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REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE
WORK OF ITS TWENTY-FIFTH SESSION

Observance of the Twenty-fifth Anniversary of the
International Law Commission

Note by the Secretary-General

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I. INTRODUCTION

The General Assembly, in resolution 2927 (XXVII) of 28 November 1972, recommended that the twenty-fifth anniversary of the International Law Commission should be observed in an appropriate manner by the Assembly during its twenty-eighth session. In connexion with this, the Secretary-General has received communications from a number of international organizations, and the texts or extracts from them are reproduced below.

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II. COMMUNICATIONS RECEIVED FROM INTERNATIONAL ORGANIZATIONS

COUNCIL OF EUROPE

Message transmitted by the Director of Legal Affairs of the Council of Europe

The Council of Europe and, in particular its European Committee on Legal Co-operation, takes the opportunity of paying its tribute to the International Law Commission on its twenty-fifth anniversary for its important and far-reaching achievements in the promotion of the progressive development of international law and its codification.

The principle of the rule of law is a pillar of the Council of Europe's Statute. This European organization thus has objectives which are in essence similar to those of the International Law Commission. It therefore welcomed the decision of the International Law Commission in 1966 to establish, in pursuance of article 26 of its Statute, working relations with the European Committee on Legal Co-operation. Thanks to these working relations it has been possible to orientate the Council of Europe work in the legal field in such a way that it is complementary to the action of the International Law Commission and in no way in contradiction with its objectives and achievements.

Grouping together 17 States of a geographically limited area and exercising its functions in a very broad field of action, the Council of Europe has a manifold role in those matters which at universal level are within the province of the International Law Commission. Thus, the Council of Europe member States have developed the practice of examining collectively the work in progress by the International Law Commission, with the express purpose of facilitating to the extent within their power the rapid and successful conclusion of that work. The Council of Europe has also taken the initiative of stimulating the compilation and publication of one of the most important categories of factual and legal material on which the fabric of international law is constructed: State practice in public international law and decisions implying the interpretation of international treaties drawn up within the orbit of the Council. In addition, specific subjects which do not seem ripe for universal legislation, such as State immunity and the protection of freshwater resources against pollution, are being tackled by way of multilateral European treaties, the result of such action might helpfully stimulate efforts and contribute towards a solution of the same problems in other parts of the world. In the same spirit, the Council of Europe has sought to regulate by means of multilateral treaties questions not exhaustively covered within the present state of codification of international law, such as the organization of the friendly settlement of disputes and the inter-State co-operation in the field of international penal law. Finally, mention is to be made of the work of the Council of Europe over the past 20 years to safeguard human rights in Europe.

On the other hand, it is immediately apparent that all the activities of the Council of Europe are strongly influenced by the results achieved and the projects discussed within the International Law Commission, above all those relating to the law of treaties and to the problems of privileges and immunities in their broadest sense.

The member States of the Council of Europe are amongst those which have historically been largely responsible for and played a predominant role in the formulation of international law - in its support of the efforts made by the International Law Commission in a universal perspective.

The Council of Europe illustrates the willingness of its member States to assume the role which is now incumbent on them in the future development of international law.

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Message from the Director General

On the occasion of the twenty-fifth anniversary of the International Law Commission, I am pleased to express, on behalf of FAO, the deep gratitude for the constructive work performed by the Commission during this period and the most sincere wishes for the continuation of its successful efforts towards codification and development of international law.

Even though FAO is primarily concerned with technical subjects, the organization is interested in many aspects of international law.

First, as one of the major organizations in the United Nations system, FAO maintains close contacts, and has frequent opportunities to negotiate and conclude agreements, with Governments of member States and other international organizations.

Even though the Conventions on the Law of Treaties and on Diplomatic Relations may not be directly applicable to international organizations, they prove to be extremely useful, together with the travaux préparatoires of the International Law Commission, to work out legally sound solutions to practical problems that arise in this field. Similarly, the Convention on the Law of Treaties has proved an invaluable guide to FAO in the exercise of its depositary functions in respect of international instruments drawn up within the organization.

In a related area, FAO has followed and continues to follow with great interest the work of the International Law Commission with respect to relations between Governments and intergovernmental organizations; in fact, some of the draft articles on representation of States in their relations with international organizations have already been incorporated in substance, in the Organization's Basic Texts, while others have been quoted in official documents pertaining to permanent representatives. Similarly, the examination by the International Law Commission of the question of treaties concluded between States and international organizations or between two or more international organizations will no doubt assist FAO and other agencies in resolving certain problems that may occur from time to time in the conclusion, interpretation or application of such treaties. The same applies, to a limited extent, to the succession of States in respect of treaties.

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Secondly, the organization's activities in its substantive sphere of responsibilities have been influenced and guided by international norms elaborated by the International Law Commission.

Perhaps most prominent among these are the four Conventions on the Law of the Sea, in particular the Convention on Fishing and Conservation of the Living Resources of the High Seas, which conferred on FAO specific functions in regard to conservation measures and to participation in the settlement of disputes. Several international instruments drawn up during the past decade under the auspices of FAO with a view to ensuring the conservation and rational exploitation of the living resources of the sea are based on the concepts defined in the fundamental treaties elaborated by the Commission.

In view of the vital role which water resources management plays in agriculture, forestry and inland fisheries, FAO will follow with particular interest the studies and deliberations of the International Law Commission in regard to the law pertaining to international water courses.

Beyond the particular topics dealt with by the Commission, the very existence within the United Nations system of a body which not only represents the collective wisdom of the world's most outstanding international lawyers but also spares no effort to develop a legal framework for fruitful co-operation among States, must be regarded as a vitally important element to ensure a peaceful and constructive future for the family of nations.

INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

Letter from the Secretary-General

I am sure the governing organs of IMCO as well as the member States of the organization would be pleased to endorse the sentiments expressed in General Assembly resolution 2927 (XXVII) and join in commending the International Law Commission and its members for the outstanding contribution which they have made to the development of international law.

We in the Secretariat are mindful of the importance of the work of the International Law Commission not only to the work of the organs of IMCO but also for our own guidance in the application of international law in the course of our work.

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INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Letter from the Vice-President and General Counsel

When the Commission was created in 1947 as a subsidiary body of the General Assembly, its main purpose was to promote the codification and development of international law. The International Bank for Reconstruction and Development has followed the work of the International Law Commission with great interest and with confidence in the ability of the Commission to successfully achieve its assigned objectives. The Commission set itself at the outset the task of adopting draft international conventions on a list of topics in international law which it felt it desirable to codify. This programme of work has already resulted in the adoption of a number of conventions on the basis of texts prepared by the Commission.

The Bank has been particularly interested in the work of the Commission on the law of treaties and was happy to note the success of the 1968 and 1969 diplomatic conferences in Vienna which approved the Convention on the Law of Treaties, on the basis of the text drawn up by the Commission. In this connexion, the Bank looks forward to further close and fruitful co-operation with the Commission in the programme of work to be conducted by the Special Rapporteur, Professor Paul Reuter, on the question of "Treaties Concluded Between States and International Organizations or Between Two or More International Organizations". The Bank attaches also considerable importance to other subjects presently under study by the International Law Commission, such as the "Law of State Responsibility", the "Question of the Succession of States in respect of Matters other than Treaties", and finally, on the "Most Favoured Nation Clause in Treaties".

The record of the first 25 years of the work of the International Law Commission has clearly justified the need for such a body and there is every reason to believe that the next 25 years of the life of the Commission will be equally, if not more, productive. In this regard it is significant that the Commission is to determine, at its present session, its long-term work programme and the order of priorities for topics included in this programme. We are pleased to note that amongst the more urgent matters on its agenda are a study of the law of the non-navigational uses of international water courses, and a study of problems of the pollution of international waterways.

The Bank believes that the work of the International Law Commission has been extremely useful and that the specialized agencies should continue to co-operate in every way possible in assisting the Commission in its programme of work. It is therefore with great pleasure that we take this opportunity to express our warm endorsement of the language contained in paragraph 1 of General Assembly resolution 2927 (XXVII) commending the International Law Commission and the distinguished lawyers who have participated in its work for the outstanding contribution that they have made to the codification and progressive development of international law.

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INTERNATIONAL LAW ASSOCIATION

Letter from the Chairman of the Executive Council

On behalf of the 5,000 members of the International Law Association, located in all parts of the world, I am pleased to extend congratulations to the International Law Commission for its outstanding work in the codification and progressive development of international law. The high quality of the work of the Commission is reflected in the Geneva Conventions on the Law of the Sea of 1958, the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, and the 1966 draft articles on the Law of Treaties.

The fact that some of the work of the International Law Association has been useful to the International Law Commission is most gratifying to us.

The International Law Association wishes to express its grateful appreciation for the accomplishments of the Commission during its first quarter century, and sincere good wishes for its future endeavours.

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LEAGUE OF ARAB STATES

Message from the Secretary-General

On the commemoration of the twenty-fifth anniversary of the International Law Commission, it gives me great pleasure to express my appreciation of the successful efforts made by the Commission to establish international law on the principles enshrined in the United Nations Charter.

Since its inception, the Commission has been charged with the task of development of international law with a view to consolidating peace and security among all peoples of the world and to lay down well-defined and established rules governing relations among various States.

The International Law Commission has taken significant strides towards the codification of international law and usages. Thanks to the dedication of those serving on it, the Commission was able to formulate many draft conventions which after endorsement by the United Nations have become vital for the effective co-operation among the States of the world. It is gratifying to note that the Commission continues to exercise its good efforts in order to fulfil its challenging task through the careful attention it has been giving to all aspects of international law, as well as through its tireless and patient work for its codification.

In this, the Commission seeks active co-operation from all national and international organizations concerned about the stability and progress of mankind; and it is this fact which makes every anniversary of the establishment of the Commission an occasion for mobilizing additional support for its task.

While expressing on behalf of the League of Arab States our sincere wishes for the continued success of the Commission, we further express the hope that the day is not far when we can all usher in a world governed by well established and unified international rules based on justice and equity and safeguarding effectively peace and tranquility for the benefit of mankind.

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ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Letter from the Head of the External Relations Division

The Organization for Economic Co-operation and Development follows with great care the conclusions deriving from the International Law Commission's current activities and it has on several occasions benefited from these findings. ... The Secretary-General wishes to express his sincere appreciation of the work accomplished in the past 25 years and the best wishes of OECD for the Commission's future activities.

ORGANIZATION OF AMERICAN STATES

Letter from the Director of the Department of Legal Affairs

The Organization of American States, especially the Inter-American Juridical Committee, and the General Secretariat of the Organization, have followed the work of the International Law Commission with particular interest. As is well known, there have been good co-operative relations between the Commission and the Inter-American Juridical Committee.

The reports of the Commission have been studied carefully in OAS, such as the reports on the reservations to multilateral conventions, arbitral procedure, law of the sea, diplomatic and consular relations, State responsibility, law of treaties, special missions, succession of States and Governments, relations between States and intergovernmental organizations.

In this connexion I would like to pay tribute to the outstanding role of the Commission in filling the gaps of customary international law and in adapting its rules to the needs of our changing world.

At this stage of the history of the Commission - after 25 years of productive work - the members of the legal profession can find in the numerous reports and draft conventions prepared by the Commission a very useful depository of legal thinking and research of the highest level.

On the occasion of the twenty-fifth anniversary of the International Law Commission, I would like to extend to the Commission warmest congratulations for its outstanding contribution to the progress of law in the world community.

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UNIVERSAL POSTAL UNION

Letter from the Deputy Director General of the International
Bureau of the Universal Postal Union

Although the activities of the Universal Postal Union in the field of international law are determined by the statutory purposes of the Union, we have constantly followed the work of the International Law Commission with great attention and interest. Consequently, we would not like this anniversary to pass without expressing our profound gratitude and admiration for the important and valuable work accomplished so far.

We have particularly in mind the Convention on the Law of Treaties, which laid down the fundamental principles governing the conclusion and the effects of treaties. In our opinion, it is remarkable that despite the profound differences in social and political systems throughout the world, which find expression also in the field of international law, the Commission succeeded in drawing up an important instrument of that kind. It should be noted that when the 1964 Vienna Universal Postal Congress considered and adopted the UPU Constitution, which is the basic Act of the Universal Postal Union, it was able to draw inspiration from the fundamental principles for the conclusion of treaties already adopted at that time by the International Law Commission.

The reason why the two sessions of the Vienna Conference on the Law of Treaties were successful was, we believe, because of the extremely painstaking and patient preparatory work done by the International Law Commission experts, who spared no effort to reconcile ideas which were at times very divergent. Of course, the Convention on the Law of Treaties, like any other human achievement, can be improved. For that reason we take the opportunity to express our hope that the Commission will not regard its task in that particular area as completed. Perhaps it would be well if, with the backing of the Sixth Committee of the United Nations General Assembly, it were to attempt:

1. To determine the practical and legal difficulties encountered by States in the implementation of the fundamental principles laid down in the Convention and establish a sort of "inventory" on the subject which could be the starting-point for a new stage leading towards the progressive development of public international law, as frequently advocated in the United Nations;

2. To determine the precise and practical reasons why so few States have so far ratified that Convention.

The other tasks of the International Law Commission are also of tremendous interest. However, it is difficult for us here to assess them and make practical comments on each of them, given the very specific nature of the legal problems of the Universal Postal Union in achieving the goals set forth in its Constitution.

In any event, we hope that the twenty-fifth anniversary of the International Law Commission will illustrate the value and use of its work and will be an occasion for the competent authorities to strengthen, as much as possible, the effectiveness of international law for mankind and for the development of social, economic and cultural relations among all the countries of the world.

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WORLD HEALTH ORGANIZATION

Letter from the Director-General

The World Health Organization has great pleasure in associating itself with the sentiments expressed by the General Assembly in its resolution 2927 (XXVII) relating to the twenty-fifth anniversary of the International Law Commission.

Indeed, this body of extremely able lawyers have immensely contributed to the processes of codification and progressive development international law, through their very patient and determined efforts.

On the occasion of the twenty-fifth anniversary of the International Law Commission, the World Health Organization extends its sincere congratulations to the Commission and its distinguished members on their impressive achievements in the field of international law and profoundly appreciates their continuing efforts for further progress in this domain.

WORLD INTELLECTUAL PROPERTY ORGANIZATION

Statement submitted by the Director General

This statement of WIPO is divided into two parts: part one encompasses a resumé of the activities of WIPO, particularly as those activities might be viewed from the perspective of their contribution to the codification and progressive development of international law and to the work of the International Law Commission; part two deals with the impact of the achievements of the International Law Commission on the work of WIPO.

I. Contribution to the codification and progressive development of international law and to the work of the International Law Commission

In pursuit of its objective to promote its protection of intellectual property throughout the world through co-operation among States and in collaboration with international organizations, WIPO has undertaken a number of activities including the preparation and administration of international agreements on the protection of industrial property and literary and artistic works, which have contributed to the progressive development of international law.

Since 1883 no less than 16 international agreements designed to promote the protection of intellectual property have been prepared and concluded.

One of the aims of these international agreements is unification and harmonization of the law relating to intellectual property. These international agreements establish an international body of minimum, substantive and procedural rules applicable to the States party to these agreements to which conferences for their revision make such improvements as are considered feasible.

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This effort at unification and harmonization has been undertaken in the following three directions:

Firstly, on many points too numerous to detail in this brief note, the international agreements have established uniform status for patents, industrial designs, distinctive signs and copyright.

Secondly, they have instituted common international procedures for obtaining the protection of inventions, industrial designs, trademarks, appellations of origin and type faces.

Lastly, on a plane which is technical rather than legal but in a sense forms part of the infrastructure on which further unification of the law can be based, international co-operation through WIPO's efforts has resulted in the adoption of a number of measures designed to standardize administrative procedures and systems. These include the adoption of uniform international classifications for patent documents, for industrial designs and with respect to the registration of marks. Measures have also been adopted with a view to simplifying and standardizing procedures for the search, retrieval and use of patent documents and patent related literature.

The progressive development of international law has been enhanced by WIPO's efforts leading not only to the conclusion of international agreements designed to promote the protection of intellectual property, but also to centralizing the administration of that protection. Through the International Bureau, its secretariat, WIPO performs the administrative tasks required by these agreements. These tasks include servicing the meetings of the organs set up under the international agreements, collecting and publishing information in the field of intellectual property, furnishing information on request to Member States, conducting relevant studies and maintaining international registration services in the fields of trademarks, industrial designs and appellations of origin. This centralization of administration and supervision by WIPO of these international agreements ensures an economy for Member States and for the private sector.

The devising of comprehensive international legal systems applicable to intellectual property is a continuous process which extends beyond the adoption of international agreements and their administration. This process also requires a constant effort to improve the scope and application of the international agreements adopted by revisions designed to render them more responsive to the evolving needs of Member States. Notable in this respect are the steps taken over a period of years by working groups and committees, assisted by the International Bureau of WIPO or its predecessor BIRPI, in elaborating proposals for submission to revision conferences. Among the more significant of these revision conferences, mention should be made of those held at Stockholm in 1967 and Paris in 1971. The Stockholm Conference adopted the Convention establishing WIPO and revised the administrative provisions of the conventions and agreements then in force. In addition, the principal international agreement on industrial property was changed in order to accommodate the concept of the inventor's

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certificate which exists in the national legislation of certain countries with a socialist system. At the Paris Conference improvements were made in the principal international agreements in the field of copyright to take into account the special needs of developing countries, particularly as regards the granting by the competent authorities of those countries of licenses for the translation of works needed for the purpose of teaching, scholarship or research, and for the reproduction of the works for use in connexion with systematic instructional activities.

WIPO's efforts at unification relate not only to developing legislation common to States parties to the international agreements, but also to obtaining their acceptance by the widest possible number of countries, and thus extending the territorial area to which such common legislation applies. The International Bureau of WIPO assists States in their evaluation of the legal implications of such agreements by informing them of the conditions of adherence and the advantages which can be expected.

The achievement of a wider acceptance of international agreements in the field of intellectual property has entailed particular consideration of the situation resulting from decolonization and the succession of new States to independence. Many of these States had been linked to the international agreements by virtue of their relationship to a metropolitan State party to the agreement, and, on becoming independent, declared that these international agreements continued to apply to their territories. Representatives of such States assisted the International Bureau in drafting model laws for developing countries which, while taking into account the special conditions in such States, nevertheless constituted a large step towards unification.

The never-ending tasks in improving the scope and application of international agreements to accommodate the immediate needs of a rapidly transforming society have not overshadowed WIPO's initiative in facing the challenges which the swift pace of scientific and technological advancement foretells for the field of intellectual property.

Thus, the increasing number of scientific discoveries has prompted the competent bodies of WIPO to call for a study of the possibilities for the international recognition and the recordation of such discoveries and of the identity of the persons having made them. The resolution of the legal status of computer programmes, currently under examination, may give rise to the international recognition of a new form of intellectual property. The copyright problems posed by the use of electronic computers for storing and reproducing copies of protected works as well as by the photographic reproduction of such works may lead to the formulation of proposals for international regulation. An international convention for the protection of programme-carrying signals transmitted via space satellites has been proposed for adoption by a diplomatic conference. As for facilitating the flow of technology to developing countries, the study of the legal framework for licence agreements and for encouraging contacts between potential partners in such agreements should be mentioned.

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In carrying out and promoting these studies in the various fields of intellectual property, WIPO contributes to a better understanding among States with different legal systems or whose needs for development require distinct solutions.

In so far as concerns the contribution of WIPO's activities to the work of the International Law Commission, it should be noted that the International Bureau of WIPO has participated actively in the past and current programmes of the Commission.

Although WIPO has not been invited to be represented at the meetings of the Commission, the International Bureau of WIPO has assisted the secretariat of the Commission and its special rapporteurs in the studies requested by the Commission. Thus, with respect to the topic of the succession of States, the International Bureau of WIPO assisted the secretariat of the Commission in its research on the succession of States to multilateral treaties by submitting papers on questions of succession to the international agreements administered by WIPO or its predecessor, BIRPI. These papers were published as part of the documents of the twentieth session of the International Law Commission. Similarly, the International Bureau of WIPO has assisted the Special Rapporteur for the question of treaties concluded by international organizations by providing information on a number of points developed by him for inclusion in a questionnaire. The information provided by the International Bureau of WIPO was circulated to the other international organizations concerned and was incorporated in the second report of the Special Rapporteur which was submitted to the twenty-fifth session of the International Law Commission.

II. Impact of the achievements of the International Law Commission on the work of WIPO

In turn, the achievements of the International Law Commission have had an impact on the work of WIPO. The studies referred to, concerning the succession of States to multilateral treaties and the question of treaties concluded by international organizations, as well as the Commission's discussion of these studies, contain a wealth of information and a valuable insight on the prevailing international legal practice. In addition, such conventions as the Convention on Special Missions, the Vienna Convention on Diplomatic Relations and the Convention on the Law of Treaties, which were adopted on the basis of texts drawn up by the International Law Commission, provide a guide to the secretariat of an international organization in the conduct of its relations with member States.

These achievements of the International Law Commission have aided the International Bureau of WIPO in its tasks in administering international agreements, in preparing draft texts of international agreements for consideration by committees of experts and diplomatic conferences, and in implementing that part of the WIPO programme which may call for entering into agreements or arrangements with member States and international organizations.