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PROGRESSIVE DEVELOPMENT OF THE PRINCIPLES AND NORMS OF INTERNATIONAL
LAW RELATING TO THE NEW INTERNATIONAL ECONOMIC ORDER

Report of the Secretary-General

CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. PROGRESS REPORT PREPARED BY THE UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH	3
III. REPLIES RECEIVED FROM MEMBER STATES [See A/37/409/Add.1]	11

I. INTRODUCTION

1. On 10 December 1981, the General Assembly adopted resolution 36/107, entitled "Progressive development of the principles and norms of international law relating to the new international economic order".
2. In paragraph 1 of that resolution, the General Assembly took note of the study by the United Nations Institute for Training and Research (A/36/143).
3. In paragraph 2 of the resolution, the General Assembly requested UNITAR to complete the above-mentioned study by preparing the "analytical study on the progressive development of the principles and norms of international law relating to the new international economic order" and to complete it in time for the Secretary-General to submit it to the General Assembly at its thirty-seventh session.
4. In paragraphs 3, 4 and 5 of the resolution, the General Assembly urged Member States to submit information with respect to the study not later than 31 July 1982; requested the United Nations Commission on International Trade Law, the United Nations Conference on Trade and Development, the United Nations Industrial Development Organization, the regional commissions, the United Nations Centre on Transnational Corporations and other relevant intergovernmental and non-governmental organizations active in this field, as determined by the United Nations Institute for Training and Research to submit relevant information and to co-operate fully with the Institute in the implementation of the present resolution; and requested the Secretary-General to submit to the General Assembly at its thirty-seventh session a report on the study made by the United Nations Institute for Training and Research for its consideration, on a priority basis, under the item entitled "Progressive development of the principles and norms of international law relating to the new international economic order" to be included in the provisional agenda of that session.
5. The present report is submitted pursuant to paragraph 5 of resolution 36/107. It includes, in addition to the present section two sections containing the introduction devoted respectively to:
 - (a) The interim report prepared by UNITAR (section II);
 - (b) Replies received from Member States pursuant to paragraph 3 of resolution 36/107 (section III) which are being circulated as an addendum to the present report. Additional replies which might be received from States will be published in further addenda.

II. PROGRESS REPORT PREPARED BY THE UNITED NATIONS INSTITUTE
FOR TRAINING AND RESEARCH

	<u>Paragraphs</u>
A. BACKGROUND	1 - 9
Co-ordination with specified United Nations agencies and other relevant intergovernmental and non-governmental organizations	5 - 7
Information submitted by States	8
List of Eminent Persons	9
B. PREPARATION OF THE SECOND PHASE: UNITAR DS/5	10 - 17
C. DETAILED ACCOUNT OF WORK COMPLETED BY UNITAR	18 - 27
Phase I	18 - 21
Phase II	22 - 27
Existing and emerging principles	23
Analytical papers	24 - 26
Existing and evolving norms	27
D. REMAINING WORK BEFORE COMPLETION OF THE ANALYTICAL STUDY	28 - 35
Time-table	30 - 35
E. FUNDING	36 - 38

A. BACKGROUND

1. By resolution 35/166 the General Assembly requested UNITAR: "To prepare a list of the existing and evolving principles and norms of international law relating to the new international economic order concerning the economic relations among states, international organisations and other entities of public international law, and the activities of transnational corporations ...";

"To prepare an analytical study, on the basis of the list referred to ... above, on the progressive development of the principles and norms of international law relating to the new international economic order";

"To complete the study ... in time for the Secretary-General to submit it to the General Assembly at its thirty-sixth session".

2. UNITAR completed the first part of the request by preparing a broad spectrum of sources or Compendium, by topics or issues, of the principles and norms of international law relating to the new international economic order. The Compendium and the accompanying report and the annexes were published as documents UNITAR DS/4, A/36/143/Add.1 and 2 respectively.

3. In the report, UNITAR informed the General Assembly that the task entrusted to it "is a long-term one, requiring adequate time and resources".

4. At the thirty-sixth session the General Assembly, by resolution 36/107, requested UNITAR to "complete the study by preparing the analytical study on progressive development of the principles and norms of international law relating to the new international economic order, in accordance with paragraph 1 (b) of resolution 35/166".

Co-ordination with specified United Nations agencies and other relevant intergovernmental and non-governmental organizations

5. In operative paragraph 4, the General Assembly "Requests the United Nations Commission on International Trade Law, the United Nations Conference on Trade and Development, the United Nations Industrial Development Organization, the regional commissions, the United Nations Centre on Transnational Corporations and other relevant intergovernmental and non-governmental organizations active in this field, 1/ as determined by the United Nations Institute for Training and Research, to submit relevant information and to co-operate fully with the Institute in the implementation of the present resolution".

6. UNITAR requested information with respect to the actual practice of these organizations in implementing the instruments listed in the Compendium, UNITAR DS/4, specifically, (i) to what extent does the practice of the particular organization reinforce the normativity of the texts of these instruments? (ii) Has the practice in respect to these topics and sub-topics, to the extent they are within the jurisdiction of the organization, become routinized in such a fashion as to permit one to conclude that a customary practice is emerging?

7. UNITAR wishes to express its appreciation to those organizations that provided the requested information.

Information submitted by States

8. In operative paragraph 3 of resolution 36/107 the General Assembly "urges Member States to submit relevant information with respect to the study not later than 31 July 1982". The Secretary-General, through the Office of Legal Affairs, requested Member States, on behalf of UNITAR, to submit information. The replies are reproduced in addenda.

List of Eminent Persons

9. It will be recalled that in last year's report, A/36/143, paragraphs 15 and 20, UNITAR stated that it would seek advice and expertise of eminent persons representative of all geographical regions. Below is a list of eminent persons whose expertise or advice UNITAR utilized in the preparation of the study. 2/

B. PREPARATION OF THE SECOND PHASE UNITAR DS/5

10. UNITAR completed the outline of the study in February 1982.

11. On 12 March 1982, UNITAR convened a meeting of experts to make recommendations on the structure and content of the analytical study on the basis of the outline.

12. The experts recommended strongly that whereas phase I covered practically all the issues in the new international economic order (Trade, Money, Foreign Investment, Transnational Corporation, Technology, Aid, Debt and Global Commons), phase II should focus on the issues that could be researched exhaustively within UNITAR's financial means and critically analysed between January and August, a period of eight months, when the study must be submitted to the General Assembly. Two topics were identified: International Trade and Industrialization (foreign investment and transnational corporations and transfer of technology).

13. The draft of "the analytical study" was completed in July and UNITAR again convened a meeting of experts on 28 July 1982 to advise on the final draft.

14. It is the intention of UNITAR to have the final analytical study circulated as a United Nations document in all the official languages of the Organization. Since it would not have been possible to have all versions ready for the thirty-seventh session of the General Assembly, the draft study is being circulated at this stage as a UNITAR document in English only.

15. UNITAR wishes to state again that due to the complexity of the subject and the abundance of detail, the analytical study can not be adequately prepared within the 24-page limit. The study should therefore continue not to be subject to control and limitation of documentation rules.

16. In summary, the timeframe of UNITAR's work can be divided into three phases:

Phase I

This phase marked the beginning of UNITAR work on the study in January 1981 following the thirty-fifth session of the General Assembly until 14 September 1981 when UNITAR completed the first part of the study, i.e., the Compendium, UNITAR DS/4, the covering report A/36/143 and the addenda A/36/143/Add.1 and 2.

Phase II

This is the current phase of study which began in January 1982 after the thirty-sixth session of the General Assembly, until 15 August 1982, the deadline which had to be adhered to for the study to be circulated in time for the thirty-seventh session of the General Assembly.

Phase III

UNITAR will request a final third phase of the study from January 1983 to September 1983 to complete the analytical study. Meanwhile after phase II of the study is submitted to the Secretary-General, UNITAR will begin work on phase III immediately.

C. DETAILED ACCOUNT OF WORK COMPLETED BY UNITAR

Phase I

17. UNITAR prepared a Compendium, UNITAR DS/4, a concordance of topics or issues, listing all possible sources of norms and principles which either are, or may be evolving in the direction of, law.

18. It covered multilateral conventions and other treaties, transregional agreements, regional agreements, subregional agreements, resolutions adopted by multilateral bodies, transregional bodies, regional bodies and subregional bodies; and in the rare instance, major instruments under negotiation. This inclusiveness was justified by the purpose of phase I, which was to prepare a reference compendium of all possible sources.

19. This compendium constitutes the first systematic attempt to draw together the dispersed mass of international sources into a schematic compendium. This makes it possible to see what principles are most frequently reiterated and to trace the root network of various concepts.

20. UNITAR in addition prepared a covering report, A/36/143 to which there are two addenda, A/36/143/Add.1 and 2, i.e., the information received from Member States.

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Phase II

21. Once the inventory of sources had been made in phase I it became possible to proceed to some principles, both fully actualized and emergent. UNITAR's objective in phase II is to look beyond the documentary sources and instruments to the "real world" of actual State behavior and to the decisions reached by established and ad hoc tribunals in resolving actual disputes. It became necessary, for this purpose, to make a selective analysis of the most important items identified in the Compendium, eliminating instruments of limited application and those adopted by bodies of restricted membership, in order to complete this phase of the work within the time allotted. However, the analysis of practice and implementation did extend to those principles set forth in:

- (a) Resolutions of the General Assembly.
- (b) Bilateral and Multilateral Agreements.
- (c) International Tribunal Decisions.
- (d) International Arbitral Awards.

Existing and emerging principles

22. The analysis of practise and implementation has enabled UNITAR to identify the following principles, or clusters of the principles, which may either exist or be in the process of evolving:

- (a) Preferential treatment of developing countries;
- (b) Stabilization of export earning of developing countries;
- (c) Permanent sovereignty over natural resources;
- (d) Right of every State to benefit from science and technology;
- (e) Entitlement of developing countries to development assistance;
- (f) Participatory equality of developing countries in international economic relations;
- (g) Common heritage of mankind.

This list may not be exhaustive. In this respect, as in others, guidance from the Sixth Committee will be very much welcomed by UNITAR.

Analytical papers

23. Having identified the principles, or clusters of principles, UNITAR began to respond to the request of the General Assembly in resolution 36/107 i.e., preparation of an analytical study on the "Progressive development of the norms

and principles of international law relating to the new international economic order". However, UNITAR reiterates the statement it made in its report (A/36/143, para. 4), to the General Assembly that the task of analysing the principles can be done with intellectual rigour only with adequate time and resources. Between January 1982 and the deadline set for submission of the study, 15 August 1982, UNITAR completed analytical papers on the following principles:

- (a) Preferential treatment for developing countries;
- (b) Stabilization of export earnings of developing countries;
- (c) Permanent sovereignty over natural resources;
- (d) Right of every State to benefit from science and technology.

24. It is important to note that the paper on "Stabilisation of export earnings of developing countries" focuses only on schemes of compensatory financing, specifically as contained in the system for the stabilization of export earnings for the Convention of Lomé (STABEX), the compensatory financing facility of the International Monetary Fund and recent proposals by the United Nations Conference on Trade and Development (UNCTAD).

25. Mention should also be made that the analytical paper on the "Right of every State to benefit from science and technology" has not been completed. What has been completed is an analysis of the evolving and existing norms under each of the topics relevant to the principle.

Existing and evolving norms

26. Accompanying each analytical paper is a careful analysis of, as stated above, only hardcore sources - General Assembly resolutions, bilateral and multilateral agreements, international tribunal decisions and arbitral awards. Following is a list of subprinciples which were analysed. The analysis makes it possible to see norms which are, or may be evolving in the direction of, law.

Preferential treatment for developing countries

1. Importance of increased international trade for the economic and social development of developing countries.
 - 1.1. The need to increase the share and the terms of international trade of developing countries.
 - 1.2. Favourable treatment to meet the trade needs of developing countries.
2. Generalized, non-reciprocal, non-discriminatory system of preferences.
 - 2.1. The need for and the importance of the generalized system of preferences.
 - 2.2. Non-reciprocity.

3. Other preferential measures.
 - 3.1. Removal of tariff and non-tariff barriers to exports of developing countries.
 - 3.2. Special consideration to be given to the social and economic effects in developing countries when applying safeguard measures.
 - 3.3. Respect for the principle of stand-still.
 - 3.4. Preferential treatment to developing countries when applying countervailing duties.
 - 3.5. Need to increase the share of semi-manufactures and manufactures in the exports of developing countries.
 - 3.6. Increased and equitable participation of developing countries in the area of invisible trade.
 - 3.6.1. The need to increase the share of the developing countries in world shipping tonnage.
 - 3.6.2. Preferential treatment for developing countries in ever increasing freight rates.
 - 3.6.3. Implementation of the Code of Conduct for Liner Conferences.
 - 3.6.4. Preferential treatment for developing countries in insurance and reinsurance rates.
 - 3.6.5. The need for assistance for developing countries in domestic insurance.
 - 3.6.6. Other areas.
 - 3.7. Preferential treatment among developing countries.
 - 3.8. Special preferential treatment for least developed countries, developing land-locked and developing island countries.

Stabilization of export earnings of developing countries

1. Effective management of commodity markets and stabilization of export earnings of developing countries.
 - 1.1. Buffer stocks.
 - 1.2. The need for adequate financing.
 - 1.3. Producers' associations.

- 1.4. Measures against the adverse effects of synthetics.
 - 1.5. Equitable relationships between export earnings and import payments of developing countries.
2. Elimination of restrictive business practices.

Permanent sovereignty over natural resources

1. Right of every State to choose its own social and economic system.
2. Permanent sovereignty over natural resources.
3. Right to nationalize.
 - 3.1. Purpose
 - 3.2. Compensation
 - 3.3. Dispute settlement
 - a. Jurisdiction
 - b. Applicable Law
 - c. Other peaceful means
4. Restitution.
5. Right of State to regulate entry and role of foreign investment.
6. Treatment of foreign investment.
7. Role and responsibility of foreign investors.

Right of every State to benefit from science and technology

1. Importance of technology in the development of developing countries - need for international assistance.
2. Special assistance for the least developed countries, land-locked and island developing countries.
3. Principles governing transfer of technology.
 - 3.1. Appropriate and indigenous technology.
 - 3.2. Mutually beneficial, fair and honest pricing practices.

4. Need for an international Code of Conduct for transfer of technology.

4.1. Elimination of restrictive business practices.

D. REMAINING WORK BEFORE COMPLETION OF THE ANALYTICAL STUDY

27. In the brief time allotted between January 1982 and the date of submission of the analytical study, 15 August 1982, and with the funds made available, a rigorous, systematic and critical analysis of the remaining principles could not be completed. UNITAR therefore inevitably has to request extension of the time of completion of the analytical study which will constitute the final phase of the study.

28. In summary the remaining work is as follows:

I. Analytical papers on the principles:

- (a) Right of every State to benefit from science and technology;
- (b) Entitlement of developing countries to development assistance;
- (c) Participatory equality of developing countries in international economic relations;
- (d) Common heritage of mankind.

In addition, as stated above, the paper on "Stabilisation of export earnings of developing countries", has to be expanded to include other stabilization mechanism - Buffer Stocks, Producers' Associations and the Common Fund.

II. Research on two sources of international law-making which require extensive field research has to be completed; these are:

- (a) National court decisions;
- (b) Teachings of the most highly qualified publicists of the various nations.

III. Research on sources that evidence State practice, specifically the following:

- (a) Agreements between States and transnational corporations;
- (b) National legislation.

Time-table

29. As is stated above, UNITAR met the deadline of 15 August 1982 for phase II of the study.

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August to November 1982

30. Library and field research on the following sources:

- (a) National court decisions;
- (b) Works of publicists;
- (c) Agreements between States and transnational corporations;
- (d) National legislation.

December 1982

31. Analysis of the research data with the objective of identifying evolving and emerging norms. Once the analysis is completed UNITAR will convene a meeting of experts to advise on the draft.

January to April 1983

32. On the basis of the analysis above UNITAR will then proceed to prepare the analytical papers on the remaining principles:

- (a) Right of every State to benefit from science and technology;
- (b) Entitlement of developing countries to development assistance;
- (c) Participatory equality of developing countries in international economic relations;
- (d) Common heritage of mankind.

In addition, as stated above, the paper on "Stabilisation of export earnings of developing countries", has to be expanded to include other stabilization mechanisms - Buffer Stocks, Producers' Associations and the Common Fund.

UNITAR intends, as stated above, to continue use of advice and expertise of eminent persons in this field always bearing in mind the principle of geographical representation.

May 1983

33. Once the analytical papers have been prepared UNITAR will again convene a meeting of experts to advise on these papers.

June to August 1983

34. This period will be used by UNITAR to revise the analytical papers on the basis of recommendations by the panel of experts. Once the revision is complete,

the final analytical study will be prepared and submitted to the Secretary-General and this will mark the end of UNITAR's third and final phase of work.

E. FUNDING

35. It will be recalled that last year UNITAR requested funding from the General Assembly in order to cover the full cost of Phase II of the study for a period of one year. The Advisory Committee on Administrative and Budgetary Questions (ACABQ), however, only approved funding for nine months, i.e., January to September 1982.

36. UNITAR is fortunate in that notwithstanding its inadequate financial resources it is a research and training institute which provides internships and clinics to students and scholars from all over the world. Indeed the enormous and expensive library and field research has been done essentially by unpaid interns, clinicians and research assistants.

37. Between October (when funding approved by the Advisory Committee will have run out) and December 1982, UNITAR will not require additional funding. However, between the period January to September 1983, UNITAR will require some funding, particularly to meet the expensive but important cost of use of consultants from all geographical regions. It is our hope and expectation that UNITAR's request for additional funding will meet with favourable response from the Advisory Committee and the Fifth Committee.

Notes

1/ African Development Fund, Abidjan, Ivory Coast; African and Mauritian Union of Development Banks, Bangui, Central African Republic; Asian-African Rural Reconstruction Organization, New Delhi, India; American Society of International Law, Washington, D.C.; Andean Development Corporation, Caracas, Venezuela; Arab Bank for Economic Development in Africa, Khartoum, Sudan; Arab Fund for Technical Assistance to Arab and African Countries, Tunis, Tunisia; Asian-African Legal Consultative Committee, Pelham, New York; Asian Productivity Organization, Tokyo, Japan; Asian and Pacific Coconut Community, Djakarta, Indonesia; Association of Iron Ore Exporting Countries, New Delhi, India; Association of Natural Rubber Producing Countries, Kuala Lumpur, Malaysia; Caribbean Development Bank, Barbados; Caribbean Free Trade Association, Georgetown, Guyana; Caribbean Investment Corporation, Georgetown, Guyana; Central American Bank of Economic Integration, Tegucigalpa, Honduras; Central American Common Market, Guatemala, Guatemala; Central American Research Institute for Industry, Guatemala, Guatemala; Central African Customs and Economic Union, Bangui, Central African Republic; Colombo Plan for Cooperative Economic Development in South and Southeast Asia, Colombo, Sri Lanka; Committee on Disarmament, Geneva, Switzerland; Common Afro-Mauritian Organisation, Bangui, Central African Republic; Commonwealth of Nations, Commonwealth Secretariat, London, England; Council of Mutual Economic Assistance, Moscow, USSR; Development Bank of Central African States, Bangui, Central African Republic; East Caribbean Common Market, Collidge, Antigua; Secretariat of the

European Economic Communities-African Caribbean Pacific States, Bruxelles, Belgium; Food and Agriculture Organization of the United Nations, Rome, Italy; General Agreement on Tariffs and Trade, Geneva, Switzerland; Group of 77, New York, New York; The Hague Academy of International Law, The Netherlands; International Bauxite Association, Kingston, Jamaica; International Development Association, Washington, D.C.; International Finance Corporation, Washington, D.C.; International Financial Corporation for Investment and Development in Africa, Geneva, Switzerland; International Labor Organisation, Geneva, Switzerland; International Monetary Fund, Washington, D.C.; Institute of Comparative Law, Belgrade, Yugoslavia; Intergovernmental Committee on the River Plate Basin, Montevideo, Uruguay; Intergovernmental Council of Copper Exporting Countries, Neuilly-sur-Seine, France; Intergovernmental Maritime Organization, London, England; Institute for Latin American Integration, Buenos Aires, Argentina; International Bank for Reconstruction and Development, Washington, D.C.; International Atomic Energy Agency, Vienna, Austria; International Tin Council, London, England; Junta of the Cartagena Agreement, Lima, Peru; Kuwait Fund for Arab Economic Development, Kuwait City, Kuwait; Latin American Economic System, Caracas, Venezuela; Latin American Free Trade Association, Montevideo, Uruguay; Secretariat of the Third United Nations Conference on the Law of the Sea, New York, New York; League of Arab States, New York, New York; National Bar Association, Washington, D.C.; Office of Development and Codification of International Law, Organization of American States, Washington, D.C.; OPEC Secretariat, Vienna, Austria; Organization of African Unity, Addis Ababa, Ethiopia; Organisation of Economic Co-operation and Development, Paris, France; Secretariate Permanente de Tratado General de Integracion Economica Centroamericano, Guatemala, Guatemala; South Pacific Bureau for Economic Cooperation, Suva, Fiji; South Pacific Commission, Noumes Cedex, New Caledonia; South Pacific Forum, Suva, Fiji; United Nations Environment Programme, Nairobi, Kenya; International Trade Commission, Washington, D.C.; World Intellectual Property Organization, Geneva, Switzerland; Yugoslavia Society of International Law, Beograd, Yugoslavia; Centre for Research on the New International Economic Order, Oxford, England; International Law Association, London, England.

2/ Samuel Asante, Senior Legal Advisor, United Nations Center on Transnational Corporations; Judge Mohammed Bedjaoui, International Court of Justice, The Hague, Netherlands; Wolfgang Benedek, Lecturer in Law, Institute of International Relations, Graz, Austria; Milan Bulajic, Minister Plenipotentiary, Secretariat for Foreign Affairs, Yugoslavia; James Evans, Jr., Deputy General Counsel, International Monetary Fund; Arghyrios A. Fatouros, Professor, Aristotelian University of Thessaloniki, Faculty of Law and Economics, Chair of International Economic Law and European Organisations; Francisco V. Garcia-Armador, Visiting Professor, University of Miami Law School; Ambassador Sergio Gonzalez-Galvez, Counselor, Juridico, Servicio Exterior Mexicano; Vladimir Kartashkin, Senior Legal Officer, Office of the Legal Counsel, United Nations Secretariat; Cynthia Liechtenstein, Professor of Law, Boston College; Merlin Magallona, Professor of Law, College of Law, University of Philippines; Muna Ndulo, Dean, Law School, University of Zambia; Frank X. Njenga, Director, Political Department of the Organization of African Unity; Sergey A. Ordzhonikidze, Senior Legal Counsellor, Permanent Mission of the USSR to the United Nations; Giorgio Sacerdotti, Professor of International Law, Instituto Universitario; Seymour Rubin, Executive Vice-President and Executive Director, American Society of

International Law; John F. Scott, Director, Office of the Legal Counsel, United Nations Secretariat; Yu Sheng, Vice Director, Institute of Law, Chinese Academy of Social Sciences, Beijing, China; Ibrahim Shitata, Director OPEC Fund for Development; Louis Sohn, Woodruff Professor of International Law, University of Georgia Law School; Erik Suy, Under-Secretary-General, The Legal Counsel, United Nations Secretariat; B. F. Johnson Theutenberg, Legal Advisor, Ministry of Foreign Affairs, Sweden; Christopher Ushewokunze, Secretary of Mines, Ministry of Mines, Zimbabwe; Detlev Vagts, Professor of Law, Harvard Law School; Leonid I. Verenikin, Counsellor, Permanent Mission of the USSR to the United Nations; Wil Verwey, Professor of International Law, University of Groningen, Netherlands; Donald Wallace, Professor of Law, Georgetown Law School and Director of the Institute of International Law; Peter Weiss, Partner, David, Fross, Zelnick, Lehrman; Louis Wells, Professor of Economics, Harvard Business School.

Owing to either schedule conflict or other circumstances, Judge Bedjaoui, Professor Magallona, Mr. Njenga, Mr. Ordzhonikidze, Mr. Sheng, Mr. Shitata and Mr. Verenikin could not attend UNITAR panel of experts meetings convened 12 March 1982 and 28 July 1982.
