly resolutions 32/151 of 19 December 1977, 34/141 of 17 December 1979, 35/163 of 15 December 1980, 36/114 of 10 December 1981, 37/111 of 16 December 1982 and all subsequent resolutions on the annual reports of the Commission to the General Assembly. See also *Yearbook of the International Law Commission*, *1980*, vol. II (Part Two), para. 190. [↑](#footnote-ref-243)
244. See *Yearbook of the International Law Commission, 1980*, vol. II (Part Two), paras. 188–190. In 2004, the Commission recalled that on several occasions it had considered the summary records to be an inescapable requirement for the procedures and methods of its work. In its view, “[t]hey constitute the equivalent of *travaux préparatoires* and are an indispensable part of the process of progressive development of international law and its codification. They are vital for the Commission’s work.” See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10), para. 367. [↑](#footnote-ref-244)
245. The Commission’s documents, reports and publications are also available on its website. See www.un.org/law/ilc/. [↑](#footnote-ref-245)
246. For the Commission’s discussions, see *Yearbook of the International Law Commission*, *1977*, vol. II (Part Two), paras. 124–126; ibid., *1980*, vol. II (Part Two), paras. 191 and 192; ibid., *1982*, vol. II (Part Two), para. 271; and *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10 (*A/58/10), paras. 440–443. [↑](#footnote-ref-246)
247. See *Yearbook of the International Law Commission*, *1977*, vol. II (Part Two), paras. 125 and 126. [↑](#footnote-ref-247)
248. The Commission indicated its understanding that regulations on the preparation of documents on the basis of Governments’ replies to a questionnaire or of submissions of the agencies and programmes of the United Nations do not affect the obligation of the Secretary-General under the Statute to publish *in extenso*, and in the languages of the Commission, all such replies whenever the work of the Commission and its procedures and methods so require. See *Yearbook of the International Law Commission*, *1980*, vol. II (Part Two), para. 191. [↑](#footnote-ref-248)
249. See *Yearbook of the International Law Commission, 1982*, vol. II (Part Two), para. 271. [↑](#footnote-ref-249)
250. See *Yearbook of the International Law Commission, 1980*, vol. II (Part Two), para. 192. [↑](#footnote-ref-250)
251. See *Yearbook of the International Law Commission, 1977*, vol. II (Part Two), para. 123; and ibid., *1980*, vol. II (Part Two), para. 192. [↑](#footnote-ref-251)
252. See General Assembly resolutions 32/151 of 19 December 1977, 34/141 of 17 December 1979, 35/163 of 15 December 1980, 36/114 of 10 December 1981, 37/111 of 16 December 1982, 38/138 of 19 December 1983 and all subsequent resolutions on the annual report of the Commission to the General Assembly. [↑](#footnote-ref-252)
253. The Commission referred to the following documentation: its annual reports, the reports of Special Rapporteurs as well as various related research projects, studies and other working documents. [↑](#footnote-ref-253)
254. See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), paras. 440–442. [↑](#footnote-ref-254)
255. See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), para. 443 and *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), para. 263 (reiterating “the importance of providing and making available all evidence of State practice and other sources of international law relevant to the performance of the Commission’s function of progressive development and codification of international law. While [the Commission was] aware of the advantages of being as concise as possible, it strongly believe[d] that an *a priori* limitation [could not] be placed on the length of its documentation and research projects, in particular reports of Special Rapporteurs”). [↑](#footnote-ref-255)
256. See *Yearbook of the International Law Commission, 1982*, vol. II (Part Two), para. 271. Subsequently confirmed in *Official Records of* *the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), para. 443. [↑](#footnote-ref-256)
257. General Assembly resolution 3071 (XXVIII) of 30 November 1973. [↑](#footnote-ref-257)
258. General Assembly resolution 3315 (XXIX) of 14 December 1974. [↑](#footnote-ref-258)
259. The thirty-eighth session, in 1986, was reduced to ten weeks for budgetary reasons. In response to the view expressed by the Commission, the twelve-week session was restored the following year. See Yearbook of the International Law Commission, 1986, vol. II (Part Two), para. 252 and General Assembly resolution 41/81 of 3 December 1986. The fifty-seventh session, in 2005, was reduced to eleven weeks as a cost-saving measure. See Official Records of the General Assembly, Sixtieth Session, Supplement No. 10 (A/60/10), para. 497. [↑](#footnote-ref-259)
260. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), paras. 148 *(m)* and224–226. [↑](#footnote-ref-260)
261. In 2005, the Commission decided to reduce the length of its fifty-seventh session by one week as a cost-saving measure. See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 10* (A/60/10), para. 497. [↑](#footnote-ref-261)
262. See *Yearbook of the International Law Commission, 1992*, vol. II (Part Two), para. 376. [↑](#footnote-ref-262)
263. See *Yearbook of the International Law Commission, 1996*, vol. II (Part Two), paras. 148 (n) and 227–232. [↑](#footnote-ref-263)
264. See *Yearbook of the International Law Commission, 1998*, vol. II (Part Two), para. 562. [↑](#footnote-ref-264)
265. See *Yearbook of the International Law Commission, 1999,* vol. II (Part Two), paras. 633–639. [↑](#footnote-ref-265)
266. See *Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10* (A/56/10), para. 260. [↑](#footnote-ref-266)
267. See *Yearbook of the International Law Commission, 1999,* vol. II (Part Two), paras. 635 and 638. [↑](#footnote-ref-267)
268. See *Yearbook of the International Law Commission, 1949,* Report to the General Assembly, para. 40; ibid., *1950,* vol. II, document A/1316, para. 22; ibid., *1951,* vol. II, document A/1858, para. 91; ibid., *1952,* vol. II, document A/2163, para. 55; ibid., *1953,* vol. II, document A/2456, para. 173; ibid., *1954,* vol. II, document A/2693, para. 79; and ibid., *1955,* vol. II, document A/2934, para. 29. The Commission initially decided to hold its sixth session in Geneva. However, this session was held in Paris. See *Yearbook of the International Law Commission, 1954,* vol. II, document A/2693, para. 1. [↑](#footnote-ref-268)
269. See *Yearbook of the International Law Commission, 1953,* vol. II, document A/2456, para. 173; and ibid., *1955,* vol. II, document A/2934, para. 26. [↑](#footnote-ref-269)
270. See *Yearbook of the International Law Commission, 1955,* vol. II, document A/2934, para. 25. [↑](#footnote-ref-270)
271. General Assembly resolution 984 (X) of 3 December 1955. [↑](#footnote-ref-271)
272. See *Yearbook of the International Law Commission, 2000,* vol. II (Part Two), para. 734. [↑](#footnote-ref-272)
273. The procedure to be followed in such cases is set forth in article 17, paragraph 2, of the Statute. [↑](#footnote-ref-273)
274. See *Yearbook of the International Law Commission, 1980,* vol. II (Part Two), para. 191. The Commission has emphasized the importance of the written comments submitted by Governments in response to the Commission’s requests on particular topics as an indispensable part of the dialogue between the Commission and Governments. See *Yearbook of the International Law Commission, 1999,* vol. II (Part Two), para. 616. [↑](#footnote-ref-274)
275. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), para. 180; and *Yearbook of the International Law Commission, 1999,* vol. II (Part Two), para. 617. [↑](#footnote-ref-275)
276. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), para. 148 *(d).* [↑](#footnote-ref-276)
277. See *Yearbook of the International Law Commission, 1958,* vol. II, document A/3859, paras. 60 and 61. [↑](#footnote-ref-277)
278. See, for instance, General Assembly resolution 52/156 of 15 December 1997 and subsequent resolutions on the report of the International Law Commission. [↑](#footnote-ref-278)
279. Until 1979, the relevant reports of the Sixth Committee to the General Assembly contained a summary of the main trends of the discussion in that Committee of the reports of the International Law Commission. For practical reasons, the summary has, since 1980, been issued as part of the Commission’s documentation and entitled “topical summaries.” [↑](#footnote-ref-279)
280. The General Assembly has usually taken the action recommended by the Commission with respect to its final products on the various topics and special assignments with the exception of the draft articles on arbitral procedure (submitted by the Commission in 1953), most-favoured-nation clauses and status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. In some cases, the General Assembly undertook further work on the text adopted by the Commission before taking the recommended action. For example, while the Commission, on transmitting the draft articles on jurisdictional immunities of States to the General Assembly, recommended the convening of a diplomatic conference to adopt the treaty, the Assembly established a Working Group of the Sixth Committee to consider several issues arising out of the draft articles. It was only following the resolution of those matters that a convention was adopted—by the Assembly itself (*see Part III.A, section 22*). The same recommendation was made by the Commission on transmitting the draft statute for an international criminal court. However, the General Assembly first established an Ad Hoc Committee, followed by a Preparatory Committee whose revised version of the draft statute was the text considered by the Rome Conference, in 1998 (*see Part III.A, section 7(c)*). The Commission has recognized that whether a particular set of draft articles is acceptable or appropriate for adoption at a given time is essentially a matter of policy for States. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), para. 182. At the time of writing, a final decision by the General Assembly on the outcome of the following draft articles was still pending: the draft articles on Nationality of natural persons in relation to the succession of States (adopted by the Commission at its fifty-first session, in 1999), the draft articles on responsibility of States for internationally wrongful acts (adopted by the Commission at its fifty-third session, in 2001), the draft articles on Prevention of transboundary harm from hazardous activities (adopted by the Commission at its fifty-third session, in 2001), the draft articles on diplomatic protection (adopted by the Commission at its fifty-eighth session, in 2006) and the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities (adopted by the Commission at its fifty-eighth session, in 2006). [↑](#footnote-ref-280)
281. This practice has not met with approval by all. See, for example, the criticism expressed by the representative of the United Kingdom during the debate on the Commission’s report in the Sixth Committee, at the fifty-fourth session of the General Assembly, in 1999. See document A/C.6/54/SR.24, para.35 (“Confusing the roles of Commission member and [G]overnment representative had not ensured independence or objectivity . . .”). [↑](#footnote-ref-281)
282. See *Yearbook of the International Law Commission, 1992,* vol. II (Part Two), para. 373. The Commission has extended its practice of highlighting the issues on which comment is specifically sought in a special chapter of its annual report to the General Assembly devoted to specific issues on which comments would be of particular interest to the Commission. See *Yearbook of the International Law Commission, 1999,* vol. II (Part Two), para. 614. This practice has been endorsed by the General Assembly which has requested the Commission to continue to pay special attention to indicating in its annual report for each topic, those specific issues, if any, on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest in providing effective guidance for the Commission in its future work. See, for instance, General Assembly resolution 44/35 of 4 December 1989 and subsequent resolutions on the report of the International Law Commission. [↑](#footnote-ref-282)
283. See *Yearbook of the International Law Commission, 1977,* vol. II (Part Two), para. 130 and *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), para. 445. The relevant chapters are also posted on the Commission’s website shortly after the end of the session. In 1996, the Commission recommended that the issues on which comment is specifically sought from the Sixth Committee should be identified, if possible, before the adoption of draft articles on the point and these issues should be of a more general, “strategic” character rather than issues of drafting technique. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), paras. 148 *(c)* and 181. In 2003, the Commission further noted that Special Rapporteurs may wish to provide sufficient background and substantive elaboration to better assist Governments in developing their responses. See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), para. 446. [↑](#footnote-ref-283)
284. This information is included in the resolution adopted by the General Assembly on the agenda item relating to the Commission’s annual report. [↑](#footnote-ref-284)
285. In 2003, following an initiative by Sweden and Austria, the General Assembly designated the first week in which the report of the Commission is discussed in the Sixth Committee to be known as “International Law Week,” and encouraged Member States to consider being represented at the level of legal adviser during that week. See General Assembly resolution 58/77 of 9 December 2003 and subsequent resolutions. [↑](#footnote-ref-285)
286. General Assembly resolution 44/35 of 4 December 1989. [↑](#footnote-ref-286)
287. General Assembly resolutions 55/152 of 12 December 2000 and subsequent resolutions. Each year since 2004, informal consultations have been held, at the annual meeting of the Sixth Committee, between the members of the Committee and those Special Rapporteurs of the Commission in attendance, to discuss issues arising out of the work of the Commission. The informal consultations held in 2006 also included several members of the Commission who were present in New York for the 2006 election. The General Assembly has welcomed this so-called “enhanced dialogue” between the two bodies and called for its continuation. See General Assembly resolution 59/41 of 2 December 2004, and subsequent resolutions. [↑](#footnote-ref-287)
288. Some of the changes have been instituted by the Sixth Committee based on the suggestions made by the Commission. See, for instance, *Yearbook of the International Law Commission, 1977,* vol. II (Part Two), paras. 127–129; ibid., *1988,* vol. II (Part Two), paras. 581 and 582; and ibid., *1989,* vol. II (Part Two), para. 742. [↑](#footnote-ref-288)
289. This was one of the recommendations made by the Ad Hoc Working Group of the Sixth Committee established at the forty-third session of the General Assembly, in 1988, to deal with the question of improving the ways in which the report of the Commission was considered in the Committee, with a view to providing effective guidance for the Commission in its work. The Working Group’s conclusions were summarized in the oral report of its Chairman to the Sixth Committee (see document A/C.6/43/SR.40, paras. 10–18). The relevant paragraphs of the summary record of the 40th meeting of the Sixth Committee are reproduced in the topical summary of the forty-third session of the General Assembly (see document A/CN.4/L.431, annex 2). [↑](#footnote-ref-289)
290. Resolutions 43/169, 44/35, 45/41, 46/54, 47/33, 48/31 and 49/51. [↑](#footnote-ref-290)
291. The report of the Sixth Committee on the agenda item relating to the report of the International Law Commission, which indicates the relevant documentation, is published in the *Official Records of the General Assembly* for each session. Relevant information may also be found on the website of the Sixth Committee. See www.un.org/law/cod/sixth. [↑](#footnote-ref-291)
292. In some situations, a topic relating to the work of the Commission may be considered by the General Assembly as a separate agenda item and be the subject of a separate resolution or decision. For example, a topic on which the Commission has already submitted a final report to the General Assembly would not be covered in its subsequent annual reports to the General Assembly. Therefore, the consideration of this topic by the General Assembly would be provided for under a separate agenda item until the Assembly has concluded its consideration of the topic. In 2006, the General Assembly decided to include in the provisional agenda of its sixty-second session (2007) a single agenda item entitled “Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm,” to consider two separate sets of draft articles developed by the Commission (the first on “prevention,” adopted in 2001, and the second on “liability” adopted in 2006). See General Assembly resolution 61/36 of 4 December 2006. [↑](#footnote-ref-292)
293. See *Yearbook of the International Law Commission, 1979,* vol. II (Part One), document A/CN.4/325, para. 18. [↑](#footnote-ref-293)
294. In a further instance, concerning the topic “Jurisdictional immunities of States and their property,” the Sixth Committee was involved in the task of elaborating a draft convention, initially through two Working Groups which were established to resolve several outstanding matters arising out of the Commission’s draft articles. (*see Part III.A., section 22*). Subsequently, an Ad Hoc Committee was established by the General Assembly to finalize the text of the draft convention, the text of which was considered and submitted by the Sixth Committee to the General Assembly for adoption as the United Nations Convention on Jurisdictional Immunities of States and their property (*see Annex V, section M*). [↑](#footnote-ref-294)
295. See *Yearbook of the International Law Commission, 1979,* vol. II (Part One), document A/CN.4/325, para. 93 and 98 (d). Commission members have, on occasion, also been active in the Sixth Committee’s consideration of the Commission’s work, albeit in their capacity as Government representatives. For example, the informal consultations on the draft articles on jurisdictional immunities of States and their property, held in the context of the Sixth Committee, as well as the first working group established by the Committee, were chaired by a sitting member of the Commission. The second working group, established by the Committee in 1999, and the Ad Hoc Committee established by the General Assembly in 2000 to finalize the draft convention, were also chaired by a member of the Commission. [↑](#footnote-ref-295)
296. The article further provides for the procedure that the Commission should follow if it deems it appropriate to proceed with the study of such proposals or drafts, including circulating a questionnaire to the bodies concerned and, if desirable, making an interim report to the organ which has submitted the proposal or draft. [↑](#footnote-ref-296)
297. The advisability of consultation by the Commission with intergovernmental organizations whose task is the codification of international law is specifically recognized in article 26, paragraph 4, of the Statute of the Commission. [↑](#footnote-ref-297)
298. See *Yearbook of the International Law Commission, 1999,* vol. II (Part Two), paras. 620–627. [↑](#footnote-ref-298)
299. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), paras. 148 *(b)* and *(r*), 165, 177–178 and 240. [↑](#footnote-ref-299)
300. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), para. 238 *(d)* . [↑](#footnote-ref-300)
301. See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), paras. 373 and 453. [↑](#footnote-ref-301)
302. See *Yearbook of the International Law Commission, 1952,* vol. I, SR. 155, para. 16. [↑](#footnote-ref-302)
303. See *Yearbook of the International Law Commission, 1999,* vol. II (Part Two), para. 621. [↑](#footnote-ref-303)
304. See *Yearbook of the International Law Commission, 1999,* vol. II (Part Two), para. 622. [↑](#footnote-ref-304)
305. See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), paras. 373 and 453; and *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10), para. 80. [↑](#footnote-ref-305)
306. See *Yearbook of the International Law Commission, 1954*, vol. II, document A/2693, para. 63. [↑](#footnote-ref-306)
307. See *Yearbook of the International Law Commission, 1999,* vol. II (Part Two), para. 620. [↑](#footnote-ref-307)
308. Study groups established by the Government of Japan, the International Law Association and the American Society of International Law provided useful feedback to the Commission and the Special Rapporteur. See *Yearbook of the International Law Commission, 1999,* vol. II (Part Two), para. 621. [↑](#footnote-ref-308)
309. See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), para. 453 *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10), para. 375; and *Official Records of the General Assembly, Sixtieth Session, Supplement No. 10* (A/60/10), para. 509. At its fifty-eighth session, in 2006, and in accordance with article 25(1) of its Statute, the Commission recommended that a meeting be organized, in 2007, with United Nations experts in the field of human rights, including representatives from human rights bodies, in order to hold a discussion on issues relating to reservations to human rights treaties. See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), para. 268. The General Assembly, in resolution 61/34, of 4 December 2006, took note of the proposed meeting. [↑](#footnote-ref-309)
310. See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), para. 454. [↑](#footnote-ref-310)
311. See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), para. 454; and *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10), para. 376. [↑](#footnote-ref-311)
312. See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 10* (A/60/10), para. 507. [↑](#footnote-ref-312)
313. The Commission has noted the fundamental and basic role that materials, comments and observations submitted by international organizations play in the codification methods of the Commission. See *Yearbook of the International Law Commission, 1980*, vol. II (Part Two), para. 191. [↑](#footnote-ref-313)
314. See *Yearbook of the International Law Commission, 1971*, vol. II (Part One), document A/8410/Rev.1, para. 15; ibid., *1978*, vol. II (Part Two), paras. 148 and 150–153; and ibid., *1995*, vol. II (Part Two), para. 489. [↑](#footnote-ref-314)
315. See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), para. 52; *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10), para. 66 (calling for further contributions from international organizations); and *Official Records of the General Assembly, Sixtieth Session, Supplement No. 10* (A/60/10), para. 196. See General Assembly resolution 58/77 of 9 December 2003. [↑](#footnote-ref-315)
316. The proceedings of the Colloquium were published in “Making Better International Law: the International Law Commission at 50,” 1998, United Nations Sales Publication, No. 98.V.5. [↑](#footnote-ref-316)
317. The proceedings of the seminar were published in “The International Law Commission Fifty Years After: An Evaluation.” See *Selected bibliography.* See also *Yearbook of the International Law Commission, 1999,* vol. II (Part Two), paras. 623–625. [↑](#footnote-ref-317)
318. This close relationship is, in part, due to the fact that a significant number of Judges of the International Court of Justice were former members of the Commission. [↑](#footnote-ref-318)
319. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), paras. 148 *(q)* and 239. [↑](#footnote-ref-319)
320. See *Yearbook of the International Law Commission, 1999,* vol. II (Part Two), para. 622, and subsequent reports of the Commission to the General Assembly. [↑](#footnote-ref-320)
321. See resolution 53/102 of 8 December 1998 and subsequent resolutions. [↑](#footnote-ref-321)
322. See for example, the view expressed by the Chairman of the Commission in introducing the annual report in the Sixth Committee, in 2003, that “[t]he importance of the role of the Codification Division in the work of the Commission rested not only on the high quality of the members of the Division, their hard work and commitment to the Commission, but also on the fact that the members of the Division were involved in dealing both with the content and substance of work as well as with the procedural and technical aspects of servicing. That provided continuous and useful interaction and feedback between the Commission and its Secretariat. The fact that the Codification Division served also as the Secretariat of the Sixth Committee provided an invaluable and irreplaceable link between the two bodies. The Codification Division was thus in a position to be a source of information and unique expertise mutually beneficial for both bodies. That quality of servicing must be preserved.” See Document A/C.6/58/SR.14, para. 6. [↑](#footnote-ref-322)
323. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), para. 234. [↑](#footnote-ref-323)
324. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), para. 234. [↑](#footnote-ref-324)
325. See *Yearbook of the International Law Commission*, *1980*, vol. II (Part Two), para. 192. See the bibliography (in volume II) for a list of substantive studies undertaken by the Secretariat. [↑](#footnote-ref-325)
326. For example, the Codification Division assisted the Commission in the review of its long-term programme of work by preparing surveys on international law in 1949 and 1971, as discussed above. [↑](#footnote-ref-326)
327. See *Yearbook of the International Law Commission*, *1979*, vol. II (Part One), document A/CN.4/325, para. 9. [↑](#footnote-ref-327)
328. See *Selected bibliography.* [↑](#footnote-ref-328)
329. See http://www.un.org/law/ilc. [↑](#footnote-ref-329)
330. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), paras. 148 *(o)* and 233–234. [↑](#footnote-ref-330)
331. In addition, at the request of the General Assembly, the Commission submitted its final report on the topic “Review of the Multilateral Treaty-Making Process” to the Secretary-General for inclusion in his report on the subject (see footnote 160). [↑](#footnote-ref-331)
332. The Commission’s work on a topic or sub-topic at its various sessions is reflected in the relevant chapter of its annual report on each session which is reproduced in the corresponding *Yearbook.* The relevant documentation that was before the Commission at a particular session is also indicated in the *Yearbook.* [↑](#footnote-ref-332)
333. Document A/285. [↑](#footnote-ref-333)
334. Document A/CN.4/2 and Add.1 (Preparatory Study concerning a draft Declaration on the Rights and Duties of States). [↑](#footnote-ref-334)
335. See *Yearbook of the International Law Commission, 1949,* Report to the General Assembly, paras. 46–52. [↑](#footnote-ref-335)
336. See *Yearbook of the International Law Commission, 1949,* Report to the General Assembly, para. 53. [↑](#footnote-ref-336)
337. See *Yearbook of the International Law Commission, 1949,* Report to the General Assembly, para. 52. [↑](#footnote-ref-337)
338. See *Yearbook of the International Law Commission, 1950*, vol. II, document A/1316, paras. 24–94. [↑](#footnote-ref-338)
339. I.e., *United Nations* *Juridical Yearbook* (of which a provisional volume for 1962 and printed volumes for the following years have been issued); *United Nations Legislative Series* (25 volumes of which have been issued); *List of Treaty Collections* (published in 1955); *Cumulative Index* of the United Nations *Treaty Series* (of which No. 41, the latest one as of 31 January 2007, covers the *Treaty Series*, vols. 2201-2250); *Repertoire of the Practice of the Security Council* (originally published in 1954, with supplements issued subsequently); *Repertory of Practice of United Nations Organs* (originally published in 1955, with supplements issued later); and *Reports of International Arbitral Awards* (25 volumes of which have been issued). In addition, the Secretariat of the United Nations has issued *Summary of Judgements, Advisory Opinions and Orders of the International Court of Justice* (covering the periods 1948–1991, 1992–1996 and 1997–2002)*.* [↑](#footnote-ref-339)
340. United Nations, *Treaty Series,* vol. 398, p. 9, and vol. 416, p. 51. [↑](#footnote-ref-340)
341. Document A/CN.4/5. [↑](#footnote-ref-341)
342. See *Yearbook of the International Law Commission, 1950*, vol. II, document A/CN.4/22. [↑](#footnote-ref-342)
343. See *Yearbook of the International Law Commission, 1950*, vol. II, document A/1316, paras. 97–127. [↑](#footnote-ref-343)
344. Observations of Member States on the Commission’s formulation of the Nürnberg principles are contained in *Yearbook of the International Law Commission, 1951*, vol. II, document A/CN.4/45 and Add.1 and 2. In addition, the second report of the Special Rapporteur on a draft code of offences against the peace and security of mankind (ibid., document A/CN.4/44) contained a digest of the observations on the Commission’s formulation of the Nürnberg principles made by delegations during the fifth session of the General Assembly. As requested by the General Assembly, the Commission took into account the comments and observations received from Governments on the formulation of the Nürnberg principles (*see footnote 374*). [↑](#footnote-ref-344)
345. For the report of Ricardo J. Alfaro, see *Yearbook of the International Law Commission, 1950,* vol. II, document A/CN.4/15, and for the report of A. E. F. Sandström, see ibid., document A/CN.4/20. [↑](#footnote-ref-345)
346. Memorandum entitled “Historical survey of the question of international criminal jurisdiction” (document A/CN.4/7/Rev.1 published in United Nations publication, Sales No. 1949.V.8); and bibliography on International Criminal Law and International Criminal Court (document A/CN.4/28). [↑](#footnote-ref-346)
347. See *Yearbook of the International Law Commission, 1950*, vol. II, document A/1316, paras. 128–145. [↑](#footnote-ref-347)
348. See *Official Records of the General Assembly, Seventh Session, Supplement No. 11* (A/2136). [↑](#footnote-ref-348)
349. See *Official Records of the General Assembly, Ninth Session, Supplement No. 12* (A/2645). [↑](#footnote-ref-349)
350. See *Official Records of the General Assembly, Twenty-third Session, Annexes*, vol. I, agenda item 8, document A/BUR/171/Rev.1, para. 4. [↑](#footnote-ref-350)
351. See *Official Records of the General Assembly, Twenty-third Session, Annexes*, vol. I, agenda item 8, document A/7250, para. 10. [↑](#footnote-ref-351)
352. See *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 8, document A/BUR/182, para. 26. [↑](#footnote-ref-352)
353. See *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 86, document A/9890, para. 2. [↑](#footnote-ref-353)
354. United Nations, *Treaty Series*, vol. 78, p. 277. [↑](#footnote-ref-354)
355. See *Official Records of the General Assembly, Fifth Session, Annexes*, agenda item 56, document A/1372. [↑](#footnote-ref-355)
356. At this session, the Commission recalled its preliminary discussion of the question at its second session, in 1950, on the basis of the report of the Special Rapporteur on the topic of the law of treaties (document A/CN.4/23). [↑](#footnote-ref-356)
357. See *Yearbook of the International Law Commission, 1951,* vol. II, document A/CN.4/41. [↑](#footnote-ref-357)
358. See *Yearbook of the International Law Commission, 1951,* vol. II, documents A/CN.4/L.9 and A/CN.4/L.14. [↑](#footnote-ref-358)
359. The Court declared that a State which has made and maintained a reservation which has been objected to by one or more of the parties to the Convention but not by others, can be regarded as a party to the Convention if the reservation is compatible with the object and purpose of the Convention; otherwise that State cannot be regarded as a party. International Court of Justice, *Reports of Judgments, Advisory Opinions and Orders, 1951*, p. 29. [↑](#footnote-ref-359)
360. See *Yearbook of the International Law Commission, 1951*, vol. II, document A/1858, paras. 12–34. [↑](#footnote-ref-360)
361. See annex V, section F. [↑](#footnote-ref-361)
362. See annex V, section K. [↑](#footnote-ref-362)
363. See *Official Records of the General Assembly, Fifth Session, Annexes*, agenda item 72, document A/C.1/608. [↑](#footnote-ref-363)
364. The Commission considered the question on the basis of chapter II of the second report of the Special Rapporteur for the draft code of offences against the peace and security of mankind entitled “The Possibility and Desirability of a Definition of Aggression” (see *Yearbook of the International Law Commission, 1951*, vol. II, document A/CN.4/44) as well as memoranda and proposals presented by other members of the Commission (see ibid., documents A/CN.4/L. 6–8, 10–12 and 19). [↑](#footnote-ref-364)
365. See *Yearbook of the International Law Commission, 1951*, vol. II, document A/1858, para. 53. [↑](#footnote-ref-365)
366. See *Official Records of the General Assembly, Seventh Session, Annexes*, agenda item 54, document A/2211. [↑](#footnote-ref-366)
367. See *Official Records of the General Assembly, Ninth Session, Supplement No. 11* (A/2638). [↑](#footnote-ref-367)
368. See *Official Records of the General Assembly, Twelfth Session, Supplement No. 16* (A/3574). [↑](#footnote-ref-368)
369. For the reports of the committee, see documents A/AC.91/2, 3 and 5. [↑](#footnote-ref-369)
370. See *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 19* (A/9619). [↑](#footnote-ref-370)
371. The text of the Definition of Aggression is contained in General Assembly resolution 3314 (XXIX), annex. See also *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 86, document A/9890. [↑](#footnote-ref-371)
372. This topic was originally entitled “Draft code of offences against the peace and security of mankind”. At its thirty-ninth session, in 1987, the Commission recommended to the General Assembly that it amend the title of the topic in English so that it would read as above. The General Assembly agreed with this recommendation in resolution 42/151 of 7 December 1987. [↑](#footnote-ref-372)
373. See *Yearbook of the International Law Commission, 1950*, vol. II, document A/CN.4/25; ibid., *1951*, vol. II, document A/CN.4/44; and ibid., *1954*, vol. II, document A/CN.4/85. [↑](#footnote-ref-373)
374. See *Yearbook of the International Law Commission, 1950*, vol. II, document A/CN.4/19 and Add.1 and 2; *Official Records of the General Assembly, Seventh Session, Annexes*, agenda item 54, document A/2162 and Add.1 as well as document A/2162/Add.2. The Commission also examined the comments and observations received from Governments on the formulation of the Nürnberg principles (see *Yearbook of the International Law Commission, 1951,* vol. II, document A/CN.4/45 and Add.1 and 2). [↑](#footnote-ref-374)
375. See *Yearbook of the International Law Commission, 1950,* vol. II, document A/CN.4/39 as well as document A/CN.4/72. [↑](#footnote-ref-375)
376. See *Yearbook of the International Law Commission, 1951*, vol. II, document A/1858, paras. 57 and 59. [↑](#footnote-ref-376)
377. See *Yearbook of the International Law Commission, 1951*, vol. II, document A/1858, para. 52 (a, b and c). [↑](#footnote-ref-377)
378. Trial of the Major War Criminals before the International Military Tribunal, Nürnberg, 14 November 1945–1 October 1946, published at Nürnberg, Germany, 1947, p. 223. [↑](#footnote-ref-378)
379. See *Yearbook of the International Law Commission, 1951*, vol. II, document A/1858, para. 59, article 1. [↑](#footnote-ref-379)
380. See *Yearbook of the International Law Commission, 1951*, vol. II, document A/1858, para. 52 (d). [↑](#footnote-ref-380)
381. See *Yearbook of the International Law Commission, 1951*, vol. II, document A/1858, para. 59, article 5 and its commentary. [↑](#footnote-ref-381)
382. See *Yearbook of the International Law Commission, 1954*, vol. II, document  
      A /CN.4/85. [↑](#footnote-ref-382)
383. See *Yearbook of the International Law Commission, 1954*, vol. II, document A/2693, paras. 50 and 51. [↑](#footnote-ref-383)
384. See *Yearbook of the International Law Commission, 1954*, vol. II, document A/2693, paras. 49 and 54. [↑](#footnote-ref-384)
385. See *Yearbook of the International Law Commission, 1977*, vol. II (Part Two), para. 111. [↑](#footnote-ref-385)
386. See *Official Records of the General Assembly, Thirty-second Session, Annexes*, agenda item 131, document A/32/470. [↑](#footnote-ref-386)
387. Document A/35/210 and Add.1 and 2 and Add.2/Corr.1. [↑](#footnote-ref-387)
388. See *Yearbook of the International Law Commission, 1983,* vol. II (Part One), document A/CN.4/364; ibid., *1984,* vol. II (Part One), document A/CN.4/377; ibid., *1985*, vol. II (Part One), document A/CN.4/387; ibid.*, 1986,* vol. II (Part One), document A/CN.4/398; ibid., *1987*, vol. II (Part One), document A/CN.4/404; ibid., *1988,* vol. II (Part One), document A/CN.4/411; ibid., *1989,* vol. II (Part One), document A/CN.4/419 and Add.1; ibid., *1990,* vol. II (Part One), document A/CN.4/430 and Add.1; ibid., *1991,* vol. II (Part One), document A/CN.4/435 and Add.1; ibid., *1992,* vol. II (Part One), document A/CN.4/442; ibid., *1993*, vol. II (Part One), document A/CN.4/449 (the tenth and eleventh reports of the Special Rapporteur published in the *1992* and *1993 Yearbooks,* respectively, were devoted entirely to the question of the possible establishment of an international criminal jurisdiction); and ibid., *1994,* vol. II (Part One), document A/CN.4/460; as well as document A/CN.4/466. [↑](#footnote-ref-388)
389. See *Yearbook of the International Law Commission, 1982,* vol. II (Part One), document A/CN.4/358 and Add.1–4; ibid., *1983,* vol. II (Part One), document A/CN.4/369 and Add.1 and 2; ibid., *1985*, vol. II (Part One), document A/CN.4/392 and Add.1 and 2; ibid., *1987*, vol. II (Part One), document A/CN.4/407 and Add.1 and 2; ibid., *1990,* vol. II (Part One), document A/CN.4/429 and Add.1–4; and ibid., *1993,* vol. II (Part One), document A/CN.4/448 and Add.1. [↑](#footnote-ref-389)
390. Documents A/CN.4/365 and A/CN.4/368 and Add.1. [↑](#footnote-ref-390)
391. See *Yearbook of the International Law Commission, 1983,* vol. II (Part One), document A/CN.4/364. [↑](#footnote-ref-391)
392. See *Yearbook of the International Law Commission,* *1983,* vol. II (Part Two), para. 67. [↑](#footnote-ref-392)
393. See *Yearbook of the International Law Commission, 1983*, vol. II (Part Two), para. 69. [↑](#footnote-ref-393)
394. See *Yearbook of the International Law Commission, 1984*, vol. II (Part One), document A/CN.4/377. [↑](#footnote-ref-394)
395. See *Yearbook of the International Law Commission, 1984*, vol. II (Part Two), para. 65. [↑](#footnote-ref-395)
396. See *Yearbook of the International Law Commission, 1987*, vol. II (Part Two), para. 65. [↑](#footnote-ref-396)
397. See *Yearbook of the International Law Commission, 1991*, vol. II (Part Two), paras. 170–175. [↑](#footnote-ref-397)
398. See *Yearbook of the International Law Commission, 1994,* vol. II (Part One), document A/CN.4/460; as well as document A/CN.4/466. [↑](#footnote-ref-398)
399. See *Yearbook of the International Law Commission, 1993,* vol. II (Part One), document A/CN.4/448 and Add.1. [↑](#footnote-ref-399)
400. See *Yearbook of the International Law Commission, 1995*, vol. II (Part Two), paras. 38 and 39. [↑](#footnote-ref-400)
401. See *Yearbook of the International Law Commission, 1995*, vol. II (Part Two), para. 140. [↑](#footnote-ref-401)
402. See *Yearbook of the International Law Commission, 1996*, vol. II (Part Two), paras. 43 and 44. [↑](#footnote-ref-402)
403. See *Yearbook of the International Law Commission, 1996*, vol. II (Part Two), paras. 45 and 50. [↑](#footnote-ref-403)
404. See *Yearbook of the International Law Commission, 1996*, vol. II (Part Two), para. 46. [↑](#footnote-ref-404)
405. See *Yearbook of the International Law Commission, 1996*, vol. II (Part Two), paras. 47 and 48. [↑](#footnote-ref-405)
406. See *Yearbook of the International Law Commission, 1983*, vol. II (Part One), document A/CN.4/364. [↑](#footnote-ref-406)
407. See *Yearbook of the International Law Commission, 1983*, vol. II (Part Two), para. 69(c)(i). [↑](#footnote-ref-407)
408. See *Yearbook of the International Law Commission, 1986*, vol. II (Part One), document A/CN.4/398. [↑](#footnote-ref-408)
409. See *Yearbook of the International Law Commission, 1986*, vol. II (Part Two), para. 185. [↑](#footnote-ref-409)
410. See General Assembly resolutions 41/75 of 3 December 1986, 42/151 of 7 December 1987, 43/164 of 9 December 1988 and 44/32 of 4 December 1989. [↑](#footnote-ref-410)
411. See *Yearbook of the International Law Commission, 1987*, vol. II (Part One), document A/CN.4/404. [↑](#footnote-ref-411)
412. In 2006, the Commission included the topic “Obligation to extradite or prosecute (*aut dedere aut judicare*)” in its programme of work (*see Part III.B, section 6*). [↑](#footnote-ref-412)
413. See *Yearbook of the International Law Commission, 1988*, vol. II (Part Two), paras. 213 and 280 (commentary to article 4). [↑](#footnote-ref-413)
414. See *Official Records of the General Assembly, Forty-fourth Session, Annexes*, vol. II, agenda item 152, document A/44/195. [↑](#footnote-ref-414)
415. See *Yearbook of the International Law Commission,* *1990*, vol. II (Part One), document A/CN.4/430 and Add.1. [↑](#footnote-ref-415)
416. For the report of the Working Group, see document A/CN.4/L.454. [↑](#footnote-ref-416)
417. See *Yearbook of the International Law Commission, 1991,* vol. II (Part One), document A/CN.4/435 and Add.1; ibid., *1992,* vol. II (Part One), document A/CN.4/442; andibid., *1993,* vol. II (Part One), document A/CN.4/449. [↑](#footnote-ref-417)
418. Document A/CN.4/L.471, reproduced in *Yearbook of the International Law Commission, 1992,* vol. II (Part Two), annex. See also *Yearbook of the International Law Commission, 1992,* vol. II (Part Two), para. 99. [↑](#footnote-ref-418)
419. See *Yearbook of the International Law Commission, 1992,* vol. II (Part Two), para. 11 and annex, para. 4. [↑](#footnote-ref-419)
420. See *Yearbook of the International Law Commission, 1992,* vol. II (Part Two), paras. 11 and 104. [↑](#footnote-ref-420)
421. The Commission had before it comments of Governments on the report of the Working Group established at the previous session submitted pursuant to General Assembly resolution 47/33 (see *Yearbook of the International Law Commission, 1993,* vol. II (Part One), document A/CN.4/452 and Add.1–3.) [↑](#footnote-ref-421)
422. For the revised report of the Working Group, see document A/CN.4/L.490 and Add.1 reproduced in *Yearbook of the International Law Commission, 1993,* vol. II (Part Two), annex. [↑](#footnote-ref-422)
423. See *Yearbook of the International Law Commission, 1993*, vol. II (Part Two), paras. 99 and 100. [↑](#footnote-ref-423)
424. See *Yearbook of the International Law Commission, 1993*, vol. II (Part Two), annex. [↑](#footnote-ref-424)
425. For the final revised report of the Working Group, see document  
     A/CN.4/L.491/Rev.2 and Add.1–3. [↑](#footnote-ref-425)
426. See *Yearbook of the International Law Commission, 1994*, vol. II (Part One), document A/CN.4/458 and Add.1–8. [↑](#footnote-ref-426)
427. Document A/CN.4/457, section B. [↑](#footnote-ref-427)
428. See *Yearbook of the International Law Commission, 1994*, vol. II (Part Two), paras. 84–86. [↑](#footnote-ref-428)
429. See *Yearbook of the International Law Commission, 1994*, vol. II (Part Two), paras. 88 and 91. [↑](#footnote-ref-429)
430. See *Yearbook of the International Law Commission, 1994*, vol. II (Part Two), para. 90. [↑](#footnote-ref-430)
431. The draft statute adopted by the Commission is reproduced because of its historical significance and its relevance as part of the legislative history of the Rome Statute of the International Criminal Court. [↑](#footnote-ref-431)
432. See *Official Records of the General Assembly, Fiftieth session, Supplement No. 22* (A/50/22). [↑](#footnote-ref-432)
433. See *Official Records of the General Assembly, Fifty-first session, Supplement No. 22* (A/51/22), vols. I and II. [↑](#footnote-ref-433)
434. Documents A/AC.249/1997/L.5, A/AC.249/1997/L.8/Rev.1 and   
     A/AC.249/1997/L.9/Rev.1. [↑](#footnote-ref-434)
435. See *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June-17 July 1998*, vol. III, Reports and other documents (United Nations publication,   
     Sales No. 02.I.5), document A/CONF.183/2/Add.1. [↑](#footnote-ref-435)
436. For the Final Act of the Conference, see *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June-17 July 1998*, vol. I, Final documents (United Nations publication, Sales No. 02.I.5), document A/CONF.183/10. [↑](#footnote-ref-436)
437. See *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June-17 July 1998*, vol. I, Final documents (United Nations publication, Sales No. 02.I.5), document A/CONF.183/9. [↑](#footnote-ref-437)
438. The Rome Statute of the International Criminal Court is not reproduced in the annexes of this publication since it was adopted on the basis of the text of the Preparatory Committee which further elaborated the Commission’s draft statute for an international criminal court. [↑](#footnote-ref-438)
439. See *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June-17 July 1998*, vol. I, Final documents (United Nations publication, Sales No. 02.I.5), document A/CONF.183/10. [↑](#footnote-ref-439)
440. See Proceedings of the Preparatory Commission at its first, second and third sessions (16–26 February, 26 July-13 August and 29 November-17 December 1999) (document PCNICC/1999/L.5/Rev.1 and Add.1 and 2); Proceedings of the Preparatory Commission at its fourth session (13–31 March 2000) (document PCNICC/2000/L.1/Rev.1 and Add.1 and Add.2); Proceedings of the Preparatory Commission at its fifth session (12–30 June 2000) (document PCNICC/2000/L.3/Rev.1); Proceedings of the Preparatory Commission at its sixth session (27 November-8 December 2000)  
     (document PCNICC/2000/L.4/Rev.1 and Add.1–3); Proceedings of the Preparatory Commission at its seventh session (26 February-9 March 2001) (document PCNICC/2001/L.1/ Rev.1 and Add.1–3); Proceedings of the Preparatory Commission at its eighth session (24 September-5 October 2001) (document PCNICC/ 2001/L.3/Rev.1 and Add.1); Proceedings of the Preparatory Commission at its ninth session (8–19 April 2002) (document PCNICC/2002/L.1/Rev.1 and Add.1 and 2); and Proceedings of the Preparatory Commission at its tenth session (1–12 July 2002) (document PCNICC/2002/L.4/Rev.1); as well as Report of the Preparatory Commission for the International Criminal Court (contained in documents PCNICC/2000/1 and Add.1 and 2; PCNICC/2001/1 and Add.1–4; PCNICC/2002/1 and Add.1 and 2; and PCNICC/2002/2 and Add.1–3). See also a Guide to the Report of the Preparatory Commission prepared by the Secretariat (document PCNICC/2002/3 and Corr.1). [↑](#footnote-ref-440)
441. As mentioned above, the Rome Statute entered into force on 1 July 2002. [↑](#footnote-ref-441)
442. See *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First Session, New York, 3–10 September 2002* (ICC-ASP/1/3, United Nations publication, Sales No. 03.V.2), paras. 16–23. [↑](#footnote-ref-442)
443. Article 2, paragraphs 1 and 2, of the draft code of offences against the peace and security of mankind, of 1954, characterized an act of aggression and the threat of aggression as on “offence against the peace and security of mankind” which were crimes under international law “for which the responsible individuals shall be punished” (article 1). Article 6 of the draft code of crimes against the peace and security of mankind, adopted in 1996, provides the following: “[a]n individual who, as leader or organizer, actively participates in or orders the planning, preparation, initi ation or waging of aggression committed by a State shall be responsible for a crime of aggression”. [↑](#footnote-ref-443)
444. See *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June-17 July 1998,* vol. I, Final documents (United Nations publication, Sales No. 02.I.5), document A/CONF.183/9, article 5. [↑](#footnote-ref-444)
445. See *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June-17 July 1998*, vol. I, Final documents (United Nations publication, Sales No. 02.I.5), document A/CONF.183/10, Annex I, F. [↑](#footnote-ref-445)
446. Rome Statute, articles 121 and 123. [↑](#footnote-ref-446)
447. See Proceedings of the Preparatory Commission at its first, second and third sessions (16–26 February, 26 July-13 August and 29 November-17 December 1999) (document PCNICC/1999/L.5/Rev.1, paras. 12, 15, 16 and 20); Proceedings of the Preparatory Commission at its fourth session (13–31 March 2000) (document PCNICC/2000/L.1/Rev.1, paras. 9 and 11); Proceedings of the Preparatory Commission at its fifth session (12–30 June 2000) (document PCNICC/2000/L.3/Rev.1, paras. 9 and 12); Proceedings of the Preparatory Commission at its sixth session (27 November-8 December 2000) (document PCNICC/2000/L.4/Rev.1, paras. 10 and 11); Proceedings of the Preparatory Commission at its seventh session (26 February-9 March 2001) (document PCNICC/2001/L.1/Rev.1, paras. 9, 11 and 14); Proceedings of the Preparatory Commission at its eighth session (24 September-5 October 2001) (document PCNICC/2001/L.3/Rev.1, paras. 10, 11 and 14); Proceedings of the Preparatory Commission at its ninth session (8–19 April 2002) (document PCNICC/2002/L.1/Rev.1, para. 14); Proceedings of the Preparatory Commission at its tenth session (1–12 July 2002) (document PCNICC/2002/L.4/Rev.1, paras. 9, 10 and 16); and Report of the Preparatory Commission for the International Criminal Court (document PCNICC/2002/2, paras. 8 and 9 as well as   
     document PCNICC/2002/2/Add.2). [↑](#footnote-ref-447)
448. See Proceedings of the Preparatory Commission at its first, second and third sessions (16–26 February, 26 July-13 August and 29 November-17 December 1999) (document PCNICC/1999/L.5/Rev.1), para. 16. [↑](#footnote-ref-448)
449. Document PCNICC/2002/WGCA/RT.1/Rev.2. [↑](#footnote-ref-449)
450. Document PCNICC/2002/WGCA/L.1 and Add.1 reproduced in “Historical Review of Developments relating to Agression” (United Nations publication, Sales No. E.03.V.10). [↑](#footnote-ref-450)
451. See Report of the Preparatory Commission for the International Criminal Court (document PCNICC/2002/2, para. 9, as well as document PCNICC/2002/2/Add.2). [↑](#footnote-ref-451)
452. Resolution ICC-ASP/1/Res.1 of 9 September 2002. See *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First Session, New York, 3–10 September 2002* (ICC-ASP/1/3, United Nations publication, Sales No. 03.V.2), p. 328. [↑](#footnote-ref-452)
453. See *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First Session (First and Second Resumptions), New York, 3–7 February and 21–23 April 2003* (ICC-ASP/1/3/Add.1, United Nations publication, Sales No. 03.V.8), paras. 37 and 38. [↑](#footnote-ref-453)
454. For the report of Manley O. Hudson, see *Yearbook of the International Law Commission, 1952,* vol. II, document A/CN.4/50; and for the reports of Roberto Córdova, see ibid., *1953,* vol. II, documents A/CN.4/64 and A/CN.4/75; and ibid., *1954,* vol. II, documents A/CN.4/81 and A/CN.4/83. [↑](#footnote-ref-454)
455. Document A/CN.4/82 and Add.1–8 reproduced in *Yearbook of the International Law Commission, 1954,* vol. II, document A/2693, annex. [↑](#footnote-ref-455)
456. See *Yearbook of the International Law Commission, 1950,* vol. II, document A/CN.4/33; ibid., *1951,* vol. II, document A/CN.4/47; and ibid., *1954,* vol. II, documents A/CN.4/81 and A/CN.4/84; as well as document A/CN.4/56 and Add.1. In addition, the Secretariat published a volume in the *United Nations Legislative Series* entitled *“Laws Concerning Nationality”* (ST/LEG/SER.B/4, United Nations publication, Sales No. 1954.V.1) and supplement thereto (ST/LEG/SER.B/9, United Nations publication,   
     Sales No. 59.V.3). [↑](#footnote-ref-456)
457. Documents A/CN.4/66 and A/CN.4/67. [↑](#footnote-ref-457)
458. See *Yearbook of the International Law Commission, 1952,* vol. II, document   
     A/CN.4/50, annex II. [↑](#footnote-ref-458)
459. See *Yearbook of the International Law Commission, 1952*, vol. II, document A/2163, para. 30. [↑](#footnote-ref-459)
460. United Nations, *Treaty Series,* vol. 309, p. 65. [↑](#footnote-ref-460)
461. See *Yearbook of the International Law Commission, 1952,* vol. II, document   
     A/CN.4/50, annex III. [↑](#footnote-ref-461)
462. See *Yearbook of the International Law Commission, 1953,* vol. II, document   
     A/CN.4/64. [↑](#footnote-ref-462)
463. See *Yearbook of the International Law Commission, 1954,* vol. II, document A/2693, para. 25. [↑](#footnote-ref-463)
464. See *Yearbook of the International Law Commission, 1954*, vol. II, document A/2693, para. 12. [↑](#footnote-ref-464)
465. See *Yearbook of the International Law Commission, 1954*, vol. II, document A/2693, para. 14. [↑](#footnote-ref-465)
466. For the Final Act of the Conference, see document A/CONF.9/14. [↑](#footnote-ref-466)
467. United Nations, *Treaty Series,* vol. 989, p. 175. [↑](#footnote-ref-467)
468. See *Yearbook of the International Law Commission, 1953*, vol. II, document   
     A/CN.4/75. [↑](#footnote-ref-468)
469. See *Yearbook of the International Law Commission, 1954*, vol. II, document   
     A/CN.4/81. [↑](#footnote-ref-469)
470. The Commission included the possibility of the exercise of diplomatic protection of stateless persons by the State in which the person lawfully and habitually resides, in its draft articles on diplomatic protection, article 8, adopted in 2006 (*see Part III.A, section 27*). See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), para. 49. [↑](#footnote-ref-470)
471. See *Yearbook of the International Law Commission, 1954*, vol. II, document A/2693, paras. 29 and 31. [↑](#footnote-ref-471)
472. See *Yearbook of the International Law Commission, 1954*, vol. II, document A/2693, paras. 26–37. [↑](#footnote-ref-472)
473. See *Yearbook of the International Law Commission, 1954*, vol. II, document A/2693, para. 36. The draft articles to be regarded as suggestions are not reproduced in the annexes of this publication. [↑](#footnote-ref-473)
474. See *Yearbook of the International Law Commission, 1954*, vol. II, document   
     A/CN.4/83. [↑](#footnote-ref-474)
475. See *Yearbook of the International Law Commission, 1954*, vol. II, document   
     A/CN.4/84. [↑](#footnote-ref-475)
476. See *Yearbook of the International Law Commission, 1954*, vol. II, document A/2693, para. 39. [↑](#footnote-ref-476)
477. See *Yearbook of the International Law Commission, 1950,* vol. II, document A/CN.4/17; ibid., *1951*, vol. II, document A/CN.4/42; ibid., *1952,* vol. II, document A/CN.4/51; ibid., *1953,* vol. II, documents A/CN.4/60 and A/CN.4/69; ibid., *1954,* vol. II, document A/CN.4/79; and ibid., *1956*, vol. II, documents A/CN.4/97 and A/CN.4/103. [↑](#footnote-ref-477)
478. See *Yearbook of the International Law Commission, 1950,* vol. II, document A/CN.4/19; ibid.*, 1953,* vol. II, document A/CN.4/70; ibid.*, 1954,* vol. II, document A/CN.4/86; and ibid., *1956,* vol. II, documents A/CN.4/97/Add.1 and Add.3, A/CN.4/99 and Add.1 to 9 and A/CN.4/100; as well as document A/CN.4/55 and Add.1, Add.1/Rev.1 and Add.2–6 incorporated in *Yearbook of the International Law Commission, 1953,* vol. II, document A/2456, annex II. [↑](#footnote-ref-478)
479. See *Yearbook of the International Law Commission, 1950,* vol. II, documents A/CN.4/30 and A/CN.4/32; and document A/CN.4/38. In addition, the Secretariat published volumes in the *United Nations Legislative Series* entitled *“Laws and Regulations on the Regime of the High Seas”* (volume I of which covers laws and regulations relating to continental shelf, contiguous zones and supervision of foreign vessels on the high seas (ST/LEG/SER.B/1, United Nations publications, Sales No. 1951.V.2) and volume II covers laws relating to jurisdiction over crimes committed abroad or on the high seas (ST/LEG/SER.B/2, United Nations publications, Sales No. 1952.V.1)) and *“Laws Concerning the Nationality of Ships”* (ST/LEG/SER.B/5 and Add.1, United Nations publication, Sales No. 1956.V.1) as well as a supplement to those volumes (ST/LEG/SER.B/8, United Nations publication, Sales No. 59.V.2). [↑](#footnote-ref-479)
480. See *Yearbook of the International Law Commission, 1951*, vol. II, document   
     A/CN.4/42. [↑](#footnote-ref-480)
481. See *Yearbook of the International Law Commission, 1953*, vol. II, document A/2456, paras. 62 and 91. [↑](#footnote-ref-481)
482. See *Yearbook of the International Law Commission, 1953*, vol. II, document A/2456, paras. 94 and 102. [↑](#footnote-ref-482)
483. See *Yearbook of the International Law Commission, 1953*, vol. II, document A/2456, paras. 105 and 114. [↑](#footnote-ref-483)
484. See *Yearbook of the International Law Commission, 1954*, vol. II, document   
     A/CN.4/79. [↑](#footnote-ref-484)
485. *Report of the International Technical Conference on the Conservation of the Living Resources of the Sea, 18 April-10 May 1955, Rome* (United Nations publication, Sales No. 1955.II.B.2). [↑](#footnote-ref-485)
486. At its fourth session, in 1952, the Commission decided, in accordance with a suggestion of the Special Rapporteur, to use the term “territorial sea” in lieu of “territorial waters”. See *Yearbook of the International Law Commission, 1952*, vol. II, document A/2163, para. 37. The General Assembly, in its relevant resolutions, continued using the term “territorial waters” in the title of the topic. [↑](#footnote-ref-486)
487. See *Yearbook of the International Law Commission, 1952,* vol. II, document   
     A/CN.4/53; ibid., *1953,* vol. II, document A/CN.4/61 and Add.1; ibid., *1954,* vol. II, document A/CN.4/77; and ibid.*, 1956,* vol. II, document A/CN.4/97; as well as amendments proposed by the Special Rapporteur to the provisional articles concerning the regime of the territorial sea in document A/CN.4/93 (ibid., *1955,* vol. II). [↑](#footnote-ref-487)
488. See *Yearbook of the International Law Commission, 1953,* vol. II, document A/CN.4/71 and Add.1 and 2; and ibid., *1956,* vol. II, documents A/CN.4/97/Add.2 and A/CN.4/99 and Add.1–9; as well as document A/CN.4/90 and Add.1–6 incorporated in *Yearbook of the International Law Commission, 1955,* vol. II, document A/2934, annex. [↑](#footnote-ref-488)
489. See *Yearbook of the International Law Commission, 1952,* vol. II, document   
     A/CN.4/53. [↑](#footnote-ref-489)
490. For the report of the experts, see the annex to the addendum to the second report of the Special Rapporteur. See *Yearbook of the International Law Commission, 1953,* vol. II, document A/CN.4/61/Add.1. [↑](#footnote-ref-490)
491. See *Yearbook of the International Law Commission, 1954,* vol. II, document   
     A/CN.4/77. [↑](#footnote-ref-491)
492. For the use of the Commission in its work on the subject of the territorial sea, the Secretariat published a volume in the *United Nations Legislative Series* entitled *“Laws and Regulations on the Regime of the Territorial Sea”* (ST/LEG/SER.B/6, United Nations publication, Sales No. 1957.V.2). [↑](#footnote-ref-492)
493. See *Yearbook of the International Law Commission, 1956,* vol. II, document A/3159, para. 33. [↑](#footnote-ref-493)
494. See *Yearbook of the International Law Commission, 1956,* vol. II, document A/3159, paras. 27 and 28. [↑](#footnote-ref-494)
495. See *Official Records of the United Nations Conference on the Law of the Sea, Geneva, 24 February-27 April 1958,* vol. VII, Fifth Committee (Question of Free Access to the Sea of Land-Locked Countries) (United Nations publication, Sales No. 58.V.4, vol. VII), Annexes, document A/CONF.13/C.5/L.1. [↑](#footnote-ref-495)
496. In pursuance of a resolution adopted by the First United Nations Conference on Trade and Development at Geneva in June 1964, the General Assembly, on 10 February 1965, decided to convene an international conference of plenipotentiaries to consider the question of transit trade of land-locked countries and to embody the results of its work in a convention and such other instruments as it might deem appropriate. The United Nations Conference on Transit Trade of Land-locked Countries, at which the Governments of fifty-eight States were represented, met in New York from 7 June to 8 July 1965. The Conference adopted the Convention on Transit Trade of Land-locked States and two resolutions. United Nations, *Treaty Series,* vol. 597, p. 3. [↑](#footnote-ref-496)
497. United Nations, *Treaty Series,* vol. 450, p. 58. Resolution VII on Regime of Historic Waters was adopted as a follow-up to the adoption by the Conference of paragraph 6 of article 7 of the Convention on the Territorial Sea and Contiguous Zone, under which the regime established by the Convention for bays “shall not apply to so-called ‘historic’ bays”. Further to this resolution, the General Assembly, by resolution 1453 (XIV) of 7 December 1959, requested the Commission:

      “ . . . as soon as it considers it advisable, to undertake the study of the question of the juridical regime of historic waters, including historic bays, and to make such recommendations regarding the matter as the Commission deems appropriate.”

     The Commission requested the Secretariat to undertake a preliminary study of the topic and decided at its fourteenth session, in 1962, to include the topic in its programme of work, but without setting any date for the start of its consideration or appointing a Special Rapporteur. The Secretariat study is reproduced in the *Yearbook of the International Law Commission, 1962,* vol. II, document A/CN.4/143. At its nineteenth session, in 1967, the Commission considered whether to proceed with the study of this topic. The Commission’s report summarized the views expressed as follows:

     “Most members doubted whether the time had yet come to proceed actively with either of these topics. Both were of considerable scope and raised some political problems, and to undertake either of them at the present time might seriously delay the completion of work on the important topics already under study.” (See *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1, para. 45.) [↑](#footnote-ref-497)
498. United Nations, *Treaty Series,* vol. 450, p. 82. [↑](#footnote-ref-498)
499. United Nations, *Treaty Series,* vol. 450, p. 169. [↑](#footnote-ref-499)
500. United Nations, *Treaty Series,* vol. 499, p. 311. [↑](#footnote-ref-500)
501. United Nations, *Treaty Series,* vol. 516, p. 205. [↑](#footnote-ref-501)
502. United Nations, *Treaty Series,* vol. 559, p. 285. [↑](#footnote-ref-502)
503. See *Official Records of the Second United Nations Conference on the Law of the Sea, Geneva, 17 March-26 April 1960* (United Nations publication, Sales No. 60.V.6), Annexes, document A/CONF.19/L.15, annex. [↑](#footnote-ref-503)
504. In 1970, the Secretariat published a volume in the *United Nations Legislative Series* entitled *“National Legislation and Treaties Relating to the Territorial Sea, the Contiguous Zone, the Continental Shelf, the High Seas and to Fishing and Conservation of the Living Resources of the Sea”*(ST/LEG/SER.B/15, United Nations publication, Sales No. 70.V.9) followed by three volumes entitled *“National Legislation and Treaties Relating to the Law of the Sea”* (ST/LEG/SER.B/16, United Nations publication, Sales No. 74.V.2; ST/LEG/SER.B/18, United Nations publication, Sales No. 76.V.2; and ST/LEG/SER.B/19, United Nations publication, Sales No. 80.V.3) in 1974, 1976 and 1980, with the main purpose being to provide as complete and up-to-date information as possible for the participants in the Third United Nations Conference on the Law of the Sea. [↑](#footnote-ref-504)
505. United Nations, *Treaty Series,* vol. 1833, p. 3. [↑](#footnote-ref-505)
506. See *Yearbook of the International Law Commission, 1950,* vol. II, document A/CN.4/18; ibid., *1951,* vol. II, document A/CN.4/46; ibid., *1952*, vol. II, document A/CN.4/57; ibid., *1957*, vol. II, document A/CN.4/109; and ibid., *1958,* vol. II, document A/CN.4/113. [↑](#footnote-ref-506)
507. See *Yearbook of the International Law Commission, 1950,* vol. II, document A/CN.4/19; as well as document A/CN.4/68 and Add.1 and 2 incorporated in *Yearbook of the International Law Commission, 1953,* vol. II, document A/2456, annex I. [↑](#footnote-ref-507)
508. See *Yearbook of the International Law Commission, 1950,* vol. II, document   
     A/CN.4/35; as well as documents A/CN.4/29, A/CN.4/36 and A/CN.4/92 (United Nations publication, Sales No. 1955.V.1). [↑](#footnote-ref-508)
509. See *Yearbook of the International Law Commission, 1953,* vol. II, document A/2456, para. 57. [↑](#footnote-ref-509)
510. See *Yearbook of the International Law Commission, 1953*, vol. II, document A/2456, para. 55. [↑](#footnote-ref-510)
511. See *Yearbook of the International Law Commission, 1953*, vol. II, document A/2456, paras. 15–52. [↑](#footnote-ref-511)
512. See *Yearbook of the International Law Commission, 1958*, vol. II, document   
     A/CN.4/113. [↑](#footnote-ref-512)
513. See *Yearbook of the International Law Commission, 1958*, vol. II, document A/3859, paras. 15 and 22–43. [↑](#footnote-ref-513)
514. See *Yearbook of the International Law Commission, 1958*, vol. II, document A/3859, para. 17. [↑](#footnote-ref-514)
515. See *Yearbook of the International Law Commission, 1958*, vol. II, document A/3859, footnote 16. [↑](#footnote-ref-515)
516. See Yearbook of the International Law Commission, 1955, vol. II, document   
     A/CN.4/91; and ibid., 1958, vol. II, document A/CN.4/116/Add.1 and 2. [↑](#footnote-ref-516)
517. Document A/CN.4/114 and Add.1–6 incorporated in *Yearbook of the International Law Commission, 1958*, vol. II, document A/3859, annex; and document   
     A/CN.4/116. [↑](#footnote-ref-517)
518. See *Yearbook of the International Law Commission, 1956,* vol. II, document A/CN.4/98. In addition, the Secretariat published for the use of the Commission in its work on diplomatic and consular intercourse and immunities a volume in the *United Nations Legislative Series* entitled *“Laws and Regulations Regarding Diplomatic and Consular Privileges and Immunities”* (ST/LEG/SER.B/7, United Nations publication, Sales No. 58.V.3), which was supplemented by an additional volume in 1963 (ST/LEG/SER.B/13, United Nations publication, Sales No. 63.V.5). [↑](#footnote-ref-518)
519. See *Yearbook of the International Law Commission, 1955,* vol. II, document   
     A/CN.4/91. [↑](#footnote-ref-519)
520. See *Yearbook of the International Law Commission, 1958,* vol. II, document A/3859, para. 53. [↑](#footnote-ref-520)
521. See *Yearbook of the International Law Commission, 1958,* vol. II, document A/3859, para. 50. [↑](#footnote-ref-521)
522. See *Yearbook of the International Law Commission, 1958,* vol. II, document A/3859, paras. 51 and 52. [↑](#footnote-ref-522)
523. See *Official Records of the General Assembly, Thirteenth Session, Annexes*, agenda item 56, document A/4007. [↑](#footnote-ref-523)
524. See *Official Records of the United Nations Conference on Diplomatic Intercourse and Immunities, Vienna, 2 March-14 April 1961*, vol. I (United Nations publication, Sales No. 61.X.2); and ibid., vol. II (United Nations publication, Sales No. 62.X.I). [↑](#footnote-ref-524)
525. United Nations, *Treaty Series,* vol. 500, p. 95. [↑](#footnote-ref-525)
526. United Nations, *Treaty Series,* vol. 500, p. 223. [↑](#footnote-ref-526)
527. United Nations, *Treaty Series,* vol. 500, p. 241. [↑](#footnote-ref-527)
528. For the reports of the Special Rapporteur, see *Yearbook of the International Law Commission, 1957,* vol. II, document A/CN.4/108; ibid., *1960,* vol. II, document   
     A/CN.4/131; and ibid., *1961,* vol. II, document A/CN.4/137. [↑](#footnote-ref-528)
529. Document A/CN.4/136 and Add.1–11 incorporated in *Yearbook of the International Law Commission, 1961,* vol. II, document A/4843, annex I. In addition, the Secretariat published for the use of the Commission in its work on diplomatic and consular intercourse and immunities a volume in the *United Nations Legislative Series* entitled *“Laws and Regulations Regarding Diplomatic and Consular Privileges and Immunities”* (ST/LEG/SER.B/7, United Nations publication, Sales No. 58.V.3), which was supplemented by an additional volume in 1963 (ST/LEG/SER.B/13, United Nations publication, Sales No. 63.V.5). [↑](#footnote-ref-529)
530. See *Yearbook of the International Law Commission, 1961,* vol. II, document A/4843, para. 37. [↑](#footnote-ref-530)
531. See *Yearbook of the International Law Commission, 1961,* vol. II, document A/4843, para. 27. [↑](#footnote-ref-531)
532. See *Official Records of the United Nations Conference on Consular Relations,* vol. I (United Nations publication, Sales No. 63.X.2); and ibid., vol. II (United Nations publication, Sales No. 64.X.I). [↑](#footnote-ref-532)
533. United Nations, *Treaty Series,* vol. 596, p. 261. [↑](#footnote-ref-533)
534. United Nations, *Treaty Series,* vol. 596, p. 469. [↑](#footnote-ref-534)
535. United Nations, *Treaty Series,* vol. 596, p. 487. [↑](#footnote-ref-535)
536. See *Yearbook of the International Law Commission, 1962*, vol. II, document A/5209, pp. 168 and 169. [↑](#footnote-ref-536)
537. See *Yearbook of the International Law Commission, 1963*, vol. II, document A/5509, para. 50. [↑](#footnote-ref-537)
538. See *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda item 88, document A/5759 and Add.1. [↑](#footnote-ref-538)
539. For the reports of James L. Brierly, see *Yearbook of the International Law Commission, 1950*, vol. II, document A/CN.4/23; ibid., *1951*, vol. II, document A/CN.4/43; and ibid., *1952*, vol. II, document A/CN.4/54 and Corr.1. For the reports of H. Lauterpacht, see *Yearbook of the International Law Commission, 1953,* vol. II, document A/CN.4/63; and ibid., *1954,* vol. II, document A/CN.4/87 and Corr.1. For the reports of Sir Gerald Fitzmaurice, see *Yearbook of the International Law Commission, 1956,* vol. II, document A/CN.4/101; ibid., *1957,* vol. II, document A/CN.4/107; ibid., *1958,* vol. II, document A/CN.4/115 and Corr.1; ibid., *1959,* vol. II, document A/CN.4/120; and ibid., *1960,* vol. II, document A/CN.4/130. For the reports of Sir Humphrey Waldock, see *Yearbook of the International Law Commission, 1962,* vol. II, document A/CN.4/144 and Add.1; ibid., *1963,* vol. II, document A/CN.4/156 and Add.1–3; ibid., *1964,* vol. II, A/CN.4/167 and Add.1–3; ibid., *1965,* vol. II, A/CN.4/177 and Add.1 and 2; and ibid., *1966,* vol. II, document A/CN.4/183 and Add.1–4 and A/CN.4/186 and Add.1–7. [↑](#footnote-ref-539)
540. See *Yearbook of the International Law Commission, 1950,* vol. II, document A/CN.4/19; and documents A/CN.4/175 and Add.1–5 and A/CN.4/182 and Add.1–3 incorporated in *Yearbook of the International Law Commission, 1966,* vol. II, document A/6309/Rev.1, annex. [↑](#footnote-ref-540)
541. See Yearbook of the International Law Commission, 1959, vol. II, document A/CN.4/121; ibid., 1963, vol. II, document A/CN.4/154; ibid., 1965, vol. II, document A/5687; and ibid., 1966, vol. II, document A/CN.4/187. See also documents A/CN.4/31, A/CN.4/37 and A/CN.4/L.55. In addition, the Secretariat published a volume in the United Nations Legislative Series entitled “Laws and Practices Concerning the Conclusion of Treaties with a Select Bibliography on the Law of Treaties” (ST/LEG/SER.B/3, United Nations publication, Sales No. 1952.V.4). [↑](#footnote-ref-541)
542. See *Yearbook of the International Law Commission, 1959*, vol. II, document A/4169, para. 18. [↑](#footnote-ref-542)
543. See *Yearbook of the International Law Commission, 1962*, vol. II, document A/5209, para. 17. [↑](#footnote-ref-543)
544. See *Yearbook of the International Law Commission, 1966*, vol. II, document A/6309/Rev.1, paras. 22 and 38. [↑](#footnote-ref-544)
545. See *Yearbook of the International Law Commission, 1966*, vol. II, document A/6309/Rev.1, para. 36. [↑](#footnote-ref-545)
546. See *Yearbook of the International Law Commission, 1966,* vol. II, document A/6309/Rev.1, paras. 28–35. [↑](#footnote-ref-546)
547. See *Official Records of the United Nations Conference on the Law of Treaties, First Session* (United Nations publication, Sales No. 68.V.7); ibid., *Second Session* (United Nations publication, Sales No. 70.V.6); and ibid., *First and Second Sessions, Documents of the Conference* (United Nations publication, Sales No. 70.V.5). [↑](#footnote-ref-547)
548. United Nations, *Treaty Series,* vol. 1155, p. 331. [↑](#footnote-ref-548)
549. See *Official Records of the United Nations Conference on the Law of Treaties, First and Second Sessions, Documents of the Conference* (United Nations publication, Sales No. 70.V.5), document A/CONF.39/26. [↑](#footnote-ref-549)
550. See *Yearbook of the International Law Commission, 1960*, vol. II, document   
     A/CN.4/129. [↑](#footnote-ref-550)
551. See *Yearbook of the International Law Commission, 1960*, vol. II, document A/4425, para. 38. [↑](#footnote-ref-551)
552. See *Official Records of the United Nations Conference on Diplomatic Intercourse and Immunities, Vienna, 2 March-14 April 1961*, vol. II (United Nations publication, Sales No. 62.X.1), pp. 45–46 and 89–90. [↑](#footnote-ref-552)
553. See *Yearbook of the International Law Commission, 1964,* vol. II, document A/CN.4/166; ibid., *1965*, vol. II, document A/CN.4/179; ibid., *1966,* vol. II, document A/CN.4/189 and Add.1 and 2; and ibid., *1967,* vol. II, document A/CN.4/194 and Add.1–5. [↑](#footnote-ref-553)
554. Documents A/CN.4/188 and Add.1–4 as well as A/CN.4/193 and Add.1–5, all incorporated in *Yearbook of the International Law Commission, 1967,* vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, annex I. [↑](#footnote-ref-554)
555. See *Yearbook of the International Law Commission, 1962,* vol. II, document   
     A/CN.4/147; andibid., *1963,* vol. II, document A/CN.4/155. [↑](#footnote-ref-555)
556. See *Yearbook of the International Law Commission, 1964,* vol. II, document   
     A/CN.4/166. [↑](#footnote-ref-556)
557. See *Yearbook of the International Law Commission, 1965,* vol. II, document   
     A/CN.4/179. [↑](#footnote-ref-557)
558. See *Yearbook of the International Law Commission,* 1967, vol. II, document   
     A/CN.4/194 and Add.1–5. [↑](#footnote-ref-558)
559. See *Yearbook of the International Law Commission, 1967,* vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, paras. 32 and 35. [↑](#footnote-ref-559)
560. See *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, para. 33. [↑](#footnote-ref-560)
561. Switzerland was admitted to the United Nations membership on 10 September 2002. [↑](#footnote-ref-561)
562. United Nations, *Treaty Series,* vol. 1400, p. 231. [↑](#footnote-ref-562)
563. United Nations, *Treaty Series,* vol. 1400, p. 339. [↑](#footnote-ref-563)
564. At its twentieth session, in 1968, the Commission decided to amend the title of the topic, without altering its meaning, by changing the word “intergovernmental” to “international”. [↑](#footnote-ref-564)
565. See *Yearbook of the International Law Commission, 1963,* vol. II, documents   
     A/CN.4/161 and Add.1, and A/CN.4/L.103; as well as document A/CN.4/L.104. [↑](#footnote-ref-565)
566. In order to assist the Commission in its work on the topic, the Secretariat published two volumes in the *United Nations Legislative Series* entitled *“Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations”* (ST/LEG/SER.B/10, United Nations publication, Sales No. 60.V.2; and   
     ST/LEG/SER.B/11, United Nations publication, Sales No. 61.V.3). [↑](#footnote-ref-566)
567. See *Yearbook of the International Law Commission, 1967,* vol. II, document A/CN.4/195 and Add.1; ibid., *1968,* vol. II, document A/CN.4/203 and Add.1–5; ibid., *1969,* vol. II, document A/CN.4/218 and Add.1; ibid., *1970,* vol. II, document A/CN.4/227 and Add.1 and 2; ibid.*, 1971,* vol. II (Part One), document A/CN.4/241 and Add.1–6; and documents A/CN.4/L.136, A/CN.4/L.151, A/CN.4/L.166, A/CN.4/L.171 and A/CN.4/L.173. [↑](#footnote-ref-567)
568. Documents A/CN.4/221 and Add.1 and Corr.1, A/CN.4/238 and Add.1 and 2, A/CN.4/239 and Add.1–3 and A/CN.4/240 and Add.1–7, incorporated in *Yearbook of the International Law Commission, 1971,* vol. II (Part One), document A/8410/Rev.1, Annex I. [↑](#footnote-ref-568)
569. See *Yearbook of the International Law Commission, 1967,* vol. II, document A/CN.4/L.118 and Add.1 and 2; ibid., *1968,* vol. II, document A/CN.4/L.129; as well as documents A/CN.4/L.162/Rev.1, A/CN.4/L.163, A/CN.4/L.164, A/CN.4/L.165 and   
     A/CN.4/L.167. [↑](#footnote-ref-569)
570. For the report of the Working Group, see documents A/CN.4/L.174 and Add.1–6 and A/CN.4/L.177 and Add.1–3. [↑](#footnote-ref-570)
571. See *Yearbook of the International Law Commission, 1971,* vol. II (Part One), document A/8410/Rev.1, paras. 39 and 60. [↑](#footnote-ref-571)
572. See *Yearbook of the International Law Commission, 1971,* vol. II (Part One), document A/8410/Rev.1, para. 57. [↑](#footnote-ref-572)
573. See *Yearbook of the International Law Commission, 1971,* vol. II (Part One), document A/8410/Rev.1, paras. 51 and 52. [↑](#footnote-ref-573)
574. See *Yearbook of the International Law Commission, 1971,* vol. II (Part One), document A/8410/Rev.1, paras. 40–56. [↑](#footnote-ref-574)
575. See *Official Records of the United Nations Conference on the Representation of States in Their Relations with International Organizations, Vienna, 4 February-14 March 1975*, vol. I (United Nations publication, Sales No. 75.V.11); and ibid., vol. II (United Nations publication, Sales No. 75.V.12). [↑](#footnote-ref-575)
576. See *Official Records of the United Nations Conference on the Representation of States in Their Relations with International Organizations, Vienna, 4 February-14 March 1975*, vol. II (United Nations publication, Sales No. 75.V.12), document A/CONF.67/16.  [↑](#footnote-ref-576)
577. See *Official Records of the United Nations Conference on the Representation of States in Their Relations with International Organizations, Vienna, 4 February-14 March 1975*, vol. II (United Nations publication, Sales No. 75.V.12), document A/CONF.67/15. [↑](#footnote-ref-577)
578. Since the thirty-ninth session of the General Assembly, the subject matter of the item has been confined to the observer status of national liberation movements recognized by the Organization of African Unity and/or by the League of Arab States. [↑](#footnote-ref-578)
579. See *Yearbook of the International Law Commission, 1977,* vol. II (Part One), document A/CN.4/304. [↑](#footnote-ref-579)
580. See *Yearbook of the International Law Commission, 1978,* vol. II (Part One), document A/CN.4/311 and Add.1. [↑](#footnote-ref-580)
581. See Yearbook of the International Law Commission, 1983, vol. II (Part One), document A/CN.4/370; ibid., 1985, vol. II (Part One), document A/CN.4/391 and Add.1; ibid., 1986, vol. II (Part One), document A/CN.4/401; ibid., 1989, vol. II (Part One), document A/CN.4/424; and ibid., 1991, vol. II (Part One), documents A/CN.4/438 and   
     A/CN.4/439. [↑](#footnote-ref-581)
582. See *Yearbook of the International Law Commission, 1985*, vol. II (Part One), addendum, document A/CN.4/L.383 and Add.1–3. [↑](#footnote-ref-582)
583. See *Yearbook of the International Law Commission, 1989,* vol. II (Part One), document A/CN.4/424; and ibid., *1991,* vol. II (Part One), documents A/CN.4/438 and A/CN.4/439. [↑](#footnote-ref-583)
584. The Subcommittee had before it the studies prepared by the Secretariat published in *Yearbook of the International Law Commission, 1962,* vol. II, documentsA/CN.4/149 and Add.1, A/CN.4/150 and A/CN.4/151. [↑](#footnote-ref-584)
585. See *Yearbook of the International Law Commission, 1963,* vol. II, document A/5509, annex II. At that session, the Commission had also before it a study prepared by the Secretariat. See *Yearbook of the International Law Commission, 1963,* vol. II, document A/CN.4/157. [↑](#footnote-ref-585)
586. See footnote 597. [↑](#footnote-ref-586)
587. For the reports of Sir Humphrey Waldock, see *Yearbook of the International Law Commission, 1968,* vol. II, document A/CN.4/202; ibid., *1969*, vol. II, document   
     A/CN.4/214 and Add.1 and 2; ibid., *1970,* vol. II, document A/CN.4/224 and Add.1; ibid., *1971,* vol. II (Part One), document A/CN.4/249; and ibid., *1972,* vol. II, documents   
     A/CN.4/256 and Add.1–4 and A/CN.4/L.184. For the report of Sir Francis Vallat, see ibid., *1974,* vol. II (Part One), document A/CN.4/278 and Add.1–6. [↑](#footnote-ref-587)
588. Documents A/CN.4/275 and Add.1 and 2, A/CN.4/L.205 and A/9610/Add.1 and 2 reproduced in *Yearbook of the International Law Commission, 1974,* vol. II (Part One), document A/9610/Rev.1, annex I; as well as document A/CN.4/L.213. [↑](#footnote-ref-588)
589. See *Yearbook of the International Law Commission, 1968,* vol. II, document   
     A/CN.4/200 and Add.1 and 2; ibid., *1969,* vol. II, document A/CN.4/210; ibid., *1970,* vol. II, documents A/CN.4/225 and A/CN.4/229; and ibid., *1971,* vol. II (Part Two), document A/CN.4/243 and Add.1. Furthermore, for the use of the Commission in its work on the topic, the Secretariat published a volume in the *United Nations Legislative Series* entitled *“Materials on Succession of States”*containing information related mainly to succession of States in respect of treaties (see ST/LEG/SER.B/14, United Nations publication, Sales No. 68.V.5). A supplement thereto was published in 1972 as a document of the twenty-fourth session of the Commission (document A/CN.4/263). [↑](#footnote-ref-589)
590. See *Yearbook of the Internatiomal Law Commission, 1974,* vol. II (Part One), document A/9610/Rev.1, paras. 43 and 85. [↑](#footnote-ref-590)
591. See *Yearbook of the Internatiomal Law Commission, 1974,* vol. II (Part One), document A/9610/Rev.1, para. 84. [↑](#footnote-ref-591)
592. See *Official Records of the United Nations Conference on Succession of States in Respect of Treaties, Vienna, 4 April-6 May 1977 and 31 July-23 August 1978*, vol. III, Documents of the Conference, First and Resumed Sessions (United Nations publication, Sales No. 79.V.10), Report of the Conference (1977 session), document A/CONF.80/15, para. 26. [↑](#footnote-ref-592)
593. See *Official Records of the United Nations Conference on Succession of States in Respect of Treaties, Vienna, 4 April-6 May 1977 and 31 July-23 August 1978*, vol. I (United Nations publication, Sales No. 78.V.8); ibid., vol. II (United Nations publication, Sales No. 79.V.9); and ibid., vol. III (United Nations publication, Sales No. 79.V.10). [↑](#footnote-ref-593)
594. Namibia was admitted to the United Nations membership on 23 April 1990. [↑](#footnote-ref-594)
595. United Nations, *Treaty Series,* vol. 1946, p. 3. [↑](#footnote-ref-595)
596. See *Official Records of the United Nations Conference on Succession of States in Respect of Treaties, Vienna, 4 April-6 May 1977 and 31 July-23 August 1978,* vol. III, Documents of the Conference, First and Resumed Sessions (United Nations publication, Sales No. 79.V.10), document A/CONF.80/32, Annex. [↑](#footnote-ref-596)
597. At its twentieth session, in 1968, the Commission decided to delete from the title of the topic all reference to sources in order to avoid any ambiguity regarding its delimitation, adopting as the new title “Succession in respect of matters other than treaties.” [↑](#footnote-ref-597)
598. See *Yearbook of the International Law Commission, 1968,* vol. II, document A/CN.4/204; ibid., *1969,* vol. II, document A/CN.4/216/Rev.1; ibid.*, 1970,* vol. II, document A/CN.4/226; ibid., *1971,* vol. II (Part One), document A/CN.4/247 and Add.1; ibid., *1972,* vol. II, document A/CN.4/259; ibid., *1973,* vol. II, document A/CN.4/267; ibid.*, 1974,* vol. II (Part One), document A/CN.4/282; ibid., *1976,* vol. II (Part One), document A/CN.4/292; ibid., *1977,* vol. II (Part One), document A/CN.4/301 and Add.1; ibid., *1978,* vol. II (Part One), document A/CN.4/313; ibid., *1979,* vol. II (Part One), document A/CN.4/322 and Add.1 and 2; ibid., *1980,* vol. II (Part One), document A/CN.4/333; and ibid., *1981*, vol. II (Part One), document A/CN.4/345 and Add. 1–3. [↑](#footnote-ref-598)
599. Document A/CN.4/338 and Add.1–4 published in *Yearbook of the International Law Commission, 1981,* vol. II (Part Two), annex I. [↑](#footnote-ref-599)
600. See *Yearbook of the International Law Commission, 1970,* vol. II, document A/CN.4/232. Furthermore, apart from the volume in the *United Nations Legislative Series* entitled *“Materials on Succession of States”* and supplement thereto (*see above*), the Secretariat published a separate volume in the *United Nations Legislative Series* containing exclusively materials provided by Governments on succession of States in respect of matters other than treaties (ST/LEG/SER.B/17, United Nations publication, Sales No. 77.V.9). [↑](#footnote-ref-600)
601. See *Yearbook of the International Law Commission, 1981,* vol. II (Part Two), paras. 61 and 87. [↑](#footnote-ref-601)
602. See *Yearbook of the International Law Commission, 1981,* vol. II (Part Two), para. 86. [↑](#footnote-ref-602)
603. Document A/CONF.117/5 and Add.1. [↑](#footnote-ref-603)
604. See *Official Records of the United Nations Conference on Succession of States in Respect of State Property, Archives and Debts, Vienna, 1 March-8 April 1983,* vol. II, Summary records of the plenary meetings and of the meetings of the Committee of the Whole (United Nations publication, Sales No. 94.V.6), document A/CONF/117/14. [↑](#footnote-ref-604)
605. See *Official Records of the United Nations Conference on Succession of States in Respect of State Property, Archives and Debts, Vienna, 1 March-8 April 1983*, vol. II, Summary records of the plenary meetings and of the meetings of the Committee of the Whole (United Nations publication, Sales No. 94.V.6), document A/CONF.117/15. [↑](#footnote-ref-605)
606. At that session, the Commission had before it observations of Member States, transmitted to the Commission in accordance with General Assembly resolution 2780 (XXVI) of 3 December 1971 (document A/CN.4/253 and Add.1–5 incorporated in *Yearbook of the International Law Commission, 1972*, vol. II, document A/8710/Rev.1, annex), a working paper containing the text of a draft convention prepared by the delegation of Uruguay (document A/C.6/L.822) as well as a working paper by a member of the Commission, Richard D. Kearney (see *Yearbook of the International Law Commission, 1972*, vol. II, document A/CN.4/L.182). [↑](#footnote-ref-606)
607. Document A/CN.4/L.186. [↑](#footnote-ref-607)
608. Documents A/CN.4/L.188 and Add.1 and A/CN.4/L.189. [↑](#footnote-ref-608)
609. See *Official Records of the General Assembly, Twenty-eighth Session, Annexes*, agenda item 90, document A/9407. [↑](#footnote-ref-609)
610. United Nations, *Treaty Series*, vol. 1035, p. 167. [↑](#footnote-ref-610)
611. Resolution 3166 (XXVIII) of 14 December 1973 requires, in its paragraph 6, that it be always published together with the Convention annexed thereto. [↑](#footnote-ref-611)
612. For the working paper and reports of Endre Ustor, see *Yearbook of the International Law Commission, 1968,* vol. II, document A/CN.4/L.127; ibid., *1969,* vol. II, document A/CN.4/213; ibid., *1970,* vol. II, document A/CN.4/228 and Add.1; ibid.*, 1972,* vol. II, document A/CN.4/257 and Add.1; ibid.*, 1973,* vol. II, document A/CN.4/266; ibid.*, 1974,* vol. II (Part One), document A/CN.4/280; ibid., *1975,* vol. II, document A/CN.4/286; and ibid., *1976,* vol. II (Part One), document A/CN.4/293 and Add.1. For the report of Nikolai A. Ushakov, see ibid., *1978,* vol. II (Part One), document A/CN.4/309 and Add.1 and 2. [↑](#footnote-ref-612)
613. Documents A/CN.4/308 and Add.1, Add.1/Corr.1 and Add.2 as well as A/CN.4/L.268 incorporated in *Yearbook of the International Law Commission, 1978,* vol. II (Part Two), annex. [↑](#footnote-ref-613)
614. See *Yearbook of the International Law Commission, 1973*, vol. II, document A/CN.4/269. [↑](#footnote-ref-614)
615. See *Yearbook of the International Law Commission, 1978*, vol. II (Part One), document A/CN.4/309 and Add.1 and 2. [↑](#footnote-ref-615)
616. Document A/CN.4/L.266. [↑](#footnote-ref-616)
617. Document A/CN.4/L.264. [↑](#footnote-ref-617)
618. Document A/CN.4/L.265. [↑](#footnote-ref-618)
619. Document A/CN.4/L.267. [↑](#footnote-ref-619)
620. Document A/CN.4/L.270. [↑](#footnote-ref-620)
621. See *Yearbook of the International Law Commission, 1978*, vol. II (Part Two), paras. 45 and 74. [↑](#footnote-ref-621)
622. See *Yearbook of the International Law Commission, 1978*, vol. II (Part Two), paras. 47–72. [↑](#footnote-ref-622)
623. See *Yearbook of the International Law Commission, 1978*, vol. II (Part Two), para. 73. [↑](#footnote-ref-623)
624. General Assembly resolutions 35/161 of 15 December 1980, 36/111 of 10 December 1981, 38/127 of 19 December 1983 and 40/65 of 11 December 1985. [↑](#footnote-ref-624)
625. See *Yearbook of the International Law Commission, 1978*, vol. II (Part Two), para. 74. [↑](#footnote-ref-625)
626. See *Official Records of the General Assembly, Sixty-first session, Supplement No. 10* (A/61/10), paras. 32–33 and 259. [↑](#footnote-ref-626)
627. Document A/CN.4/L.155 reproduced in *Yearbook of the International Law Commission, 1970*, vol. II, document A/8410/Rev.1, para. 89. [↑](#footnote-ref-627)
628. See *Yearbook of the International Law Commission, 1971*, vol. II (Part Two), document A/CN.4/250, also reproduced in ibid., vol. II (Part One), document A/8410/Rev.1, annex. [↑](#footnote-ref-628)
629. See *Yearbook of the International Law Commission, 1972,* vol. II, document A/CN.4/258; ibid.*, 1973,* vol. II, document A/CN.4/271; ibid.*, 1974,* vol. II (Part One), document A/CN.4/279; ibid.*, 1975,* vol. II, document A/CN.4/285; ibid., *1976,* vol. II (Part One), document A/CN.4/290 and Add.1; ibid.*, 1977,* vol. II (Part One), document A/CN.4/298; ibid.*, 1978,* vol. II (Part One), document A/CN.4/312; ibid.*, 1979,* vol. II (Part One), document A/CN.4/319; ibid.*, 1980,* vol. II (Part One), document A/CN.4/327; ibid.*, 1981,* vol. II (Part One), document A/CN.4/341 and Add.1; and ibid., *1982,* vol. II (Part One), document A/CN.4/353. [↑](#footnote-ref-629)
630. Document A/CN.4/339 and Add.1–8 reproduced in *Yearbook of the International Law Commission, 1981,* vol. II (Part Two), annex II; as well as document A/CN.4/350 and Add.1–6, Add.6/Corr.1 and Add.7–11 reproduced in *Yearbook of the International Law Commission, 1982,* vol. II (Part Two), annex. [↑](#footnote-ref-630)
631. Document A/CN.4/L.161 and Add.1 and 2; as well as *Yearbook of the International Law Commission, 1974,* vol. II (Part Two), documents A/CN.4/277 and   
     A/CN.4/281. [↑](#footnote-ref-631)
632. In the light of Commission practice regarding its work on the topic, the organizations in question were the United Nations and the intergovernmental organizations invited to send observers to United Nations codification conferences. [↑](#footnote-ref-632)
633. See *Yearbook of the International Law Commission, 1982,* vol. II (Part Two), paras. 33 and 57. [↑](#footnote-ref-633)
634. The informal summing-up by the co-Chairman of the informal consultations is contained in document A/C.6/40/10. [↑](#footnote-ref-634)
635. See *Official Records of the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations, Vienna, 18 February-21 March 1986*, vol. II, Documents of the Conference (United Nations publication, Sales No. 94.V.5), document A/CONF.129/15. [↑](#footnote-ref-635)
636. Ten international organizations, including the United Nations, had signed the Convention. [↑](#footnote-ref-636)
637. Instruments of formal confirmation or accession deposited by international organizations are not counted toward the entry into force of the Convention. By 31 January 2007, 12 international organizations had deposited instruments of formal confirmation or accession. [↑](#footnote-ref-637)
638. See *Official Records of the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations, Vienna, 18 February-21 March 1986,* vol. II, Documents of the Conference (United Nations publication, Sales No. 94.V.5), document A/CONF.129/14. [↑](#footnote-ref-638)
639. For the report of the Working Group, see document A/CN.4/305. [↑](#footnote-ref-639)
640. See *Yearbook of the International Law Commission, 1977*, vol. II (Part Two), paras. 83 and 84. [↑](#footnote-ref-640)
641. See annex V, section C (1). [↑](#footnote-ref-641)
642. See annex V, section D (1). [↑](#footnote-ref-642)
643. See annex V, section E (1). [↑](#footnote-ref-643)
644. See annex V, section H.  [↑](#footnote-ref-644)
645. Document A/CN.4/L.285. [↑](#footnote-ref-645)
646. See *Yearbook of the International Law Commission, 1978*, vol. II (Part Two), paras. 137–144. [↑](#footnote-ref-646)
647. See *Yearbook of the International Law Commission, 1979*, vol. II (Part Two), chapter VI, sections B to D. For the report of the Working Group, see document   
     A/CN.4/L.310. [↑](#footnote-ref-647)
648. See *Yearbook of the International Law Commission, 1980*, vol. II (Part One), document A/CN.4/335; ibid., *1981,* vol. II (Part One), document A/CN.4/347 and Add.1 and 2; ibid., *1982*, vol. II (Part One), document A/CN.4/359 and Add.1; ibid., *1983,* vol. II (Part One), document A/CN.4/374 and Add.1–4; ibid., *1984,* vol. II (Part One), document A/CN.4/382; ibid., *1985*, vol. II (Part One), document A/CN.4/390; ibid., *1986,* vol. II (Part One), document A/CN.4/400;and ibid., *1988,* vol. II (Part One), document   
     A/CN.4/417. [↑](#footnote-ref-648)
649. See *Yearbook of the International Law Commission, 1979,* vol. II (Part One), document A/CN.4/321 and Add.1–7; ibid., *1982,* vol. II (Part One), document A/CN.4/356 and Add.1–3; ibid., *1983,* vol. II (Part One), document A/CN.4/372 and Add.1 and 2; ibid., *1984,* vol. II (Part One), document A/CN.4/379 and Add.1; ibid., *1988,* vol. II (Part One), document A/CN.4/409 and Add. 1–5; and ibid., *1989,* vol. II (Part One), document A/CN.4/420. [↑](#footnote-ref-649)
650. See *Yearbook of the International Law Commission, 1977,* vol. II (Part One), document A/CN.4/300, as well as working papers A/CN.4/WP.4 and 5. [↑](#footnote-ref-650)
651. See *Yearbook of International Law Commission, 1988,* vol. II (Part One), document A/CN.4/417. [↑](#footnote-ref-651)
652. See *Yearbook of International Law Commission, 1989,* vol. II (Part Two), paras. 30 and 72. [↑](#footnote-ref-652)
653. See *Yearbook of International Law Commission, 1989,* vol. II (Part Two), para. 66. [↑](#footnote-ref-653)
654. Document A/CN.4/L.279/Rev.1. Section III of the report is reproduced in *Yearbook of the International Law Commission, 1978*, vol. II (Part Two), para. 190, annex. [↑](#footnote-ref-654)
655. See *Yearbook of the International Law Commission, 1978*, vol. II (Part Two), paras. 179, 180 and 188–190. [↑](#footnote-ref-655)
656. For the reports of Sompong Sucharitkul, see *Yearbook of the International Law Commission, 1979*, vol. II (Part One), document A/CN.4/323; ibid., *1980,* vol. II (Part One), document A/CN.4/331 and Add.1; ibid., *1981,* vol. II (Part One), document A/CN.4/340 and Add.1; ibid., *1982*, vol. II (Part One), document A/CN.4/357; ibid., *1983,* vol. II (Part One), document A/CN.4/363 and Add.1; ibid., *1984*, vol. II (Part One), document A/CN.4/376and Add.1 and 2; ibid., *1985*, vol. II (Part One), document A/CN.4/388; and ibid., *1986,* vol. II (Part One), document A/CN.4/396. For the reports of Motoo Ogiso, see *Yearbook of the International Law* Commission, *1988,* vol. II (Part One), document A/CN.4/415; ibid., *1989*, vol. II (Part One), document A/CN.4/422 and Add.1; and ibid. . *1990,* vol. II (Part One), document A/CN.4/431. [↑](#footnote-ref-656)
657. Document A/CN.4/343 and Add.1–4, reproduced in a volume in the *United Nations Legislative Series* entitled *“Materials on Jurisdictional Immunities of States and Their Property”* (ST/LEG/SER.B/20, United Nations publication, Sales No. 81.V.10); and *Yearbook of the International Law Commission, 1988,* vol. II (Part One), document A/CN.4/410 and Add.1–5. [↑](#footnote-ref-657)
658. See *Yearbook of the International Law Commission, 1979*, vol. II (Part One), document A/CN.4/323. [↑](#footnote-ref-658)
659. See *Yearbook of the International Law Commission, 1989,* vol. II (Part Two), paras. 406 and 407. [↑](#footnote-ref-659)
660. See *Yearbook of the International Law Commission, 1991,* vol. II (Part Two), paras. 23 and 28. [↑](#footnote-ref-660)
661. See *Yearbook of the International Law Commission, 1991,* vol. II (Part Two), para. 25. [↑](#footnote-ref-661)
662. For the report of the Working Group, see document A/C.6/47/L.10. [↑](#footnote-ref-662)
663. For the report of the Working Group, see document A/C.6/48/L.4. [↑](#footnote-ref-663)
664. Document A/C.6/49/L.2. [↑](#footnote-ref-664)
665. See document A/49/744, paras. 3–7. [↑](#footnote-ref-665)
666. See *Yearbook of the International Law Commission, 1999,* vol. II (Part Two), paras. 481–484. [↑](#footnote-ref-666)
667. For the report of the Working Group, see document A/C.6/54/L.12. [↑](#footnote-ref-667)
668. For the report of the Working Group, see document A/C.6/55/L.12. [↑](#footnote-ref-668)
669. Document A/C.6/55/L.12. [↑](#footnote-ref-669)
670. For the report of the Ad Hoc Committee, see *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 22* (A/57/22). For the documents before the Ad Hoc Committee, see ibid., para. 7. [↑](#footnote-ref-670)
671. See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 22* (A/57/22), paras. 8–13. [↑](#footnote-ref-671)
672. See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 22* (A/58/22). For the documents before the Ad Hoc Committee, see ibid., para. 7. [↑](#footnote-ref-672)
673. See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 22* (A/58/22), annex I. [↑](#footnote-ref-673)
674. As renumbered (previously article 18). [↑](#footnote-ref-674)
675. See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 22* (A/58/22), annex II. [↑](#footnote-ref-675)
676. See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 22* (A/58/22), para.12. [↑](#footnote-ref-676)
677. See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 22* (A/59/22), annex I. [↑](#footnote-ref-677)
678. The Commission noted that a considerable amount of such material had already been published in 1963 in the Secretary-General’s report entitled “Legal problems relating to the utilization and use of international rivers” (see *Yearbook of the International Law Commission, 1974,* vol. II (Part Two), document A/5409), prepared pursuant to General Assembly resolution 1401 (XIV) of 21 November 1959, as well as in a volume in the *United Nations Legislative Series* entitled *“Legislative Texts and Treaty Provisions Concerning the Utilization of International Rivers for Other Purposes Than Navigation”* (ST/LEG/SER.B/12, United Nations publication, Sales No. 63.V.4). [↑](#footnote-ref-678)
679. The General Assembly, in resolution 2669 (XXV) of 8 December 1970, requested the Secretary-General to continue the study initiated in accordance with General Assembly resolution 1401 (XIV) in order to prepare a “supplementary report” on the legal problems relating to the question, taking into account the updated application in State practice and international adjudication of the law of international watercourses and also intergovernmental and non-governmental studies of this matter. The Secretary-General submitted a supplementary report in 1974, which was printed in *Yearbook of the International Law Commission, 1974,* vol. II (Part Two), document A/CN.4/274. [↑](#footnote-ref-679)
680. Document A/CN.4/283 reproduced in *Yearbook of the International Law Commission, 1974,* vol. II (Part One), document A/9610/Rev.1, chapter V, annex. [↑](#footnote-ref-680)
681. For the report of Richard D. Kearney, see *Yearbook of the International Law Commission, 1976,* vol. II (Part One), document A/CN.4/295. For the reports of Stephen M. Schwebel, see *Yearbook of the International Law Commission, 1979,* vol. II (Part One), document A/CN.4/320; ibid., *1980,* vol. II (Part One), document A/CN.4/332and Add.1; and ibid., *1982,* vol. II (Part One), document A/CN.4/348. For the reports of Jens Evensen, see *Yearbook of the International Law Commission, 1983,* vol. II (Part One), document A/CN.4/367; and ibid.*, 1984,* vol. II (Part One), document A/CN.4/381. For the reports of Stephen McCaffrey, see *Yearbook of the International Law Commission, 1985*, vol. II (Part One), document A/CN.4/393; ibid., *1986,* vol. II (Part One), document A/CN.4/399 and Add.1 and 2 (in his second report, the Special Rapporteur discussed the concept of “shared natural resources” which was subsequently taken up by the Commission as a separate topic. See Part III.B, section 3); ibid., *1987,* vol. II (Part One), document A/CN.4/406 and Add.1 and 2; ibid., *1988*, vol. II (Part One), document A/CN.4/412 and Add. 1 and 2; ibid., *1989,* vol. II (Part One), document A/CN.4/421 and Add.1 and 2; ibid., *1990,* vol. II (Part One), document A/CN.4/427 and Add.1; and ibid., *1991*, vol. II (Part One), document A/CN.4/436. For the reports of Robert Rosenstock, see *Yearbook of the International Law Commission, 1993,* vol. II (Part One), document A/CN.4/451; and ibid., *1994,* vol. II (Part One), document A/CN.4/462. [↑](#footnote-ref-681)
682. See *Yearbook of the International Law Commission, 1976,* vol. II (Part One), document A/CN.4/294 and Add.1; ibid., *1978,* vol. II (Part One), document A/CN.4/314; ibid., *1979*, vol. II (Part One), document A/CN.4/324; ibid., *1980,* vol. II (Part One), document A/CN.4/329 and Add.1; ibid., *1982,* vol. II (Part One), document A/CN.4/352 and Add.1; and ibid., *1993,* vol. II (Part One), document A/CN.4/447 and Add.1–3. [↑](#footnote-ref-682)
683. Apart from the documents mentioned above, see also *Yearbook of the International Law Commission, 1971,* vol. II (Part Two), document A/CN.4/244/Rev.1; ibid., *1973*, vol. II, document A/CN.4/270; as well as document A/CN.4/L.241. [↑](#footnote-ref-683)
684. The hypothesis was contained in a note which reads as follows:

     “A watercourse system is formed of hydrographic components such as rivers, lakes, canals, glaciers and ground water constituting by virtue of their physical relationship a unitary whole; thus, any use affecting waters in one part of the system may affect waters in another part.

     “An ‘international watercourse system’ is a watercourse system, components of which are situated in two or more States.

     “To the extent that parts of the waters in one State are not affected by or do not affect uses of waters in another State, they shall not be treated as being included in the international watercourse system. Thus, to the extent that the uses of the waters of the system have an effect on one another, to that extent the system is international, but only to that extent; accordingly, there is not an absolute, but a relative, international character of the watercourse.” See *Yearbook of the International Law Commission, 1980,* vol. II (Part Two), para. 90. [↑](#footnote-ref-684)
685. See *Yearbook of the International Law Commission, 1993*, vol. II (Part One), document A/CN.4/451. [↑](#footnote-ref-685)
686. See *Yearbook of the International Law Commission, 1994,* vol. II (Part One), document A/CN.4/462. [↑](#footnote-ref-686)
687. The term “unrelated confined groundwaters” is conceived as a shared aquifer which is an independent water resource body, not contributing water to a “common terminus” via a river system, or receiving significant amounts of water from any extant surface water body. See *Yearbook of the International Law Commission, 1994,* vol. II (Part One), document A/CN.4/462, annex, para. 38. [↑](#footnote-ref-687)
688. See *Yearbook of the International Law Commission, 1994*, vol. II (Part Two), paras. 218 and 222. The question of transboundary groundwaters was subsequently taken up by the Commission, in the context of the topic “Shared natural resources” (*see Part III.B, section 3, below*). [↑](#footnote-ref-688)
689. See *Yearbook of the International Law Commission, 1994,* vol. II (Part Two), para. 219. [↑](#footnote-ref-689)
690. For the reports of the Working Group of the Whole, see documents A/51/624 and A/51/869. [↑](#footnote-ref-690)
691. In accordance with article 36, paragraph 3, of the Convention, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States for the purposes, inter alia, of entrance into force of the Convention. [↑](#footnote-ref-691)
692. The Commission’s study on the topic has proceeded under this title following the completion by the Commission of the preliminary study of the topic “State succession and its impact on the nationality of natural and legal persons” at its forty-eighth session, in 1996. [↑](#footnote-ref-692)
693. At these sessions, the Commission considered respectively the Special Rapporteur’s first and second reports (documents A/CN.4/467 and A/CN.4/474). [↑](#footnote-ref-693)
694. For the report of the Working Group at the Commission’s forty-seventh session, see document A/CN.4/L.507 reproduced in *Yearbook of the International Law Commission, 1995*, vol. II (Part Two), annex. For the summary of the oral report to the plenary on the work of the Working Group at the Commission’s forty-eighth session, see *Yearbook of the International Law Commission, 1996*, vol. II (Part Two), paras. 78–87. [↑](#footnote-ref-694)
695. See *Yearbook of the International Law Commission, 1996*, vol. II (Part Two), para. 88. [↑](#footnote-ref-695)
696. Document A/CN.4/480 and Add.1. [↑](#footnote-ref-696)
697. Document A/CN.4/493 and Corr.1. [↑](#footnote-ref-697)
698. Document A/CN.4/497. [↑](#footnote-ref-698)
699. Document A/CN.4/L.572. [↑](#footnote-ref-699)
700. See *Yearbook of the International Law Commission, 1999*, vol. II (Part Two), paras. 42, 43, 47 and 48. [↑](#footnote-ref-700)
701. See *Yearbook of the International Law Commission, 1999*, vol. II (Part Two), para. 44. [↑](#footnote-ref-701)
702. Document A/CN.4/489. [↑](#footnote-ref-702)
703. See *Yearbook of the International Law Commission, 1998*, vol. II (Part Two), paras. 460–468. For the report of the Working Group, see document A/CN.4/L.557. [↑](#footnote-ref-703)
704. See *Yearbook of the International Law Commission, 1999*, vol. II (Part Two), para. 45. [↑](#footnote-ref-704)
705. At its fifty-third session, in 2001, the Commission decided to amend the title of the topic to “Responsibility of States for internationally wrongful acts”. [↑](#footnote-ref-705)
706. The Commission also had before it the memorandum presented by its member, F. V. García Amador (see *Yearbook of the International Law Commission, 1954,* vol. II, document A/CN.4/80). [↑](#footnote-ref-706)
707. See *Yearbook of the International Law Commission, 1956,* vol. II, document A/CN.4/96; ibid., *1957,* vol. II, document A/CN.4/106; ibid., *1958,* vol. II, document A/CN.4/111; ibid., *1959,* vol. II, document A/CN.4/119; ibid., *1960,* vol. II, document A/CN.4/125; and ibid., *1961,* vol. II, document A/CN.4/134 and Addendum. [↑](#footnote-ref-707)
708. Document A/CN.4/152 reproduced in *Yearbook of the International Law Commission, 1963,* vol. II, document A/5509, annex I. [↑](#footnote-ref-708)
709. For a note and the reports of Roberto Ago, see *Yearbook of the International Law Commission, 1967,* vol. II, document A/CN.4/196; ibid., *1969,* vol. II, document A/CN.4/217 and Add.1; ibid., *1970,* vol. II, document A/CN.4/233; ibid., *1971,* vol. II (Part One), documents A/CN.4/217/Add.2 and A/CN.4/246 and Add.1–3; ibid., *1972,* vol. II, document A/CN.4/264 and Add.1; ibid., *1976,* vol. II (Part One), document A/CN.4/291 and Add.1 and 2; ibid., *1977,* vol. II (Part One), document A/CN.4/302 and Add.1–3; ibid., *1978,* vol. II (Part One), document A/CN.4/307 and Add.1 and 2; ibid., *1979,* vol. II (Part One), document A/CN.4/318 and Add.1–4; and ibid., *1980,* vol. II (Part One), document A/CN.4/318/Add.5–7. For the reports of Willem Riphagen, see ibid., *1980,* vol. II (Part One), document A/CN.4/330; ibid., *1981,* vol. II (Part One), document A/CN.4/344; ibid., *1982,* vol. II (Part One), document A/CN.4/354 and Add.1 and 2; ibid., *1983,* vol. II (Part One), document A/CN.4/366 and Add.1; ibid., *1984,* vol. II (Part One), document A/CN.4/380; ibid., *1985,* vol. II (Part One), document A/CN.4/389; and ibid., *1986,* vol. II (Part One), document A/CN.4/397 and Add.1. For the reports of Gaetano Arangio-Ruiz, see ibid., *1988,* vol. II (Part One), document A/CN.4/416 and Add.1; ibid., *1989,* vol. II (Part One), document A/CN.4/425 and Add.1; ibid., *1991,* vol. II (Part One), document A/CN.4/440 and Add.1; ibid., *1992,* vol. II (Part One), document A/CN.4/444 and Add.1–3; ibid., *1993,* vol. II (Part One), document A/CN.4/453 and Add.1–3; ibid., *1994,* vol. II (Part One), document A/CN.4/461 and Add.1–3; as well as document A/CN.4/469 and Add.1 and 2; and document A/CN.4/476 and Add.1. For the reports of James Crawford, see documents A/CN.4/490 and Add.1–7; A/CN.4/498 and Add.1–4; A/CN.4/507 and Add.1–4; and A/CN.4/517 and Add.1. [↑](#footnote-ref-709)
710. See *Yearbook of the International Law Commission,* *1980,* vol. II (Part One), document A/CN.4/328and Add.1–4; ibid., *1981,* vol. II (Part One), document A/CN.4/342and Add.1–4; ibid., *1982,* vol. II (Part One), document A/CN.4/351 and Add.1–3; ibid., *1983,* vol. II (Part One), document A/CN.4/362; ibid., *1988,* vol. II (Part One), document A/CN.4/414; as well as documents A/CN.4/488 and Add.1–3, and A/CN.4/492. [↑](#footnote-ref-710)
711. See *Yearbook of the International Law Commission,* *1964*, vol. II. documents A/CN.4/165 and A/CN.4/169; ibid., *1969,* vol. II, documents A/CN.4/208 and A/CN.4/209; ibid., *1978,* vol. II (Part One), document A/CN.4/315 (a survey of State practice, international jurisprudence and doctrine relating to “force majeure” and “fortuitous event” as circumstances precluding wrongfulness); and ibid., *1980,* vol. II (Part One), document A/CN.4/318/Add.8 (a list of the principal works cited in the reports of Mr. Ago). [↑](#footnote-ref-711)
712. See *Yearbook of the International Law Commission,* *1969,* vol. II, document A/CN.4/217 and Add.1. [↑](#footnote-ref-712)
713. See *Yearbook of the International Law Commission,* *1969*, vol. II, document A/7610/Rev.1, para. 80. [↑](#footnote-ref-713)
714. See *Yearbook of the International Law Commission, 1970*, vol. II, document   
     A/CN.4/233. [↑](#footnote-ref-714)
715. See *Yearbook of the International Law Commission, 1973,* vol. II, document A/9010/Rev.1, paras. 36–57. [↑](#footnote-ref-715)
716. For the guidelines on the consideration of this topic on second reading adopted by the Commission on the recommendation of the Working Group, see *Yearbook of the International Law Commission, 1997,* vol. II (Part Two), para. 161. For the report of the Working Group, see document A/CN.4/L.538. [↑](#footnote-ref-716)
717. See *Yearbook of the International Law Commission, 1998,* vol. II (Part Two), paras. 241–330. [↑](#footnote-ref-717)
718. Document A/CN.4/490 and Add.1–7. [↑](#footnote-ref-718)
719. See *Yearbook of the International Law Commission, 1998,* vol. II (Part Two), para. 331. [↑](#footnote-ref-719)
720. See *Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10 (*A/56/10), para. 44. [↑](#footnote-ref-720)
721. Reproduced in *Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10 (*A/56/10), paras. 49, 55, 60 and 67. [↑](#footnote-ref-721)
722. See *Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10 (*A/56/10), para. 68. [↑](#footnote-ref-722)
723. See *Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10 (*A/56/10), paras. 69, 70, 76 and 77. [↑](#footnote-ref-723)
724. See *Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10 (*A/56/10), paras. 72 and 73. [↑](#footnote-ref-724)
725. See *Yearbook of the International Law Commission, 1973*, vol. II, document A/9010/Rev.1, para. 39. [↑](#footnote-ref-725)
726. For the report of the Working Group, see document A/CN.4/L.284 and Corr.1. Section II of the report is reproduced in *Yearbook of the International Law Commission, 1978*, vol. II (Part Two), para. 178, annex. [↑](#footnote-ref-726)
727. For the reports of Robert Q. Quentin-Baxter, see *Yearbook of the International Law Commission, 1980,* vol. II (Part One), document A/CN.4/334 and Add.1 and 2; ibid., *1981,* vol. II (Part One), document A/CN.4/346and Add.1 and 2; ibid., *1982,* vol. II (Part One), document A/CN.4/360; ibid., *1983,* vol. II (Part One), document A/CN.4/373; and ibid., *1984,* vol. II (Part One), document A/CN.4/383 and Add.1. For the reports of Julio Barbosa, see *Yearbook of the International Law Commission, 1985,* vol. II (Part One), document A/CN.4/394; ibid., *1986,* vol. II (Part One), document A/CN.4/402; ibid., *1987,* vol. II (Part One), document A/CN.4/405;ibid., *1988,* vol. II (Part One), document A/CN.4/413; ibid., *1989,* vol. II (Part One), document A/CN.4/423; ibid., *1990,* vol. II (Part One), document A/CN.4/428 and Add.1; ibid., *1991,* vol. II (Part One), document A/CN.4/437; ibid., *1992,* vol. II (Part One), document A/CN.4/443; ibid., *1993,* vol. II (Part One), document A/CN.4/450; ibid., *1994,* vol. II (Part One), document A/CN.4/459; as well as documents A/CN.4/468 and A/CN.4/475 and Add.1. [↑](#footnote-ref-727)
728. See *Yearbook of the International Law Commission, 1984,* vol. II (Part One), document A/CN.4/378; as well as document A/CN.4/481 and Add.1. [↑](#footnote-ref-728)
729. “Survey of State practice relevant to international liability for injurious consequences arising out of acts not prohibited by international law” (document ST/LEG/15, subsequently reissued in a slightly amended form under the symbol A/CN.4/384, reproduced in *Yearbook of the International Law Commission, 1985*, vol. II (Part One, addendum)); and “Survey of liability regimes relevant to the topic of international liability for injurious consequences arising out of acts not prohibited by international law” (document A/CN.4/471). [↑](#footnote-ref-729)
730. Document A/CN.4/L.470. [↑](#footnote-ref-730)
731. See *Yearbook of the International Law Commission, 1992,* vol. II (Part Two), paras. 344–348. [↑](#footnote-ref-731)
732. Document A/CN.4/L.510. [↑](#footnote-ref-732)
733. Document A/CN.4/L.533 and Add.1 reproduced in *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), annex I. [↑](#footnote-ref-733)
734. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), para. 99. [↑](#footnote-ref-734)
735. See *Yearbook of the International Law Commission, 1997,* vol. II (Part Two), paras. 165–167. [↑](#footnote-ref-735)
736. Document A/CN.4/L.536 reflected in *Yearbook of the International Law Commission, 1997,* vol. II (Part Two), paras. 165–167. [↑](#footnote-ref-736)
737. Documents A/CN.4/487 and Add.1; A/CN.4/501; and A/CN.4/510. [↑](#footnote-ref-737)
738. Documents A/CN.4/509 and A/CN.4/516. [↑](#footnote-ref-738)
739. Document A/CN.4/L.556 reproduced in *Yearbook of the International Law Commission, 1998,* vol. II (Part Two), footnote 12. [↑](#footnote-ref-739)
740. Document A/CN.4/510. [↑](#footnote-ref-740)
741. See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10), paras. 91, 92, 97 and 98. [↑](#footnote-ref-741)
742. See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10), para. 94 [↑](#footnote-ref-742)
743. In resolution 61/36 of 4 December 2006, the General Assembly decided to return to the topic, together with the issue of allocation of loss in the case of transboundary harm from hazardous activities, at its sixty-second session, in 2007. [↑](#footnote-ref-743)
744. See *Yearbook of the International Law Commission, 1999,* vol. II (Part Two), para. 608. [↑](#footnote-ref-744)
745. See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10), para. 517. [↑](#footnote-ref-745)
746. See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10), paras. 441–457. [↑](#footnote-ref-746)
747. See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10), para. 519. [↑](#footnote-ref-747)
748. See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), para. 166. [↑](#footnote-ref-748)
749. See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10), para. 170. [↑](#footnote-ref-749)
750. Documents A/CN.4/531, A/CN.4/540 and A/CN.4/566. [↑](#footnote-ref-750)
751. See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10), paras. 442–457; *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10), paras. 170–171 and document A/CN.4/L.661 and Corr.1. [↑](#footnote-ref-751)
752. Document A/CN.4/543. [↑](#footnote-ref-752)
753. Document A/CN.4/562 and Add.1. [↑](#footnote-ref-753)
754. Document A/CN.4/540. [↑](#footnote-ref-754)
755. See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10), paras. 175 and 176. [↑](#footnote-ref-755)
756. See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10), para. 173. [↑](#footnote-ref-756)
757. Document A/CN.4/566. [↑](#footnote-ref-757)
758. Document A/CN.4/562 and Add.1. [↑](#footnote-ref-758)
759. See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), paras. 66 and 67. [↑](#footnote-ref-759)
760. See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), paras. 62 and 63. [↑](#footnote-ref-760)
761. See *Yearbook of the International Law Commission, 1995,* vol. II (Part Two), para. 501. [↑](#footnote-ref-761)
762. See *Yearbook of the International Law Commission, 1996*, vol. II (Part Two), annex II, addendum 1. [↑](#footnote-ref-762)
763. See *Yearbook of the International Law Commission, 1997*, vol. II (Part Two), paras. 172–189. [↑](#footnote-ref-763)
764. See *Yearbook of the International Law Commission, 1997,* vol. II (Part Two), para. 190 and *Yearbook of the International Law Commission, 1999,* vol. II (Part Two), para. 19. [↑](#footnote-ref-764)
765. Documents A/CN.4/484, A/CN.4/506 and Corr.1 and Add.1, A/CN.4/514 and Corr.1 and 2 (Spanish only), A/CN.4/523 and Add.1, A/CN.4/530 and Corr.1 (Spanish only) and Add.1, A/CN.4/538, A/CN.4/546, and A/CN.4/567. [↑](#footnote-ref-765)
766. See *Yearbook of the International Law Commission, 1997,* vol. II (Part Two), paras. 172–189, *Yearbook of the International Law Commission, 1998,* vol. II (Part Two), paras. 108–109, and *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), paras. 91–92. [↑](#footnote-ref-766)
767. Documents A/51/358 and Add.1; A/CN.4/561 and Add.1 and 2 and A/CN.4/575. The General Assembly, in resolution 53/102 of 8 December 1998, invited Governments to submit the most relevant national legislation, decisions of domestic courts and State practice relevant to diplomatic protection in order to assist the Commission in its future work on the topic. [↑](#footnote-ref-767)
768. Documents A/CN.4/506 and Corr.1 and Add.1, A/CN.4/514 and Corr.1 and 2 (Spanish only), A/CN.4/523 and Add.1, A/CN.4/530 and Corr.1 (Spanish only) and Add.1, and A/CN.4/538. [↑](#footnote-ref-768)
769. See proposals for draft articles: 2 (The threat or use of force), 4 (The duty to exercise diplomatic protection in cases of injury arising from a grave breach of a *jus cogens* norm), in document A/CN.4/506 and Corr.1; 12 (The exhaustion of local remedies rule as a procedural precondition with respect to an internationally wrongful act which is a violation of domestic law and international law), 13 (The exhaustion of local remedies rule with respect to a denial of justice regarding a violation of domestic law), in document A/CN.4/514 and Corr.1 and 2 (Spanish only); 15 (Burden of proof), 16 (The Calvo clause), in document A/CN.4/523 and Add.1; and 23 to 25 (Protection by an international organization and diplomatic protection), in document A/CN.4/538. At its fifty-sixth session, in 2004, the Commission did not accept proposals to include within the scope of the topic: the protection by an administering State or international organization; the delegation of the right of diplomatic protection and the transfer of claims; and the protection by an international organization and diplomatic protection. See document A/CN.4/538. The Commission, at its fifty-seventh session, in 2005, agreed with the conclusion of the Special Rapporteur, reflected in his sixth report, document A/CN.4/546, that it was not appropriate to include a provision on the “clean hands” doctrine in the draft articles. See *Official Records of the General Assembly, Sixtieth Session, Supplement N0.10* (A/60/10), para. 231. [↑](#footnote-ref-769)
770. At its fifty-fifth session, in 2003, the Commission established an open-ended Working Group, chaired by the Special Rapporteur, on draft article 17, paragraph 2. See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), paras. 90–92. [↑](#footnote-ref-770)
771. An open-ended informal consultation, chaired by the Special Rapporteur, was established at the fifty-third session, in 2001, to consider draft article 9. See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10), para. 166. An open-ended informal consultation, chaired by the Special Rapporteur, on the question of the diplomatic protection of crews as well as that of corporations and shareholders, was also established at the fifty-fourth session, in 2002. See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10), para. 113. [↑](#footnote-ref-771)
772. See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10), paras. 59 and 60. [↑](#footnote-ref-772)
773. See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10), para. 57. [↑](#footnote-ref-773)
774. Document A/CN.4/567. [↑](#footnote-ref-774)
775. Documents A/CN.4/561 and Add.1 and 2, and A/CN.4/575 (issued after the adoption of the draft articles on second reading). [↑](#footnote-ref-775)
776. See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), paras. 43, 44, 49 and 50. [↑](#footnote-ref-776)
777. See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), para. 46. [↑](#footnote-ref-777)
778. Document A/CN.4/1 (United Nations publication, Sales No. 48.V.1) reissued under the symbol A/CN.4/1/Rev.1 (United Nations publication, Sales No. 48.V.1(1)). [↑](#footnote-ref-778)
779. *Nuclear Tests (Australia v. France, New Zealand v. France), Judgment, I.C.J. Reports 1974*, pp. 253 and 457. [↑](#footnote-ref-779)
780. See *Yearbook of the International Law Commission, 1996,* vol. II (Part Two), annex II, addendum 3. [↑](#footnote-ref-780)
781. See *Yearbook of the International Law Commission, 1997,* vol. II (Part Two), para. 212. [↑](#footnote-ref-781)
782. Documents A/CN.4/486; A/CN.4/500 and Add.1; A/CN.4/505; A/CN.4/519; A/CN.4/525 and Add.1, Corr.1, Corr.2 (Arabic and English only) and Add.2; A/CN.4/534; A/CN.4/542 and Corr.1 (French Only), 2 and 3; A/CN.4/557; and A/CN.4/569 and Add.1. [↑](#footnote-ref-782)
783. For replies from Governments to the questionnaire submitted to Governments following the Commission’s fifty-first session in 1999, see document A/CN.4/511. The document contains the text of the replies received as at 6 July 2000. For replies from Governments to the questionnaire submitted to Governments following the Commission’s fifty-third session in 2001, see document A/CN.4/524. [↑](#footnote-ref-783)
784. See *Yearbook of the International Law Commission, 1997,* vol. II (Part Two), paras. 195–210; *ibid., 1998,* vol. II (Part Two), paras. 192–200; *ibid., 1999,* vol. II (Part Two), paras. 577–597; *ibid., 2000,* vol. II (Part Two), paras. 620–621; *Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10* (A/56/10), para. 254; *ibid., Fifty-eighth session, Supplement No. 10* (A/58/10), paras. 303–308; *ibid., Fifty-ninth session, Supplement No. 10* (A/59/10), paras. 245–247; *ibid., Sixtieth session, Supplement No. 10* (A/60/10), paras. 327–332; and *ibid., Sixty-first session, Supplement No. 10* (A/61/10), paras. 173–176. [↑](#footnote-ref-784)
785. The Working Group developed guidelines for a questionnaire to be sent to States, requesting materials and inquiring about their practice in the area of unilateral acts as well as their position on certain aspects of the Commission’s study of the topic. See *Yearbook of the International Law Commission, 1999,* vol. II (Part Two), paras. 590–595. [↑](#footnote-ref-785)
786. See *Yearbook of the International Law Commission, 1999,* vol. II (Part Two), para. 581. [↑](#footnote-ref-786)
787. See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), paras. 304–308. [↑](#footnote-ref-787)
788. See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10), para. 247. The grid included the following elements: date; author/organ; competence of author/organ; form; content; context and circumstances; aim; addressees; reactions of addressees; reactions of third parties; basis; implementation; modification; termination/revocation; legal scope; decision of a judge or an arbitrator; comments; and literature. [↑](#footnote-ref-788)
789. See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 10* (A/60/10), para. 329. [↑](#footnote-ref-789)
790. See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), paras. 173–175. [↑](#footnote-ref-790)
791. Document A/CN.4/569 and Add.1. [↑](#footnote-ref-791)
792. See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), paras. 176–177. [↑](#footnote-ref-792)
793. See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), para. 170. [↑](#footnote-ref-793)
794. See *Yearbook of the International Law Commission, 2000,* vol. II (Part Two), para. 729. [↑](#footnote-ref-794)
795. See *Yearbook of the International Law Commission, 2000,* vol. II (Part Two), para. 731. [↑](#footnote-ref-795)
796. See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10), paras. 492–494. [↑](#footnote-ref-796)
797. See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10), para. 493; *ibid., Fifty-eighth Session, Supplement No. 10* (A/58/10), para. 412; *ibid., Fifty-ninth Session, Supplement No. 10* (A/59/10), para. 298; *ibid., Sixtieth Session, Supplement No. 10* (A/60/10), para. 442; and *ibid., Sixty-first Session, Supplement No. 10* (A/61/10), para. 237. [↑](#footnote-ref-797)
798. The successive reports of the Study Group have been reproduced each year in the annual reports of the International Law Commission. See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10) paras. 495–513; *ibid., Fifty-eighth Session, Supplement No. 10* (A/58/10) paras. 415–435; *ibid., Fifty-ninth Session, Supplement No. 10* (A/59/10) paras. 300–358; *ibid., Sixtieth Session, Supplement No. 10* (A/60/10) paras. 445–493; *ibid., Sixty-first Session, Supplement No. 10* (A/61/10) paras. 241–251. [↑](#footnote-ref-798)
799. See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10), para. 512. [↑](#footnote-ref-799)
800. See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10), paras. 512. [↑](#footnote-ref-800)
801. See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), para. 430. [↑](#footnote-ref-801)
802. See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 10* (A/60/10), para. 447–448. [↑](#footnote-ref-802)
803. See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10) para. 251. [↑](#footnote-ref-803)
804. Document A/CN.4/L.682 and Add.1 and Corr.1. [↑](#footnote-ref-804)
805. See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), para. 239. [↑](#footnote-ref-805)
806. At its forty-seventh session, in 1995, the Commission concluded that the title of the topic should be amended to read as above rather than “The law and practice relating to reservations to treaties”. [↑](#footnote-ref-806)
807. See *Yearbook of the International Law Commission, 1993,* vol.II (Part Two), paras. 427–430 and 440. [↑](#footnote-ref-807)
808. See *Yearbook of the International Law Commission, 1994,* vol. II (Part Two), para. 381. [↑](#footnote-ref-808)
809. Document A/CN.4/470. [↑](#footnote-ref-809)
810. See *Yearbook of the International Law Commission, 1995,* vol. II (Part Two), para. 487. [↑](#footnote-ref-810)
811. See *Yearbook of the International Law Commission, 1995,* vol. II (Part Two), para. 488. [↑](#footnote-ref-811)
812. See *Yearbook of the International Law Commission, 1995,* vol. II (Part Two), para. 489. [↑](#footnote-ref-812)
813. Document A/CN.4/477 and Add.1. [↑](#footnote-ref-813)
814. Document A/CN.4/478. A revised version was issued as document A/CN.4/478/Rev.1 at the fifty-first session, in 1999. [↑](#footnote-ref-814)
815. See *Yearbook of the International Law Commission*, *1996*, vol. II (Part Two), para. 137. [↑](#footnote-ref-815)
816. See *Yearbook of the International Law Commission*, *1997*, vol. II (Part Two), para. 157. [↑](#footnote-ref-816)
817. See *Yearbook of the International Law Commission*, *1997*, vol. II (Part Two), para.28. [↑](#footnote-ref-817)
818. An eleventh report, contained in document A/CN.4/574, was submitted at the fifty-eighth session, in 2006, the consideration of which was postponed to the fifty-ninth session in 2007. [↑](#footnote-ref-818)
819. Documents A/CN.4/491 and Corr.1 (English only), and Add.1, Add.2 and Corr.1, Add.3 and Corr.1 (Arabic, French, Russian only), Add.4 and Corr.1, Add.5 and Add.6 and Corr.; A/CN.4/499; A/CN.4/508 and Add.1–4; A/CN.4/518 and Add.1–3; A/CN.4/526 and Add.1–3; A/CN.4/535 and Add.1; A/CN.4/54; and A/CN.4/558 and Corr.1, Add.1 and Corr.1 and 2 (Fench and Arabic only, and Add.2). [↑](#footnote-ref-819)
820. For the respective texts of, and commentaries to, the draft guidelines adopted by the Commission between 1998 and 2006 see: *Yearbook of the International Law Commission, 1998,* vol. II (Part Two), para. 540; *ibid., 1999,* vol. II (Part Two), para. 470; *ibid., 2000,* vol. II (Part Two), para. 663; *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10), para. 157; *ibid., Fifty-seventh Session, Supplement No. 10* (A/57/10), para. 103; *ibid., Fifty-eighth Session, Supplement No. 10* (A/58/10), para. 368; *ibid., Fifty-ninth Session, Supplement No. 10* (A/59/10), para.295; *ibid., Sixtieth Session, Supplement No. 10* (A/60/10), para. 438; and *ibid., Sixty-first Session, Supplement No. 10* (A/61/10), para. 159. [↑](#footnote-ref-820)
821. See Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10 (A/58/10), para. 334; Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10 (A/59/10), para.375; and Official Records of the General Assembly, Sixtieth Session, Supplement No. 10 (A/60/10), paras. 370 and 509. [↑](#footnote-ref-821)
822. General Assembly resolutions 51/160 of 16 December 1996, 53/102 of 8 December 1998, 54/111 of 9 December 1999, 55/152 of 12 December 2000, 56/82 of 12 December 2001, 57/21 of 19 November 2002, 58/77 of 9 December 2003, 59/41 of 2 December 2004 and 60/22 of 23 November 2005. The work on the topic will continue at the fifty-ninth session of the Commission, in 2007, in accordance with General Assembly resolution 61/34 of 4 December 2006. [↑](#footnote-ref-822)
823. See *Yearbook of the International Law Commission, 2000,* vol. II (Part Two), paras. 726–728 and 729 (1). For the syllabus on the topic, see ibid., annex (1). [↑](#footnote-ref-823)
824. See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10), paras. 18, 461–463, 517 and 519. [↑](#footnote-ref-824)
825. See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10), paras. 465–488. The Commission requested the Secretariat to circulate, on an annual basis, the relevant chapter of the report of the Commission to international organizations asking for their comments and for any relevant materials which they could provide to the Commission. See ibid.*, Fifty-seventh Session, Supplement N0.10,* (A/57/10 and Corr.1), para. 488 and ibid.*, Fifty-eighth Session, Supplement No. 10* (A/58/10), para. 52. The General Assembly, in resolution 58/77 adopted on 9 December 2003, requested the Secretary-General to invite States and international organizations to submit information concerning their practice relevant to the topic, including cases in which States members of an international organization may be regarded as responsible for acts of the organization [↑](#footnote-ref-825)
826. Documents A/CN.4/532, A/CN.4/541, A/CN.4/553, and A/CN.4/564 and Add.1 and 2. [↑](#footnote-ref-826)
827. Documents A/CN.4/545, A/CN.4/547, A/CN.4/556 and A/CN.4/568 and Add.1. [↑](#footnote-ref-827)
828. See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), para. 90. For the commentaries to: draft articles 1 to 3, see *ibid., Fifty-eighth Session, Supplement No. 10* (A/58/10), para. 54; draft articles 4 to 7, see *ibid., Fifty-ninth Session, Supplement No. 10* (A/59/10), para. 72; draft articles 8 to 16 [15], see *ibid., Sixtieth Session, Supplement No. 10* (A/60/10), para. 206; and draft articles 17 to 30, see *ibid., Sixty-first Session, Supplement No. 10* (A/61/10), para. 91. [↑](#footnote-ref-828)
829. See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), paras. 47–48 and 51. [↑](#footnote-ref-829)
830. See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 10* (A/60/10), para. 201. [↑](#footnote-ref-830)
831. General Assembly resolutions 55/152 of 12 December 2000, 56/82 of 12 December 2001, 57/21 of 19 November 2002, 58/77 of 9 December 2003, 59/41 of 2 December 2004 and 60/22 of 23 November 2005. The work on the topic will continue at the fifty-ninth session of the Commission, in 2007, in accordance with General Assembly resolution 61/34 of 4 December 2006. [↑](#footnote-ref-831)
832. See *Yearbook of the International Law Commission, 2000,* vol. II (Part Two), para. 729 (3). For the syllabus on the topic, see ibid., annex (3). [↑](#footnote-ref-832)
833. See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10), paras. 20, 518 and 519. [↑](#footnote-ref-833)
834. Document A/CN.4/533 and Add.1. [↑](#footnote-ref-834)
835. See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), paras. 376–381. [↑](#footnote-ref-835)
836. See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10), para. 81. [↑](#footnote-ref-836)
837. Documents A/CN.4/539 and Add.1, and A/CN.4/551 and Corr.1 and Add.1. [↑](#footnote-ref-837)
838. Document A/CN.4/555 and Add.1. [↑](#footnote-ref-838)
839. The Commission also received informal briefings by experts on groundwaters from the Economic Commission for Europe (ECE), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Food and Agriculture Organization (FAO) and the International Association of Hydrogeologists (IAH), at its fifty-fifth and fifty-sixth sessions, in 2003 and 2004, respectively; as well as an informal technical presentation on the Guarani Aquifer System project, at its fifty-seventh session, in 2005. See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), para. 373; *ibid., Fifty-ninth Session, Supplement No. 10* (A/59/10), para. 80; and *ibid., Sixtieth Session, Supplement No. 10* (A/60/10), para. 32. [↑](#footnote-ref-839)
840. Draft articles 1 (Scope), 2 (Use of terms), 3 (Sovereignty of aquifer States), 4 (Equitable and reasonable utilization), 5 (Factors relevant to equitable and reasonable utilization), 6 (Obligation not to cause significant harm to other aquifer States), 7 (General obligation to cooperate), 8 (Regular exchange of data and information), 9 (Protection and preservation of ecosystems), 10 (Recharge and discharge zones), 11 (Prevention, reduction and control of pollution), 12 (Monitoring), 13 (Management), 14 (Planned activities), 15 (Scientific and technical cooperation with developing States), 16 (Emergency situations) 17 (Protection in time of armed conflict), 18 (Data and information concerning national defence or security), and 19 (Bilateral and regional agreements and arrangements). The draft articles are divided into the following five parts: Part I (Introduction) including articles 1 and 2 ; Part II (General principles) including articles 3 to 8; Part III (Protection, preservation, and management) including articles 9 to 13; Part IV (Activities affecting other States) including article 14; and Part V (Miscellaneous provisions) including articles 15 to 19. See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), paras. 75 and 76. [↑](#footnote-ref-840)
841. See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), para. 73. [↑](#footnote-ref-841)
842. General Assembly resolutions 55/152 of 12 December 2000, 56/82 of 12 December 2001, 57/21 of 19 November 2002, 58/77 of 9 December 2003, 59/41 of 2 December 2004 and 60/22 of 23 November 2005. The work on the topic will continue at the fifty-ninth session of the Commission, in 2007, in accordance with General Assembly resolution 61/34 of 4 December 2006. [↑](#footnote-ref-842)
843. See *Yearbook of the International Law Commission, 2000,* vol. II (Part Two), paras. 726–728 and 729 (2). [↑](#footnote-ref-843)
844. See *Yearbook of the International Law Commission, 2000,* vol. II (Part Two), annex (2). [↑](#footnote-ref-844)
845. Article 73. [↑](#footnote-ref-845)
846. See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10), para. 364. [↑](#footnote-ref-846)
847. Documents A/CN.4/552 and A/CN.4/570 and Corr.1. [↑](#footnote-ref-847)
848. Document A/CN.4/550 and Corr.1 and 2. [↑](#footnote-ref-848)
849. See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 10* (A/60/10), para. 112. [↑](#footnote-ref-849)
850. General Assembly resolutions 55/152 of 12 December 2000, 59/41 of 2 December 2004 and 60/22 of 23 November 2005. The work on the topic will continue at the fifty-ninth session of the Commission, in 2007, in accordance with General Assembly resolution 61/34 of 4 December 2006. [↑](#footnote-ref-850)
851. See *Yearbook of the International Law Commission, 1998,* vol. II (Part Two), para. 554. [↑](#footnote-ref-851)
852. See *Yearbook of the International Law Commission, 2000,* vol. II (Part Two), paras.726–728 and 729(4). [↑](#footnote-ref-852)
853. See *Yearbook of the International Law Commission, 2000,* vol. II (Part Two), annex (4). [↑](#footnote-ref-853)
854. See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10), para. 364. [↑](#footnote-ref-854)
855. Documents A/CN.4/554 and A/CN.4/573. The consideration of the second report was deferred to the fifty-ninth session, in 2007. See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), para. 252. [↑](#footnote-ref-855)
856. Document A/CN.4/565. [↑](#footnote-ref-856)
857. General Assembly resolutions 55/152 of 12 December 2000, 59/41 of 2 December 2004 and 60/22 of 23 November 2005. The work on the topic will continue at the fifty-ninth session of the Commission, in 2007, in accordance with General Assembly resolution 61/34 of 4 December 2006. [↑](#footnote-ref-857)
858. See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10), paras. 362–363. [↑](#footnote-ref-858)
859. See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10), annex. [↑](#footnote-ref-859)
860. See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 10* (A/60/10), para. 500. [↑](#footnote-ref-860)
861. Document A/CN.4/571. [↑](#footnote-ref-861)
862. General Assembly resolutions 59/41 of 2 December 2004 and 60/22 of 23 November 2005. The work on the topic will continue at the fifty-ninth session of the Commission, in 2007, in accordance with General Assembly resolution 61/34 of 4 December 2006. [↑](#footnote-ref-862)
863. Text amended by General Assembly resolution 36/39 of 18 November 1981. [↑](#footnote-ref-863)
864. Text amended by General Assembly resolution 985 (X) of 3 December 1955. [↑](#footnote-ref-864)
865. Text amended by General Assembly resolution 984 (X) of 3 December 1955. [↑](#footnote-ref-865)
866. Text amended by General Assembly resolution 485 (V) of 12 December 1950. [↑](#footnote-ref-866)
867. General Assembly decision 61/411 of 16 November 2006.

     b As designated during the term of office of a respective member.

     c Years included in the period of service correspond to the years when a member is listed as such in the Yearbooks of the International Law Commission.

     d As from 17 May 1997, the designation “Zaire”was changed to the “Democratic Republic of the Congo”.

     e As at 24 December 1991, the name “Russian Federation” is used in the United Nations in place of the name the “Union of Soviet Socialist Republics”. [↑](#footnote-ref-867)
868. a General Assembly resolution 351 A (IV) of 9 December 1949. [↑](#footnote-ref-868)
869. b See Security Council resolutions 808 (1993) of 22 February 1993 and 827 (1993) of 25 May 1993. [↑](#footnote-ref-869)
870. c Effect of awards of compensation made by the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1954, p. 62. [↑](#footnote-ref-870)
871. d Document S/25704, annex. [↑](#footnote-ref-871)
872. e See, for example, General Assembly resolution 48/251 of 14 April 1994. [↑](#footnote-ref-872)
873. f Set up, respectively, by General Assembly resolutions 388 A (V) of 15 December 1950 and 530 (VI) of 29 January 1952. [↑](#footnote-ref-873)
874. g United Nations, Treaty Series, vol. 276, p. 3. [↑](#footnote-ref-874)
875. h General Assembly resolution 1145 (XII) of 14 November 1957, annex. [↑](#footnote-ref-875)
876. i See document LOS/PCN/SCN.4/WP.16/Add.4. [↑](#footnote-ref-876)
877. \* Text adopted by the Commission at its fifty-first session, in 1999, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session. The report, which also contains commentaries on the draft articles, appears in Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10 (A/54/10). Text reproduced as it appears in the annex to General Assembly resolution 55/153 of 12 December 2000.. [↑](#footnote-ref-877)
878. 17 There is not much case-law on conflicts between successive norms. However, the situation of a treaty conflict arose in Slivenko and others v. Latvia (Decision as to the admissibility of 23 January 2002) ECHR 2002-II, pp. 482-483, paras. 60–61, in which the European Court of Human Rights held that a prior bilateral treaty between Latvia and Russia could not be invoked to limit the application of the European Convention on Human Rights and Fundamental Freedoms: “It follows from the text of Article 57 (1) of the [European Convention on Human Rights], read in conjunction with Article 1, that ratification of the Convention by a State presupposes that any law then in force in its territory should be in conformity with the Convention . . . In the Court’s opinion, the same principles must apply as regards any provisions of international treaties which a Contracting State has concluded prior to the ratification of the Convention and which might be at variance with certain of its provisions.” [↑](#footnote-ref-878)
879. \* Came into force on 10 September 1964. United Nations, Treaty Series, vol. 516,  
     p. 205. [↑](#footnote-ref-879)
880. Came into force on 30 September 1962. United Nations, Treaty Series, vol. 450, p. 11, p. 82. [↑](#footnote-ref-880)
881. Came into force on 20 March 1966. United Nations, Treaty Series, vol. 559, p. 285. [↑](#footnote-ref-881)
882. Came into force on 10 June 1964. United Nations, Treaty Series, vol. 499, p. 311. [↑](#footnote-ref-882)
883. Came into force on 30 September 1962. United Nations, Treaty Series, vol. 450,  
     p. 169. [↑](#footnote-ref-883)
884. Came into force on 13 December 1975. United Nations, Treaty Series, vol. 989,  
     p. 175. [↑](#footnote-ref-884)
885. Came into force on 24 April 1964. United Nations, Treaty Series, vol. 500, p. 95. [↑](#footnote-ref-885)
886. Came into force on 24 April 1964. United Nations, Treaty Series, vol. 500, p. 223. [↑](#footnote-ref-886)
887. Came into force on 24 April 1964. United Nations, Treaty Series, vol. 500, p. 241. [↑](#footnote-ref-887)
888. Came into force on 19 March 1967. United Nations, Treaty Series, vo1. 596, p. 261. [↑](#footnote-ref-888)
889. \* Came into force on 19 March 1967. United Nations, Treaty Series, vol. 596, p. 469. [↑](#footnote-ref-889)
890. \*  Came into force on 19 March 1967. United Nations, Treaty Series, vol. 596, p. 487. [↑](#footnote-ref-890)
891. Came into force on 21 June 1985. United Nations, Treaty Series, vol. 1400, p. 231. [↑](#footnote-ref-891)
892. \* Came into force on 21 June 1985. United Nations, Treaty Series, vol. 1400, p. 339. [↑](#footnote-ref-892)
893. Came into force on 27 January 1980. United Nations, Treaty Series, vol. 1155,  
     p. 331. [↑](#footnote-ref-893)
894. Came into force on 20 February 1977. United Nations, Treaty Series, vol. 1035,  
     p. 167. [↑](#footnote-ref-894)
895. Not yet in force. See Official Records of the United Nations Conference on the Representation of States in their Relations with International Organizations, vol. II (United Nations publication, Sales No. E.75.V.12). [↑](#footnote-ref-895)
896. Came into force on 6 November 1996. United Nations, Treaty Series, vol. 1946, p. 3. [↑](#footnote-ref-896)
897. Not yet in force. See Official Records of the United Nations Conference on Succession of States in Respect of State Property, Archives and Debts, vol. II (United Nations publication, Sales No. E.94.V.6). [↑](#footnote-ref-897)
898. Not yet in force. See Official Records of the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations, vol. II (United Nations publication, Sales No. E.94.V.5). [↑](#footnote-ref-898)
899. Not yet in force. See General Assembly resolution 51/229, annex. [↑](#footnote-ref-899)
900. Not yet in force. See General Assembly resolution 59/38, annex. [↑](#footnote-ref-900)