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FUTURE WORK IN THE FIELD OF THE CODIFICATION AND PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW

Note by the Secretary-General with an annex containing observations by Governments

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NOTE BY THE SECRETARY-GENERAL

1. At its 943rd plenary meeting on 12 December 1960, the General Assembly adopted resolution 1505 (XV) entitled "Future work in the field of the codification and progressive development of international law". This resolution reads as follows:

"The General Assembly,

"Bearing in mind the purposes and principles of the United Nations,

"Considering that the conditions prevailing in the world today give increased importance to the role of international law - and its strict and undeviating observance by all Governments - in strengthening international peace, developing friendly and co-operative relations among the nations, settling disputes by peaceful means and advancing economic and social progress throughout the world,

"Recalling its resolutions 1236 (XII) of 14 December 1957 and 1301 (XIII) of 10 December 1958,

"Mindful of Article 13, paragraph 1, 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 the extent of the progress made by the International Law Commission in the codification of topics listed in paragraph 16 of the report covering its first session,

"Expressing its appreciation to the Commission for the work it has accomplished in the field of the codification and progressive development of international law,

"Considering that many new trends in the field of international relations have an impact on the development of international law,

"Considering that it is desirable to survey the present state of international law, with a view to ascertaining whether new topics susceptible of codification or conducive to progressive development have arisen, whether priority should be given to any of the topics already included in the Commission's list or whether a broader approach may be called for in the consideration of any of these topics,

"Deeming it necessary therefore to reconsider the Commission's programme of work in the light of recent developments in international law and with due regard to the need for promoting friendly relations and co-operation among States,

"1. Decides to place the question entitled 'Future work in the field of the codification and progressive development of international law' on the provisional agenda of its sixteenth session in order to study and survey the whole field of international law and make necessary suggestions with regard to the preparation of a new list of topics for codification and for the progressive development of international law;

"2. Invites Member States to submit in writing to the Secretary-General, before 1 July 1961, any views or suggestions they may have on this question for consideration by the General Assembly."

2. In pursuance of operative paragraph 2 of this resolution, the Secretary-General, by a note verbale of 25 January 1961, requested the Governments of Member States to communicate, before 1 July 1961, any views or suggestions which they might have on the question of future work in the field of the codification and progressive development of international law.

3. By 5 July 1961, the Governments of Afghanistan, Burma, Colombia, Israel, Sweden, the United Kingdom and Yugoslavia had communicated their observations on this question. These observations are set out in the annex to the present note.

4. In letters addressed to the Secretary-General, the Governments of Greece, Norway, South Africa and the Sudan stated that they had no observations to make.

ANNEX

Observations by Governments on future work in the field of the codification and progressive development of international law

1. AFGHANISTAN

Transmitted by a note verbale of 8 May 1961 from the Permanent Mission of Afghanistan to the United Nations

[Original text: English]

... Afghanistan notes with great satisfaction that the nations of the world, through national and international institutions, have given more impetus in the last few years to the codification of international law and its progressive development.

The various committees of the International Law Association and the regional institutes such as the Afro-Asian Legal Consultative Committee and the Inter-American Commission of Jurists, as well as the legal activities of the United Nations, are moving firmly towards the basic objectives of Article 13, paragraph 1a, of the United Nations Charter.

The Permanent Mission of Afghanistan believes that the discussions at the fifteenth session of the General Assembly on giving more impetus to the legal work of the United Nations, especially in the field of codification and the progressive development of international law, were praiseworthy. It was at the right time that the Assembly adopted resolution 1506 (XV) unanimously in order to place the question, the future work in the field of codification and progressive development of international law, on the provisional agenda of the sixteenth session in order to study and survey the whole field of international law and make necessary suggestions with regard to the new list of topics of international law for codification and progressive development.

Afghanistan was one of the sponsors of the resolution. Its views were explained fully during the discussion of the question, and can be summarized as follows:

1. The question of the legal aspects of outer space should be studied in the light of the great demand of jurists and legal institutions who are in favour of formulating international principles in this field.

2. The General Assembly can initiate the preparation of a declaration on the prohibition of war, in line with the Declaration of St. Petersburg of 1868 and the Brussels Conference of 1874, and the Geneva Protocol of 1925.

3. The definition of coexistence, on the basis of the Bandung Principles for peaceful co-operation among nations, could be a timely item for codification.

These are the few items that we can suggest at this time, that could be added to the list of topics which was adopted by the General Assembly, for the purpose of codification and progressive development.

The Mission of Afghanistan hopes that a thorough discussion of this question, as well as the future programme of the work of the International Law Commission will be fully reviewed by the Assembly.

.....

2. BURMA

Transmitted by a note verbale of 23 June 1961 from the Minister for Foreign Affairs of Burma

[Original text: English]

.....

The Government of the Union of Burma are in entire agreement with the resolution 1505 (XV) of the General Assembly deciding to place the question entitled "Future work in the field of the codification and progressive development of International Law" on the provisional agenda of the sixteenth session. They further are of the opinion that the codification of the Law of Territorial Sea should not be protracted and that questions of Statelessness and Sovereignty in Air Space should also be considered in preparing the new list of topics for codification and progressive development of International Law at the next session of the General Assembly.

3. COLOMBIA

Transmitted by a note verbale of 10 June 1961 from the Ministry of External Relations of Colombia

[Original text: Spanish]

.....

The Ministry of External Relations of Colombia takes the liberty of suggesting:

1. That priority should be given to Right of asylum, which is already included in the provisional list of topics for codification selected by the International Law Commission.

2. That to the aforementioned provisional list of topics selected for codification should be added the following:

   (a) Pacific settlement of international disputes: procedures for investigation, mediation and conciliation;

   (b) Extradition.

3. That there should be included in the aforementioned list, as a topic conducive to the progressive development of international law, the International protection of human rights through the creation of a Special International Court.

Attached hereto is a copy of a memorandum, prepared by the Division of International Organizations of the Ministry of External Relations, which sets out the considerations on which the above suggestions have been based.

MEMORANDUM

1. The Secretary-General of the United Nations has, through the Permanent Delegation of Colombia to that Organization, transmitted to the Ministry the text of resolution 1505 (XV), which was adopted by the General Assembly of the United Nations at its fifteenth session held in New York from 20 September to 20 December 1960 and from 7 March to 22 April 1961.

In that resolution, the General Assembly - after referring to the increased importance of international law in developing friendly and co-operative relations among States and in furthering their progress, and after recalling the progress made by the International Law Commission of the United Nations in the matter of studies and recommendations designed to encourage the progressive development and codification of international law in conformity with Article 13 (1) of the Charter of the United Nations - decided to place the item entitled "Future work in the field of the codification and progressive development of international law" on the provisional agenda of its sixteenth session and to invite Member States to submit in writing to the Secretary-General, before 1 July 1961, any views or suggestions they might have on this question for consideration by the General Assembly.

2. Within the United Nations the codification and progressive development of international law is a task which devolves upon the International Law Commission established under General Assembly resolution 174 (II) of 21 November 1947. The Commission was elected for the first time on 3 November 1948 by the General Assembly in conformity with the Statute adopted for that purpose by the Assembly and held its first session from 12 April to 9 June 1949. The Commission is a subsidiary body of the General Assembly.

Since then the International Law Commission has held regular annual sessions and has reported on its accomplishments to the General Assembly at the regular sessions of that organ.

In addition to the work devolving upon it under its Statute, the International Law Commission carries out such tasks as the General Assembly may assign to it through resolutions.

3. At its first session the Commission considered a work programme which, in addition to the specific tasks assigned to it by the General Assembly - Draft

Declaration on the Rights and Duties of States, Formulation of the principles recognized in the Charter of the Nürnberg Tribunal and in the judgement of the Tribunal, Preparation of a draft code of offences against the peace and security of mankind, 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 - included the basic question of the selection of topics of international law for codification.

The topics that have been considered by the Commission are:

(1) Subjects of international law;
(2) Sources of international law;
(3) Obligations of international law in relation to the law of States;
(4) Fundamental rights and duties of States;
(5) Recognition of States and Governments;
(6) Succession of States and Governments;
(7) Domestic jurisdiction;
(8) Recognition of acts of foreign States;
(9) Jurisdiction over foreign States;
(10) Obligations of territorial jurisdiction;
(11) Jurisdiction with regard to crimes committed outside national territory;
(12) Territorial domain of States;
(13) Régime of the high seas;
(14) Régime of the territorial sea;
(15) Pacific settlement of international disputes;
(16) Nationality, including statelessness;
(17) Treatment of aliens;
(18) Extradition;
(19) Right of asylum;
(20) Law of Treaties;
(21) Diplomatic intercourse and immunities;
(22) Consular intercourse and immunities;
(23) State responsibility;
(24) Arbitral procedure;
(25) Laws of war.

From this list, the Commission has selected the following topics:

(1) Recognition of States and Governments;

(2) Succession of States and Governments;

(3) Jurisdictional immunities of States and their property;

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

(5) Régime of the high seas;

(6) Régime of the territorial sea;

(7) Nationality, including statelessness;

(8) Treatment of aliens;

(9) Right of asylum;

(10) Law of treaties;

(11) Diplomatic intercourse and immunities;

(12) Consular intercourse and immunities;

(13) State responsibility;

(14) Arbitral procedure.

These fourteen topics were selected provisionally, i.e., on the understanding that additions or deletions could be made after further study by the Commission or in compliance with instructions of the General Assembly. Of the fourteen topics, it was decided to give priority to the following three:

(1) Law of treaties;

(2) Arbitral procedure;

(3) Régime of the high seas.

4. The following is a summary of what the International Law Commission has accomplished during the fourteen years of its existence:

Preparation of a draft declaration on the rights and duties of States;

Formulation of the principles of criminal law recognized in the Charter of the United Nations and in the judgement of the Nürnberg Tribunal;

Preparation of a draft code of offences against the peace and security of mankind;

Definition of aggression;

Examination of the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide and certain other crimes;

Recommendations concerning the problem of reservations to multilateral conventions;

Preparation of draft conventions on the elimination or reduction of future statelessness;

Examination of the ways and means for making the evidence of customary international law more readily available;

Preparation of a draft convention on arbitral procedure for the pacific settlement of international disputes;

Preparation of a draft convention on diplomatic intercourse and immunities;

Preparation of draft conventions on the régime of the high seas; the régime of the territorial sea; the continental shelf; and fishing and the conservation of the living resources of the high seas.

The Commission has also studied the following three topics:

The law of treaties;

State responsibility;

Consular intercourse and immunities.

5. The most satisfactory results achieved have been those relating to the codification of international law in the following fields:

(a) International maritime law. The drafts prepared by the International Law Commission were considered at the United Nations Conference on the Law of the Sea, which met at Geneva in 1958 and adopted the four conventions on the Territorial Sea; the High Seas; Fishing and the Conservation of the Living Resources of the High Seas; and the Continental Shelf. Following the recommendations of the Colombian representatives at that Conference, the Colombian Government submitted the latter two Conventions to Congress for approval. The Convention relating to the Continental Shelf was approved by Law 9 (a) of 1961.

A second Conference on the Law of the Sea was convened by the United Nations in 1960 with a view to filling gaps and deficiencies in the conventions on the territorial sea but was without result because of continuing divergencies between the participating States which made it impossible to obtain the two-thirds majority needed for approval of the proposed articles.

(b) Nationality and statelessness. In spite of the difficulties in reaching agreement on such a controversial topic, the codification of which comes into conflict with the norms and practices of the domestic law of States, a Conference of Plenipotentiaries was at last convened in 1959 by the United Nations to consider the draft conventions prepared by the International Law Commission. The second part of this conference will be held in New York from 15 August to 1 September 1961.

(c) Diplomatic intercourse and immunities. A convention based on the work of the International Law Commission on this subject, together with a protocol on the pacific settlement of disagreements between States concerning the application of the Convention, were signed at the Conference of Plenipotentiaries held at Vienna in April and May 1961.

6. Of the fourteen topics which the International Law Commission, when it began it work in 1949, provisionally selected for codification, the following still remain to be considered: (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) Treatment of aliens; and (6) Right of asylum.

7. Furthermore, of the twenty-five topics on the initial list considered for codification, the following have not yet been dealt with by the International Law Commission: (1) Subjects of international law; (2) Sources of international law; (3) Obligations of international law in relation to the law of States; (4) Domestic jurisdiction; (5) Recognition of acts of foreign States; (6) Jurisdiction over foreign States; (7) Obligations of territorial jurisdiction; (8) Territorial domain of States; (9) Pacific settlement of international disputes; and (10) Extradition.

8. Several of these pending topics have already been dealt with by the International Conferences of American States, either directly or through the work of codification which has been carried out under the conventions approved and signed at the second and third of those Conferences in 1902 and 1906. This work is now being carried on by the Inter-American Council of Jurists and its permanent organ, the Inter-American Juridical Committee. The topics whose codification has already been dealt with on an American regional basis and whose consideration by the

International Law Commission of the United Nations could therefore be based on highly respectable antecedents are the following:

I. Treatment of aliens. (Convention approved at the Second International Conference of American States; Convention approved at the Sixth International Conference of American States).

II. Asylum. (Convention approved at the Sixth International Conference of American States; Additional Convention approved at the Seventh International Conference of American States; Convention on Territorial Asylum approved at the Tenth International Conference of American States; Convention on Diplomatic Asylum approved at the Tenth Inter-American Conference; Final Acts of the first, second, third and fourth meetings of the Inter-American Council of Jurists).

III. Pacific settlement of international disputes. The International Law Commission has already examined the topic of arbitral procedure and produced a model set of rules which it submitted to the General Assembly and which the latter transmitted to Governments in November 1958 for comments and to be taken into account in drawing up treaties of arbitration. The Commission, as the codifying organ of the United Nations has still, however, to consider the other procedures for pacific settlement provided for both in Article 33 of the Charter of the United Nations and in article 21 of the Charter of the Organization of American States, viz., good offices, mediation, investigation and conciliation - judicial procedure being regulated by the Statute of the International Court of Justice annexed to the Charter of the United Nations. With regard to such procedures for the pacific settlement of international disputes, there are many Inter-American precedents having a bearing on codification (Treaty to Avoid or Prevent Conflicts between the American States (Gondra Pact), approved at the Fifth International Conference of American States and centred around the investigation procedure; General Convention on Inter-American Conciliation, General Treaty of Inter-American Arbitration and Protocol of Progressive Arbitration, all approved at the International Conference of American States on Conciliation and Arbitration held at Washington in 1929; Anti-War Treaty of Non-Aggression and Conciliation (Saavedra Lamas Pact), concluded at Rio de Janeiro in 1933;

Inter-American Treaty on Good Offices and Mediation, adopted by the Inter-American Conference for the Maintenance of Peace at Buenos Aires in 1936; Inter-American Treaty on Pacific Settlement (Pact of Bogota), approved at the Ninth International Conference of American States).

IV. Extradition. (Convention on Extradition approved at the Seventh International Conference of American States, and draft prepared by the Inter-American Juridical Committee and the Inter-American Council of Jurists, the examination of which has been placed on the agenda of the Eleventh Inter-American Conference).

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

9. The codification organs of the Organization of American States have also examined other topics which have not been considered by the United Nations International Law Commission. Some of these relate to private international law (possibility of revising the "Bustamante Code" or Code of Private International Law with a view to bringing its provisions into line with those of the Montevideo Treaties of 1889 and 1940 and with the "Restatement" of the United States of America; uniform law on international sales of immovable property; uniform law on commercial arbitration). Another topic is concerned with international procedural civil law and thus also relates to private international law (international legal co-operation). In such matters concerning private international law, the doctrine and practice do not seem to have reached the point where codification of world scope or intention should be attempted by the United Nations. This is so partly because of the somewhat negative precedent

of the efforts made up to 1928 by the Hague Conferences, and partly because of certain highly respectable contemporary doctrinal tendencies, which maintain with some reason that the conventions on uniformity of norms in private international law are not capable of resolving the problems which arise in this regard and that an effort should first be made, within the framework of public international law, to resolve the question of the international distribution of legislative jurisdiction in matters of private substantive law.

10. The relevant inter-American bodies have considered or suggested other topics of codification which, because of their relatively narrow scope, might be included in the studies on more general but related topics of public international law. One of these is the immunity of State vessels, which could be included in international maritime law or in the codification on diplomatic intercourse and immunities. Another is political crimes, a topic which is subordinated to that of political asylum on the one hand and to extradition on the other.

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

12. On the other hand, another topic which has been considered by the Inter-American codification organs - viz., the International protection of human rights, including the possibility of establishing an International Court for that purpose - could usefully be studied by the International Law Commission of the United Nations with a view to eventual codification. A convention on that topic could be an effective instrument for implementing the principles expressed in Articles 1 (3), 13 (1) (b) and 62 (3) of the Charter of the United Nations and hence for the progressive development of international law.

13. With regard to the addition of the Right of Asylum to the priority list of

topics for codification, it will be recalled that the United Nations General Assembly has already called for this in resolution 1400 (XIV).

As regards the International Law Commission taking advantage of the codification work already accomplished by the corresponding organs of the Organization of American States, it should be noted that in article 26 of the Commission's Statute, as approved by the General Assembly in resolution 174 (II), the advisability of consultation by the Commission with inter-governmental organizations whose task is the codification of international law, such as those of the Pan-American Union, is recognized. In addition to this, the Commission itself, at several of its sessions (including the sixth, seventh, tenth and eleventh), has adopted resolutions by virtue of which liaison has been maintained between the International Law Commission of the United Nations and the Inter-American Council of Jurists which, with its permanent organ, the Inter-American Juridical Committee, is responsible for the work of codification and the progressive development of International law at the inter-American level.

14. Conclusions: On the basis of the considerations outlined in this memorandum, it is suggested that the Ministry, when replying to note LE 114 of 23 January 1961 addressed to the Chancellery by the United Nations Secretariat through the delegation of Colombia, should submit the following suggestions regarding new topics suitable for codification or conducive to the progressive development of international law and regarding the priority to be given to other topics already included in the list drawn up by the International Law Commission:

I. That priority should be given to Right of asylum, which is already included in the provisional list of topics for codification selected by the International Law Commission in compliance with resolution 1400 (XIV) of the United Nations General Assembly and in accordance with the request made by the delegation of Colombia in the Sixth Committee of the United Nations General Assembly at the Assembly's 1959 session.

II. That the following topics should be added to the provisional list of topics for codification selected by the International Law Commission:

(a) Pacific settlement of international disputes: procedures for investigation, mediation and conciliation;

/...

(b) Extradition.

III. That there should be included in the aforementioned list, as a topic conducive to the progressive development of international law, the International protection of human rights through the creation of a Special International Court.

4. ISRAEL

Transmitted by a note verbale of 5 July 1961 from the Permanent Mission of Israel to the United Nations

[Original text: English]

1. The Government of Israel, which has been actively concerned in the endeavours of the United Nations in the sphere of the codification and progressive development of international law, welcomes the initiative which found expression in resolution 1505 (XV). It wishes at the outset to place on record once more its highest appreciation for the work which has been accomplished by the International Law Commission, by the General Assembly itself and by other organs which have been concerned with it. The progress which has been achieved since the establishment of the United Nations in this field, although not widely known, is, it is believed, of considerable significance for the development of peaceful and friendly relations between nations and for the achievement of the purposes and principles of the United Nations.

2. It is desirable to recall the circumstances which led to the adoption of resolution 1505 (XV) because it may be thought that those circumstances themselves are not fully reflected in the terms of the resolution. A succinct account of the preceding debate, which appears in paragraphs 35 and following of the report of the Sixth Committee (A/4605), shows that while in terms the resolution is limited to future work in the field of the codification and progressive development of international law, it itself only deals with part of the issues which arose in the debate and which, indeed, as perusal of the summary records of the Sixth Committee shows, were of no less significance. Those issues related to the future activities of the Sixth Committee itself and it is considered therefore desirable to deal also with that aspect.

3. Although the Sixth Committee is a Main Committee of the General Assembly, it differs from the other Main Committees - leaving out of consideration for present purposes the two Political Committees - in that it is not "fed" by regular and substantial reports from other principal organs such as the Economic and Social Council and the Trusteeship Council, the reports of which constitute a basis for a

great deal of the work of the Second, Third and Fourth Committees. Nor does it receive a regular flow of administrative matters comparable in any way to the material which comes before the Fifth Committee. Apart from the Annual Report of the International Law Commission - which, as the experience of the last two years has shown, does not always require immediate substantive decisions by the General Assembly - the agenda of the Sixth Committee is limited in comparison with that of other Main Committees. The Government of Israel believes that this situation ought to be remedied, and could be remedied without great difficulty if more careful consideration were given, in the preparatory stages of the organization of the sessions of the General Assembly, to the allocation of items, and especially new items, to the Committees, so as to ensure a more balanced allocation of agenda items to the various Main Committees. It is difficult to subscribe to the view that the allocation of agenda items to the Main Committees follows automatically either from the character of the principal or subsidiary organ calling for General Assembly action, or from the department of the Secretariat which has administrative responsibility for that particular item. Concretely, the fact that an item comes before the General Assembly, for instance, as a result of a decision of the Economic and Social Council does not carry with it any implication that only the Second or the Third Committee (as the case may be) should deal with that matter in the General Assembly. Careful analysis of this aspect may show that a more balanced distribution of work is possible, and that resultant changes would be to the general advantage. This matter is stressed because it is one which can be settled through administrative channels without involving any reconsideration of the rules of procedure of the General Assembly; at the same time it may be pointed out that a more flexible approach to the question of the distribution of items to the Committees would conform to resolution 362 (IV) adopted by the General Assembly on 22 October 1949.

4. In this connexion the paradox may be recalled that when the Statute of the International Law Commission was being prepared, anxiety was expressed that because of the anticipated enormous agenda of the Sixth Committee, inadequate consideration would be able to be given by that Committee to the reports of the International Law Commission. That anxiety is now seen to have been misplaced. Not only is the agenda of the Sixth Committee not enormous, but if the reports of

the ILC are themselves of an interim character, as was the case in the last two sessions of the General Assembly, the Sixth Committee may find itself in effect with hardly any agenda at all.

5. Turning now to the substance of resolution 1505 (XV), the Government of Israel agrees with the idea that the change in the pattern of international relationships which has occurred since 1949 warrants a complete overhauling of the programme of work of the International Law Commission, and possibly also of the Commission's methods of work. Attention will now be devoted to these two aspects.

6. On the programme of work, it is suggested that the International Law Commission be requested at its fourteenth session in 1962 to re-examine the conclusions which it reached at its first session in 1949 on the basis of the Memorandum submitted by the Secretary-General and entitled "Survey of International Law" (A/CN.4/1). In undertaking that re-examination the Commission should also be asked to bear in mind the many concrete suggestions which were made in the fifteenth session of the General Assembly, and which may be made in the sixteenth session, regarding the Commission's future work. In other words, it is here being suggested that the Memorandum A/CN.4/1, and the Commission's deliberations in its first session, should be considered a point of departure for the drawing up by the Commission of a new work programme which would meet the considerations adumbrated in resolution 1505 (XV). In making this re-examination the Commission should be free to consider also whether it still regards items included in its Provisional List of 1949 on which work has not yet been initiated as being appropriate for codification. It should also keep in mind the likelihood that despite its comprehensiveness the Secretary-General's Memorandum does not discuss all the topics which might today be found to be appropriate for a process of codification.

7. At the same time the Government of Israel wishes to place on record its regret that, because of a series of unfortunate and unforeseeable circumstances, the Commission, despite the vast amount of preparatory work undertaken by the successive Special Rapporteurs, has been unable to submit any final reports on the Law of Treaties. Although the question of the Law of Treaties may be thought to be somewhat technical, it is believed that an adequate codification of the topic would be of the greatest value for the conduct of international affairs and for strengthening the role of international law in general. It would follow from the successful codification effort on the topic of Diplomatic Intercourse and Immunities, and the anticipated rapid conclusion of a similar effort on the topic

of Consular Intercourse and Immunities, that codification of the Law of Treaties would go a long way towards establishing an agreed legal basis for the manner in which a great deal of current international business ought to be conducted.

8. With regard to the methods of work of the International Law Commission, it is recognized that somewhat contradictory tendencies and influences may be operative. The experience of the Government of Israel - and it believes that this experience is shared by other new and small States - is that adequate preparation for discussions of questions of codification and progressive development (both discussions in the General Assembly and discussions in ad hoc political conferences) imposes a considerable burden on the personnel of the different Ministries concerned. This subjective factor may mitigate against too rapid an acceleration in the completion of projects by the International Law Commission and against too great a proliferation within a short period of time of substantive discussions leading to the completion of the codification process on a given topic. In this connexion, although perhaps from a different point of view, the observations made by the International Law Commission in paragraph 68 of its Report covering the work of its tenth session in 1958 may be endorsed. Here the Commission made the point that the whole of international law and international relations was now going through a period of adjustment:

> "In such a situation speed was not necessarily the most important consideration. Time spent in endeavouring to reconcile different points of view and different types of outlooks and ideas was not time wasted. In the course of the years what would matter was the quality of the work, and not whether a greater or lesser period had been spent in producing it".

9. Furthermore, the Government of Israel wishes to repeat what its representatives have said in the Sixth Committee on previous occasions, that in the ultimate resort the Commission must remain the best judge of its own procedure and methods of work and that the governing criteria should not be the speed at which the Commission submits its final report on a given topic but rather that the quality of its work should not be impaired and that the representative character of the Commission should be adequately reflected in all stages of its work. This latter consideration is felt to be the most fundamental and the most important factor to condition the successful outcome of future endeavours in the field of the codification and progressive development of the law.

10. Nevertheless, it is felt that certain questions relating to the Commission's character and procedure may appropriately be raised despite the fact that many of these questions had been discussed in past years. Among this type of question may be included the following:

(a) The date of the Commission's annual session. Under current arrangements, the Commission commences its ten-week sessions during the month of April, and the Report of the Commission is usually not generally available until a very short time before the opening of the session of the General Assembly. In addition, the Summary Records of the Commission, which are essential to an adequate understanding of the Commission's Report, are not available until very much later. This makes impossible adequate consideration by Governments of Reports of the International Law Commission brought up for consideration by the General Assembly, and this may account for the difficulties which the General Assembly has sometimes experienced - the case of Diplomatic Intercourse and Immunities may be taken as an illustration - in reaching its procedural decisions, a process which sometimes requires two sessions of the General Assembly. Too great a prevalence of this type of situation is likely to bring the codification effort as a whole into some disrepute. The Government of Israel therefore strongly feels that both the Commission, which is a subsidiary organ of the General Assembly, and the Conference services of the United Nations, should be requested so to arrange the Commission's annual sessions that its Report is available at least three months prior to the opening of the session of the General Assembly, and that copies of the Commission's Summary Records should also be available before the Sixth Committee commences to discuss the Commission's Report.

(b) The Government of Israel, while not wishing to reopen the discussion of whether the Commission should not be placed on a full-time basis, believes that it might be timely to reconsider whether the observations on this question expressed by the Sixth Committee in its Report to the General Assembly in 1951 (A/2088), paragraph 8 are still valid.

(c) It is believed that the Sixth Committee, and in the light of the Committee's observations the Commission itself, might be asked to give further consideration to the question of whether, subject to the maintenance

of the Commission's representative character in all stages of its work, it is still considered impractical for the Commission to conduct some stages of the codification effort through the instrumentality of sub-commissions. The Government of Israel is not fully convinced that it is not possible to constitute two properly balanced and representative sub-commissions out of a Commission which itself consists of twenty-one members, and while it is not suggesting that the final reports should not be approved otherwise than by the Commission as a whole in plenary session, it is suggesting that a further examination be undertaken into the question whether the earlier stages of work on a given project could not advantageously be carried out by a sub-commission consisting of half of the total membership of the Commission. It is possible that a rearrangement of the Commission's method of conducting its business along these lines may be found to be more satisfactory than alternative suggestions to the effect that the Commission should meet either for longer sessions, or for two sessions, in each year.

11. In conclusion, the Government of Israel wishes to re-emphasize its view of the great importance of the task which the United Nations has taken upon itself in Article 13(1) (a) of the Charter. Resolutions adopted by the General Assembly in the early days, notably resolution 94 (I) of 11 December 1946, went so far as to refer to the "obligation" imposed upon the General Assembly by that Article. The experience of the United Nations as a whole shows that the desire to see a well prepared and acceptable international law is strongly held by the Members of the United Nations. All experience of the legislative process shows that, by its very nature, this is not a rapid process, and that the lapse of a period of years without obvious and concrete results is not in itself a cause for dismay, provided that the preparatory work - both of a technical and of a more general character - is being carried on with all the care and consideration and continuity which it requires. The admission into the United Nations of a great number of new nations who are now independent members of the community of nations, and who quite properly wish to make their own contribution to the reformulation of an accepted international law - as they have done in the Conferences on the Law of the Sea and on Diplomatic Intercourse and Immunities - makes more urgent the satisfactory solution of the questions raised in resolution 1505 (XV). It is in that spirit that these observations are being submitted.

5. SWEDEN

Transmitted by letter of 19 June 1961 from the
Ministry of Foreign Affairs of Sweden

[Original text: French]

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In the Swedish Government's view, one of the most important questions of the day is that of strengthening the role of international law in the settlement of conflicts between States.

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

The Swedish Government does not otherwise feel that there is any need at the present time for the General Assembly to add to the existing list of topics to be studied by the International Law Commission. In the Swedish Government's view, the Commission should first be given the time to complete its work on the topics that have already been included, particularly the topic concerning the Responsibility of States. With regard to possible new topics, it would seem best for the Commission itself to make the initial selection with due regard for the discussions which took place last year in the Sixth Committee of the General Assembly and which will no doubt be renewed at the sixteenth session of the Assembly.

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6. UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Transmitted by a note verbale of 29 June 1961 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland

[Original text: English]

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This memorandum is submitted in accordance with the invitation of the General Assembly in paragraph 2 of its resolution 1505 (XV) adopted on 12 December 1960. That resolution invited Member States to submit in writing to the Secretary-General any views or suggestions they might have on the question entitled "Future work in the field of the codification and progressive development of international law".

2. Resolution 1505 (XV) arose out of a debate on the Report of the International Law Commission covering the work of its twelfth session, but was largely stimulated by the feeling of the large majority of representatives on the Sixth Committee that the Committee had insufficient work. It was considered that in recent years there had been new trends in the field of international relations which had an impact on the development of international law, and that the time had come for a fresh study of the whole field of international law, with a view to considering whether the list of topics for codification and progressive development of international law should be revised and whether new priorities should be established.

3. This in itself is a matter to which the Government of the United Kingdom attach considerable importance. While they do not consider that tasks in the field of the codification and progressive development of international law should be undertaken merely to provide work for the Sixth Committee of the General Assembly, or that there are necessarily any new subjects which should be referred to the International Law Commission, they believe that the question posed in resolution 1505 (XV) is one that should be considered carefully and seriously. The question should be approached not with a pre-disposition to find new topics, but to decide on the merits in each instance whether there are new topics which are truly ripe for codification and progressive development.

on for a long time, indeed indefinitely. We are still only in the early stages. It is essential that this process should be planned in such a manner as to ensure that each successive stage, and each new result achieved, will fit in harmoniously with what has already been accomplished. The structure of international law must be built from below, adding brick to brick. This is precisely the task in which the International Law Commission has been engaged from the very beginning of its activities. In the opinion of the Danish Government it would be a mistake to adopt a new and different approach.

It has been suggested that the Commission, instead of considering subject matters of limited and narrowly defined scope, should be directed to embark upon such broad and general subjects as the sovereignty of States or the principles of peaceful coexistence. The Danish Government is not convinced of the advisability of this course. If the consideration of such subjects is to go beyond mere generalities, they are likely to prove highly controversial and to raise grave political issues which are not yet ripe for solution through legal formulas. There may even be a risk of compromising the whole process of codification and development of international law. On the other hand, the approach adopted so far will allow a gradual extension and broadening of the consensus of legal opinion in the international community. A foundation will thus be laid upon which it may some day prove possible to reach agreement on matters which at present appear to be fraught with discord.

V. The central position of the International Law Commission in the process of codification of international law should be maintained. This applies not only to the study of specific subjects, but also to the general determination of the programme of codification. The fact that the Statute of the Commission is not an integral part of the Charter, but was adopted by a resolution of the General Assembly, has enabled the membership of the Commission to be increased in such a manner as to provide for adequate representation of new groups of Member States. In its present composition, the International Law Commission adequately reflects the various currents of legal opinion in the international community. Given the personal qualifications of its members, no organ of the United Nations could be in a better position to select subjects for codification. The Danish Government is therefore of the opinion that the Commission should be allowed to continue its functions in this respect without interference by the General Assembly.

4. The work of codification and progressive development is, subject to the authority of the General Assembly, the task of the International Law Commission. By article 18 of its Statute the Commission is given the specific task of recommending topics for codification. From its experience the Commission is in the best position to know not only what topics are most suitable for codification, but also what topics are most suitable for progressive development. In fact experience has shown that the two processes of codification and progressive development in relation to any particular topic tend to blend into one another. No sharp lines can be drawn between them. Therefore, it is not practicable for the Commission to isolate entirely its function of recommending subjects for codification from the function of recommending topics for progressive development. The two go hand in hand, and in the view of the Government of the United Kingdom the experience and knowledge of the Commission should be used and relied upon in determining what subjects shall be referred to the Commission for codification and progressive development and in what order of priority.

5. It would be most unwise to request the Commission to undertake tasks which it considered either outside its scope as a legal body, or which it could not undertake satisfactorily for whatever reason.

6. Accordingly, the Government of the United Kingdom hope that the preliminary views of the Commission will be available to the General Assembly at its sixteenth session, and that the General Assembly will not adopt any decisions without taking due account of the views of the Commission and giving the Commission an opportunity to comment on any new topics or new priorities which the General Assembly might propose to adopt.

7. In approaching the question under consideration, it should not be assumed that the Commission has very little further work to occupy it. On the contrary, its present programme is far from complete. Of the original list of twenty-five possible topics, the Commission selected fourteen. Of these, the following are still outstanding:

(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) Treatment of aliens;

(6) Law of treaties;

(7) State responsibility.

8. Much work has been done by special rapporteurs on the law of treaties and on State responsibility, but much remains to be done. The law of treaties alone is a vast subject and one of basic importance. Relations between States are governed increasingly by treaties and nothing could be more desirable than that the law of treaties should be clearly and universally understood and observed. The other topics are also important. They are topics which affect, not it is true directly the question of peace and war, but those day-to-day relations between States which are the best subjects for codification. The General Assembly should in the view of the Government of the United Kingdom be very slow to interfere with the steady progress of the work of the Commission on the basis of what it has been and is doing.

9. Bearing in mind the foregoing considerations, the Government of the United Kingdom submit that the General Assembly should be guided by the following principles:

(1) Progressive development should be based on the foundation of known and accepted rules of international law, which are themselves ripe for codification. The International Law Commission should not be called upon to create new law under the guise of progressive development where the subject is so novel that it is a matter for agreement between States rather than for progressive development based on codification of existing rules.

(2) Topics of a highly controversial character should not be referred to the International Law Commission.

(3) International law should not be considered primarily as an instrument which may be shaped to enable particular Governments to give effect to their policies. No State or group of States should, therefore, seek reference to the Commission on topics with a view to furthering their own particular political aims.

(4) The authority of customary international law should be sustained and supported by all Members of the United Nations, and there should be no attempt to use the Commission as a vehicle to undermine the authority of existing law.

(5) The General Assembly should aim to disturb the work of the Commission as little as possible.

7. YUGOSLAVIA

Transmitted by a note verbale of 28 June 1961 from the Permanent Representative of Yugoslavia to the United Nations

[Original text: English]

1. The adoption of resolution 1505 (XV) by the General Assembly of the United Nations was, in the view of the Yugoslav Government, an important and timely decision. The moment has undoubtedly come to survey the present state of work of the International Law Commission "in the light of recent developments in international law and with due regard to the need for promoting friendly relations and co-operation among States".

The vast changes that have swept the international scene, the many new trends in international relations have, as the resolution puts it, "an impact on the development of international law". The momentous advances in science and technology, the integrating forces at work in a divided world, coupled with a growing diversity of social and political structures, the mounting role of international organizations, the emergence of a rapidly increasing number of formerly dependent peoples into independent nationhood, the pressing needs of the under-developed areas - to mention some of the more significant of these trends and changes, many of which were but dimly discernible at the time the International Law Commission was established - have altered many of the time-honoured concepts of international law and brought new ones into being. New legal problems have been posed and call for answers. At the same time, the legal community of mankind has expanded very considerably, both in scope and in diversity, through the accession of new States from vast areas of the world which had previously been excluded from active participation in the creation of international law.

On the other hand, there is an obvious need for a more vigorous role of international law in the field of international relations, "in strengthening" - to quote once again from General Assembly resolution 1505 (XV) - "international peace, developing friendly and co-operative relations among the nations, settling disputes by peaceful means and advancing economic and social progress throughout the world". And in this connexion the General Assembly very appropriately

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recalls two of its previous resolutions dealing with the development of peaceful and good-neighbourly relations among States. The Charter of the United Nations has, of course, not only emphasized the importance of the role assigned to international law within the new pattern of international relations which it was seeking to establish, but has also laid the foundations - foundations which were in many ways revolutionary as compared to traditional concepts - for the further growth of international law in response to the demands of a swiftly changing world. The role of international law should in fact be to ensure that the powerful new trends in world affairs evolve in the sense indicated by the Charter of the United Nations.

2. It is in the light of these general considerations that the Yugoslav Government views the question of the "future work in the field of codification and progressive development of international law" with regard to which the views and suggestions of Member States have now been sought. This question falls, it would seem, into two closely connected parts: the first of which concerns the method of the future work and the second the topics which it is to cover.

As regards the question of method, the Statute of the International Law Commission provides for codification and progressive development. Now, as has been frequently and rightly pointed out, the difference between these two methods is one of degree rather than of kind, it is a distinction prompted by reasons of convenience and legal technique. Codification being, as was pointed out in the days of the League of Nations Committee of Experts, "a creative process" and implying, even in its strictest sense, "a certain legislative element", necessarily contains a measure of progressive development. It now seems essential, if United Nations efforts in the field of international law are to keep abreast of the new trends and requirements, that greater emphasis should be placed on the element of progressive development within the process of codification, and that the method of progressive development itself should be given wider application with regard to the growing number of important topics that are conducive thereto.

3. In regard to the question of the topics to be covered by the future work in the field of the codification and progressive development of international law, resolution 1505 (XV) raises three major questions: the question of whether

new topics susceptible of codification or conducive to progressive development have arisen, of whether priority should be given to any of the topics already included in the Commission's list, and of whether a broader approach may be called for in the consideration of any of those topics.

As concerns the topics already on the list of the International Law Commission, the Yugoslav Government would like to offer the following suggestions. It would, in the first place, urge the International Law Commission to speed up the consideration of certain topics, which it has had under review for some time now and, in particular, of the law of treaties and of the responsibility of States; with regard to the second of these two topics, a broader approach than the one hitherto applied might, it is felt, also usefully be considered. It would, furthermore, appear advisable to give priority to two topics on the Commission's present list: the recognition of States and Governments and the succession of States and Governments. Both these topics have acquired certain new features as well as an added importance and a growing sense of urgency within the general context of the changes undergone by international relations and international law. The appearance of a growing number of new members of the community of nations since the end of the Second World War has given rise to a practice, both rich and varied, with regard to problems of recognition, new political criteria have emerged and call for the establishment of a unifying legal pattern; due attention should also be given to questions relating to collective recognition through admission to the United Nations and to the many and complex problems connected with the recognition of Governments. The same general considerations also militate in favour of the early codification of the rules governing the succession of States; this topic has, moreover, a substantial impact upon a number of questions of vital concern to the newly independent States and their efforts towards full and complete emancipation.

4. Recent developments in international law also quite clearly call for the inclusion of certain new topics in the programme of work of the International Law Commission, if the programme is adequately to reflect present trends and requirements in the field of international relations and of international law. A number of such topics were mentioned in the course of the discussion in the Sixth Committee at the fifteenth regular session of the General Assembly.

Reference will here be made to certain topics to which the Yugoslav Government attaches particular importance in the present circumstances. The topics which the Yugoslav Government considers should now be included in the list of the International Law Commission are: the principles of peaceful and active coexistence, the rules governing multilateral trade, rules pertaining to the various forms of economic assistance to under-developed countries.

The principles of active and peaceful coexistence of States provide a basis for the development of international relations and international law along lines conducive to the strengthening of peace and the growth of co-operation among States, i.e. along the lines indicated by the Charter of the United Nations. They have been laid down in the Charter and set forth in a number of international documents, both multilateral and bilateral that have since been adopted. Their codification would constitute a creative interpretation and elaboration of the principles of the Charter in the light of swiftly evolving world conditions and would help ensure that the trend of world affairs does in fact follow the lines indicated in the Charter.

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

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

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In concluding, it should be pointed out that the listing of these topics is not intended to be exhaustive, and further suggestions in this regard may be offered by the Yugoslav delegation at the sixteenth session of the General Assembly.
