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# CONSIDERATION OF STEPS TO BE TAKEN FOR PROGRESSIVE DEVELOPMENT IN THE FIELD OF PRIVATE INTERNATIONAL LAW WITH A PARTICULAR VIEW TO PROMOTING INTERNATIONAL TRADE

## Background paper by the delegation of Hungary

/Note by the Secretariat. In view of the length of the paper, the first fourteen pages have been summarized, with the agreement of the delegation of Hungary, in paragraphs 1 to 5 below. From paragraph 6 onwards, the full text is given./

1. Technical progress in the past hundred or hundred and fifty years has accelerated the process of change of human society, which in turn creates a need for the development of law, embodied both in customary rules and in treaties. Social changes prompted the scholarly world to develop the idea of deliberate development of international law, and the scientific work done in this field has also had a fructifying influence on the activities of States.

2. The League of Nations first undertook efforts toward the systematic, deliberate development of international law in a resolution of the League Assembly, adopted on 22 September 1924; in that resolution, and in the work of the Committee of Experts which was convened by it, no distinction was made between codification and development of the law. The fields of work of the Committee of Experts, and of The Hague Codification Conference which followed in 1930, embraced topics both of public and of private international law. A convention and three protocols relating to various nationality questions, drafted at that Conference, obviously belong to the sphere of progressive development. The League also contributed to the development of the law by numerous treaties concluded outside the systematic programme of codification, in response to the political, economic, cultural, humanitarian and other needs of the time.

3. At the San Francisco Conference in 1945, it was almost immediately recognized that it was desirable to insert a reference to the codification of international law, but a long debate developed around the use of the word "revision". It was finally decided to refer to "progressive development", which established a balance between stability and change of the law, rather than to "revision", which seemed to lay too much emphasis on change. The result was paragraph 1 (a) of Article 13 of the Charter.

4. This provision was interpreted by the General Assembly, in its resolution 94 (I) of 11 December 1946, as laying an obligation on the Assembly to initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification. The same resolution established a committee to report on the methods whereby the Assembly could most effectively discharge its obligation and it was this committee which prepared the draft of the Statute of the International Law Commission, later adopted by the General Assembly in resolution 174 (II) of 21 November 1947. The committee, in its report, drew a line between codification and progressive development, but recognized that the two terms could not be mutually exclusive in practice, as in any work of codification, gaps would have to be filled in and the law amended in the light of new developments. This conclusion was in accord with statements by various scholars who had examined the problem, and with the later experience of the International Law Commission, which found it necessary to abandon the attempt to decide which articles drafted by it fell into the category of "codification" and which into that of "progressive development".

5. In contrast to the interstitial progressive development which is a necessary part of codification, there exists a kind of progressive development which is an independent, primary activity, which is not connected with codification, and which, in the words of article 15 of the Statute of the International Law Commission, consists of the international regulation of fields "which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States". Articles 16 and 17 of the Statute, which relate to this kind of progressive development, reserve the right of initiative in this regard to the General Assembly (and indirectly to the States, organs and international organizations which may make proposals to it) since a political decision and a metajuridical consideration of the degree

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of economic necessity of such work are required; article 18 assigns the whole process of codification, a more purely scholarly task, to the International Law Commission. It is desirable to give consideration to the results achieved in the United Nations in regard both to codification and to progressive development.

Results of codification

6. Article 18 of the Statute of the International Law Commission provides that:

> "The Commission shall survey the whole field of international law with a view to selecting topics for codification. When the Commission considers that the codification of a particular topic is necessary or desirable, it shall submit its recommendations to the General Assembly."

7. Consequently in 1949 the International Law Commission, on the basis of a study by the United Nations Secretariat (A/CN.4/1/Rev.1), examined twenty-five topics of international law and selected fourteen of them for codification (Report of the International Law Commission on the work of its first session, chapter II, para. 16. Yearbook of the International Law Commission 1949, p. 281). The General Assembly approved the selection by its resolution 373 (IV) of 6 December 1949. The work of codification on four of the selected topics has been successfully completed by the preparation of treaties on topics including the régime of the high seas; the régime of territorial waters; diplomatic relations; and consular relations. The present work programme of the Commission includes the topics of Succession of States and Governments; Law of Treaties; State responsibility; Relations between States and inter-governmental organizations; and Right of asylum. (This latter subject is related to the draft declaration on the right of asylum, which is now on the agenda of the Sixth Committee.)

8. Work on the topic of arbitral procedure is also concluded for the time being, although no convention has been concluded in this report.

Results of progressive development

9. In the field of progressive development no such plan has been adopted as was made for codification. The Statute does not lay a duty upon the International Law Commission to determine where progressive development is possible, and it does not direct the Commission to select particular topics for that purpose.

10. The General Assembly could have provided for a plan, but it did not do so. As a consequence, the International Law Commission's activities in the sphere of progressive development present a rather varied picture.

11. In what cases has the International Law Commission been invited to perform work related with progressive development?

12. In resolution 177 (II), the General Assembly directed the Commission to "formulate the principles of international law /italics added/ recognized in the Charter of the Nürnberg Tribunal and in the judgement of the Tribunal; and to prepare a draft code of offences against the peace and security of mankind...".

13. In resolution 178 (II), the General Assembly instructed the International Law Commission to prepare a draft declaration on the rights and duties of States.

14. Strictly speaking, the above two subjects fall within the province of the codification of international law. The passage in italics above from the General Assembly resolution on the Nürnberg principles gives some indication that the General Assembly was of the same view. (For the relevant discussion in the IIC see: summary record of the 17th meeting, paras. 1-36.) The topic entitled "Fundamental rights and duties of States" was included among the twenty-five subjects considered by the Commission for the purpose of codification, but was not added to the fourteen topics selected for the obvious reason that the General Assembly had provided for it separately.

15. In resolution 260 B (III) the General Assembly invited the International Law Commission to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide and other crimes.

16. In resolution 478 (V) the General Assembly invited the Commission to study the question of reservations to multilateral conventions.

17. In resolution 378 B (V) the General Assembly referred to the Commission the question of defining aggression.

18. Economic and Social Council resolutions 304 D (X) and 319 B III (XI) requested the International Law Commission to undertake at the earliest possible date the formulation of a draft international convention or conventions for the elimination of statelessness. The topic of "nationality including statelessness" was also

part of the Commission's plan of codification, although the Secretariat, in its preparatory memorandum under the heading "Law of Nationality", wrote as follows about the abolition of statelessness:

> "... it is probable that in this respect the proper sphere of international regulation through the efforts of the International Law Commission will be not through codification but through development aiming at introducing a departure from the existing practice". ("Survey of International Law in relation to the work of codification of the International Law Commission", doc. A/CN.4/1/Rev.1, United Nations Sales No.: 1948.V.1 (1), p. 45)

19. It was by virtue of General Assembly resolution 1289 (XIII) that the Commission included in its agenda the item "Relations between States and inter-governmental organizations", just as under resolution 1687 (XVI) it took up the subject of "Special missions", and under resolution 1453 (XIV) the topic of "The juridical régime of historic waters, including historic bays".

20. By virtue of General Assembly resolution 1766 (XVII) the Commission dealt with the "Question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations".

21. It is worthy of note that in respect of the subjects listed above only the consideration of the topic of statelessness resulted in a convention, and even that is of moderate importance because of the small number of ratifications.

22. But if it is desired to record the whole truth regarding the results the United Nations has achieved in the progressive development of international law, then account has to be taken of a number of other facts as well.

23. The first is the fact that the Commission's work of codification has also resulted in conventions in which progressive development can be considered as predominating, such as the Convention on the Continental Shelf, and especially the Convention on Fishing and Conservation of the Living Resources of the High Seas.

24. Second, there is the fact that, without using the services of the International Law Commission, the General Assembly of the United Nations has adopted a number of international treaties which clearly constitute a development of international law (e.g. Convention on the Prevention and Punishment of the Crime of Genocide (resolution 260 A (III)), and Convention on the Political Rights of Women (resolution 640 (VII))). Further work on topics of high importance is also in preparation, such as the framing of draft international convenants on human rights,

and the consideration (and possibly eventual formulation) of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations.

25. Third, one cannot exclude from the sphere of the progressive development of international law certain important General Assembly resolutions which, as appears from the virtually unanimous votes of Member States, express an understanding among States as to the acceptance of new principles of international law, for example, the Declaration on the granting of independence to colonial countries and peoples (resolution 1514 (XV) of 14 December 1960), the Declaration on the elimination of all forms of racial discrimination (resolution 1904 (XVIII) of 20 November 1963), and the Declaration of legal principles governing the activities of States in the exploration and use of outer space (resolution 1962 (XVIII) of 13 December 1963).

26. Fourth, the general multilateral treaties in various special fields which have been concluded under the auspices of the United Nations are impressive in numbers and serve as governing rules in many important spheres of international life. A few chapter-titles of the list of treaties of which the Secretary-General acts as depositary indicate the variety of such spheres: opium and other dangerous drugs, traffic in women and children, obscene publications, health, international trade and development, transport and communications, navigation, economic statistics, educational and cultural matters, declaration of death of missing persons, status of women, freedom of information, slavery, commodities, maintenance obligations, and commercial arbitration.

27. Fifth, the significant contribution of the International Court of Justice to the development of international customary law is fully appreciation. That contribution, however, falls beyond the scope of the present analysis.

The prospects of progressive development

28. While it can be stated that the United Nations has achieved significant results, not only in the codification of international law but also in its progressive development, a cursory glace at these results raises the question whether a modicum of planning ought not to be applied to the latter as well as to the former. For if the progressive development of international law is, like codification, an obligation of the General Assembly - as was laid down in

resolution 94 (I) - then it logically follows that organized, planned measures ought also to be taken for the implementation of this obligation. In regard to progressive development (and what is meant here is not the mere filling of gaps of secondary importance which is an inseparable part of codification), the Statute of the International Law Commission, as has been seen, has only set up executive machinery, but has reserved the right of initiative to the General Assembly (though not excluding from it other organs). This right of initiative, however, has been rather sporadically put to use by the General Assembly and the other qualified organs; nor can the purpose of a planned progressive development of international law be detected in those activities of the General Assembly in the course of which it acted independently of the International Law Commission, adopting either international treaties or other instruments involving development of international law.

29. Is there any chance of making a change in this situation? What should be done in this respect? In what direction could the United Nations proceed systematically to extend the area of "law-governed matters" mainly through the conclusion of international conventions regulating fields of activity in which no agreed rules exist? (A/AC.10/7, p. 2)

30. Some authors insist that there has been an unparalleled extension of the scope of international law. Jessup writes about Transnational Law (Philip C. Jessup, Transnational Law, New Haven, 1956). W. Friedmann refers to new fields like International Constitutional Law, International Administrative Law, International Labour Law, International Criminal Law, International Commercial Law, International Economic Development, International Corporation Law, International Anti-Trust Law, International Tax Law (Wolfgang Friedmann, The Changing Structure of International Law, London, 1964, p. 152 et seq.).

> "Even if most of these newly developing branches of international law are still in an embryonic stage", writes Friedmann, "they already show clearly the imperative need for a far wider conception of international law... than is reflected in traditional attitudes" (ibid.).

31. Other authors strike a more sceptical note. According to C.W. Jenks:

> "... a number of these suggestions and categories rest upon debatable or ill-defined concepts and represent verbal innovations rather than a solid rethinking of the structure of the law; partly for this reason, they have too often appeared to be vehicles for the views of particular writers rather than objectively valid contributions to a more satisfactory organization and exposition of international law as a whole". (C.W. Jenks, "The Scope of International Law", British Year Book of International Law 1954, p. 8)

He is obliged to admit, however, that "International aviation law, international maritime law, international labour law, and international sanitary law have secured a wider, though still limited, measure of acceptance as recognized branches of international law, partly because they have been less identified with the views of particular writers but chiefly, no doubt, because they have a more definable scope and, as the result of the existence of a large number of widely ratified conventions and other international instruments, a more precise content." (Ibid.)

32. All this leads to the question whether the United Nations General Assembly's activities aimed at the progressive development of international law under Article 13, paragraph 1 (a), of the Charter can be extended beyond the traditional area of public international law.

33. This is generally not denied. What is contended is that Article 13 (1) (a) refers primarily /italics added/ to customary (i.e. public) international law and that this can be inferred from the fact that other provisions of the Charter, notably Article 13 (1) (b) and Chapters IX and X, contain provisions which enable the United Nations to sponsor the creation of new rules of law, particularly though not exclusively, by means of new conventions (S. Rosenne, "The International Law Commission 1949-1959", British Year Book of International Law 1960, p. 112, note 1).

34. By Article 13, paragraph 1 (b), the Charter assigns to the General Assembly the duty of initiating studies and making recommendations with a view to "promoting international co-operation in the economic, social, cultural, educational and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinctions as to race, sex, language, or religion".

35. According to Article 62 of the Charter:

"1. The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned.

"2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.

"3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.

"4. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence."

36. Is there an overlapping between sub-paragraph (a) and sub-paragraph (b) of Article 13, paragraph 1, of the Charter, and especially between sub-paragraph (a) and Article 62? If there is, should this be interpreted to mean that the United Nations organs dealing with the progressive development of international law must refrain from any initiative if it touches upon the spheres of activity enumerated in sub-paragraph (b)? In this connexion the aspects of form and substance are like two sides of a coin. Here formal requirements of the progressive development of law coincide with material demands of substance which come up in various special fields and demonstrate the necessity of international regulation.

37. To cite examples, the conventions created within the scope of the law of the sea are of a nature to promote international co-operation in the economic field, in addition to carrying forward the codification or progressive development of international law. It is obvious that the progressive development of international law, that is the extension of legally regulated fields, requires extensive collaboration between the specialist in the field concerned and the international lawyer (Friedmann, op. cit., p. 187). General Assembly resolution 1105 (XI) on an international conference of plenipotentiaries to examine the law of the sea properly realized that with respect to the law of the sea not only the legal but also the technical, biological, economic and political aspects of the problem had to be examined, and invited Member States to include among their representatives experts competent in the fields to be considered.

38. The foregoing cannot be construed, of course, as meaning that it would be desirable for legal forums to take over the international regulation of all technical fields, but it should mean that legal forums are not excluded from entering such fields, and that these forums, aware of the interrelationships, could perform useful services for the international community, especially in relation to planning.

39. This is particularly evident where legal elements predominate over technical problems and where the lawyer's work has great traditions. Such a field, for instance, is that of private international law with its aspects related to international trade. It is desirable to examine the question of how far the United Nations General Assembly can contribute to the development of international law in this field and what circumstances would make timely an increase in United Nations activity in this connexion.

The prospects of development in the field of private international law

40. The great variety of national laws is a fact. This diversity is determined by the differences in the economic bases of the various national societies, in their traditions and other circumstances which need not be analysed here. Yet it is a common feature of all legal systems - and what is now in view is primarily civil law - that they admit the application of foreign law and even make its application obligatory in certain cases where foreign elements are involved. Variety is again great in the solutions given to the question of when and how to apply foreign law, i.e. in the national rules governing the conflict of law.

41. As cases involving foreign elements are of an international character, it is obvious that the rules adopted by States for the solution of conflicts are of interest for the international community. The diversity of the rules of private international law applied by different States is a disturbing element, which leads to limping marriages, to mutually contradictory judgements in different countries and makes the establishment of international relations complicated and difficult in the field of economic and commercial activities. True, there are customary rules of international law which affect certain fields of private international law (e.g. immunity of sovereign States), but they are few in number and even they are frequently contested.

42. There has therefore long been a tendency to eliminate complications and promote international co-operation through agreements between States.

43. In so far as agreements of this kind are reached between States, there is certainly a contribution to the domain of public international law. In those areas where international contracts are especially frequent the tendency to agreement does not stop with the conflict of laws, but aims at a standardization of substantive rules.

44. As making private international law truly international evidently contributes to the progressive development of public international law, this matter came up at the time the Statute of the International Law Commission was being framed.

45. The Committee on the Progressive Development of International Law and its Codification took the view that the International Law Commission's task should extend to the sphere of private international law. According to a foot-note added to the report of the Committee it appeared to be the feeling of the Committee that the Commission should undertake nothing which might detract from the valuable work being done in the sphere of private international law by The Hague Conference on Private International Law. It therefore recommended that the Commission, when dealing with questions in the field of private international law, should consider the appropriateness of consulting the Netherlands Government. (A/331, Official Records of the General Assembly, Second Session, Sixth Committee, p. 174)

46. When this report was under discussion in the Sixth Committee of the General Assembly, the representative of the Netherlands, Mr. François, said that he preferred that the International Law Commission should deal only with public international law, "as studies in private international law were already being covered by The Hague Conferences". (Official Records of the General Assembly, Second Session, Sixth Committee, 37th meeting, p. 7)

47. The Sixth Committee referred the report for further discussion to its second sub-committee, where the question was raised again. According to the report of the latter, some members of the sub-committee felt that the Commission should not concern itself with private international law. Some of them contended that Article 13 of the Charter envisaged the progressive development and codification of public international law only. Above all, practical considerations were cited in support of the view that the Commission's task should be limited. Most of the jurists who had specialized in private international law were little interested, it was held, in public international law. The system already adopted for having representatives

on the Commission of the principal legal systems of the world would be seriously compromised if some systems of law were represented by experts in public international law and others by jurists who had specialized in private international law. It would, in that case, be necessary to double the number of members of the Commission, which seemed out of the question. Some representatives considered that most countries would prefer that the Commission should consist of experts in public law. It would seem inadmissible that a committee which did not include the leading experts in private international law should have the necessary authority to direct work in that domain. Other members of the Committee challenged this view, and pointed out that there was no express stipulation limiting the task of the Assembly, as laid down in Article 13 of the Charter, to public international law. The borderline between public international law and private international law was, moreover, not clear. The number of experts engaged in both these fields was not so small as it was claimed to be. The Commission would always be able to call on experts if there were insufficient specialists in private international law among the members of the Commission (A/C.6/193, para. 16, Official Records of the General Assembly, Second Session, Sixth Committee, pp. 203-204).

48. A common measure of agreement was found by the unanimous adoption, with one abstention, of the following stipulation: "The Commission shall concern itself primarily with public international law, but is not precluded from entering the field of private international law." It was this agreed wording that was included in article 1, paragraph 2 of the ILC Statute.

49. It is worthy to note that the debate in the sub-committee essentially centred on the extent to which the International Law Commission might be burdened by work on private international law. To the question whether the scope of activities defined in Article 13, paragraph 1 (a) extends also to private international law, the General Assembly gave a positive answer by accepting the ILC Statute, i.e. Article 1 (2) of it. The positive stand of the General Assembly on this matter had been clear from resolution 94 (I) of 11 December 1946, which stated that in preparation for the execution of the obligation under Article 13, paragraph 1 (a) the General Assembly realized "... the need for a careful and thorough study of what has already been accomplished in this field (i.e. in the field of the progressive development and codification of international law) as well as of the projects and activities of official and unofficial bodies engaged in efforts to promote the progressive development and formulation of public and private international law ..." [italics added].

50. In spite of this, the United Nations prepared no programme of work to deal with private international law. Yet it cannot be said that the United Nations is not at all engaged in activities of this kind.

51. In September 1956 the International Institute for the Unification of Private Law organized in Barcelona a meeting of international bodies dealing with the unification of law. This meeting was attended by a representative of the United Nations, who submitted a report entitled "Some examples of methods followed by the United Nations on subjects relating to private international law and the unification of private law" (Unidroit Year-Book, 1956, p. 105).

52. In that report the United Nations representative stated that the role of the United Nations in the matter was marginal, and that the United Nations was not systematically engaged in the work of unification (ibid., p. 345). The report reviewed the activities of United Nations bodies in connexion with the following subjects: status of refugees and stateless persons, elimination and reduction of future statelessness, enforcement of foreign arbitral awards, death of missing persons, recovery abroad of maintenance, road traffic, road signs and signals, customs facilities for touring, importation of commercial samples and advertising materials and licensing of motor vehicle drivers.

53. A similar report was submitted to the second meeting held in 1959.

54. The question arises now why the United Nations should not widen this marginal role into a systematic programme, and what action in the present circumstances would increase the timeliness of dealing with private international law.

## The law of international trade

55. The United Nations Conference on Trade and Development accepted some general and special principles. General Principle Six reads as follows:

> "International trade is one of the most important factors in economic development. It should be governed by such rules /italics added/ as are consistent with the attainment of economic and social progress and should not be hampered by measures incompatible therewith. All countries should co-operate in creating conditions of international trade conducive in particular to the achievement of a rapid increase in the export earnings of developing countries and in general to the promotion of an expansion and diversification of trade between all countries, whether at similar levels of development, at different levels of development, or having different economic and social systems."

56. This principle, which was virtually unanimously adopted by that highly important Conference, refers to what rules should govern international trade and what measures should be eliminated from it. At the same time it lays down the obligation of States to co-operate in creating favourable conditions for the development of international trade. It is beyond doubt that creation of such favourable conditions should cover the formulation and development of those relevant national and international rules of law which best promote the attainment of the proposed aim. General Principle Six should act as a stimulus to major development of international commercial law.

57. Is there need in this respect for the United Nations General Assembly to take the initiative in accordance with Article 13, paragraph 1 (a), of the Charter? The question is especially justified by the fact that more than one international agency is already dealing with the problem of the development of international commercial law.

58. As has been seen above, already the Committee on the Progressive Development of International Law and its Codification stressed the significance of the work of The Hague Conferences. Since that time the participants of those conferences have formed an international organization, The Hague Conference on Private International Law. According to its Statute, which came into force on 15 July 1955, members of this agency are the States which have already participated in one or more sessions of the Conference and which accept the Statute.

59. The Statute continues with a rather cryptic provision to the effect that any other State may become a member "the participation of which is from a juridical point of view of importance for the work of the Conference" /italics added/. The admission of new members is decided upon by the Governments of the participating States (Amos J. Peaslee, International Governmental Organisations, revised second edition, Vol. I, p. 747).

60. Though the Conference has adopted some international treaties which are open to accession by a large number of States, yet the Conference itself, whose merits are not contested, is a highly exclusive organization.

61. An important part is played in this field by another inter-governmental organization, the International Institute for the Unification of Private Law. This Institute and The Hague Conference on Private International Law co-operate with the Council of Europe and, under agreements concluded in virtue of Economic

and Social Council resolution 678 (XXVI), also with the United Nations. Notable accomplishments of the Institute and of The Hague Conference on Private International Law are two Hague Conventions adopted in 1964, one relating to a Uniform Law on the International Sale of Goods and the other to the Formation of Contracts for the International Sale of Goods.

62. The Economic Commission for Europe makes a different kind of contribution towards the standardization of the rules of international trade. The development of uniform conditions of sale is also a very efficient and far-reaching method to promote international trade in various branches of commerce.

63. Of great importance in this respect is the work of the International Chamber of Commerce in connexion with the unification of international commercial terms and the Uniform Customs and Practice for Commercial Documentary Credits.

64. The importance of the standardization of the rules of international trade has been recognized by the European Economic Community (the Common Market). Paragraphs 100 to 102 of the Rome Convention of 25 March 1957, bear the title "Approximation of Laws". In paragraph 100 the Council of the EEC is directed to "issue directives for the approximation of such legislative and administrative provisions of the member States as have a direct incidence on the establishment and functioning of the Common Market".

65. Notable results have also been attained in similar respects by the Council for Mutual Economic Aid. The member States of the CMEA in 1958 adopted General Conditions of Delivery of Goods, which solve in a uniform manner the main problems relating to conclusion of contracts, terms of delivery, modes of payment, responsibility in case of frustration, methods of settling disputes, and so on.

66. There are many other regional agreements and tendencies in this field, such as the uniform law of sales of the Scandinavian countries, the co-operation of the Benelux countries, and that of the States of the Arab League.

67. The American continent can be credited with particularly remarkable results in the development of private international law. Article 67 of the Bogotá Charter of the Organization of American States makes it a duty of the Inter-American Council of Jurists to promote the development and codification of public and private /italics added/ international law. To illustrate the past success of this activity in America, it will suffice to point to the Código Bustamante.

It was evidently in the spirit of article 67 of the Bogotá Charter that the Council of Jurists at its 1965 Conference, held in San Salvador, proposed that the Council of the Organization of American States should convene a conference in 1967 for a revision of the Código Bustamante.

68. From the above survey, which is not at all complete, it appears that a great many international agencies have taken and are taking steps in the field of the development of the law of international trade. It would not be justified to extol the merits of one of these international agencies at the expense of the others. Their work is productive, whether it takes the form of conventions, model laws, standard conditions, uniform customs and practices, definition of trade terms or other forms.

69. Scientific writers have pointed out that this diversified activity, for all its usefulness, is lacking direction, uniform organization and synthesis. The International Association of Legal Science, a non-governmental organization, with the encouragement and support of UNESCO, in 1962 held in London a Colloquium on the New Sources of the Law of International Trade, with Dean Ronald H. Graveson of the University of London presiding.

70. The following passages are quoted from the material of the Colloquium:

> "... the main defect which this examination of the sources of the law of international trade has revealed is the lack of purposeful co-operation between the formulating agencies. ... the law of international trade, by its nature, is universal and for that reason a progressive liaison and co-operation between the formulating agencies should be the next step in the development of an autonomous law of international trade".
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> (Clive M. Schmitthoff, "The Law of International Trade, its Growth, Formulation and Operation", in The Sources of the Law of International Trade, edited by Clive M. Schmitthoff, London, 1964, p. 37)

71. It has been often stated that the co-operation which is now lacking should be brought about, that this activity should be repeatedly stimulated in one place, at the top level, and that this should be the United Nations or one of its specialized agencies (Clive M. Schmitthoff in Rabels' Zeitschrift, 1964, p. 75). It was also claimed that in view of the developing world-wide market this work should not have a purely regional orientation and that sponsorship of the United Nations could be useful to carry this work forward with the necessary scope and intensity (Prof. John Honnold, in "International Institute for the Unification of Private Law", Year-Book 1959, p. 239).

72. Although the capacities of the International Law Commission, which is the agency set up by the General Assembly for the purpose of the progressive development and codification of international law, is at present and will be for many years to come absorbed by a heavy agenda, this should not prevent the General Assembly from dealing with the development of private international law and in particular of the law of international trade, or from discharging its urgent duties in that field.

73. The United Nations has achieved outstanding results in the codification of customary international law and in the kind of progressive development which is inseparable from codification: in filling in the gaps of customary international law and in adapting its rules to contemporary conditions. In the achievement of these results the work of the International Law Commission has played a prominent part.

74. The achievements of the United Nations in progressive development are also notable in the sense that there are a great number of treaties which, in response to the needs of international co-operation, from time to time, have been concluded under its aegis. Some law-making agreements embodied in solemn declarations add to the brilliance of the record.

75. All these achievements support the belief that the General Assembly will be able to find ways and means for systematically handling the problem of progressive development, thereby fully implementing its tasks prescribed in Article 13, paragraph 1 (a) of the Charter. In order to do this, there must be a selection of hitherto unregulated fields where by social necessity international agreement is needed for establishing universal legal rules, and where such agreement seems both desirable and feasible. Such necessity manifests itself at present most forcefully in the field of international trade, the promotion of which primarily serves the progress of the developing countries and is thus in the interest of the whole community of nations. The development of the law of international trade on a universal scale does not mean ploughing untilled soil. Arduous spade-work is being done by several organizations and agencies, whose results demand an ultimate common effort sponsored by a central authority. This demand fits very properly into the framework of the progressive development of international law, entrusted by Article 13, paragraph 1 (a) of the Charter to the General Assembly of the United Nations.

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