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REPORT OF THE PLANNING GROUP

Programme, procedures and working methods of the Commission and its documentation

1. At its 2713th meeting on 1 May 2002, the Commission established a Planning Group for the current session.¹
2. The Planning Group held six meetings. It had before it section E of the Topical Summary of the discussion held in the Sixth Committee of the General Assembly during its fifty-sixth session entitled "Other decisions and conclusions of the Commission".²

¹ The Group was composed of the Chairman: Mr. Enrique Candioti, members: Mr. E.A. Addo, Mr. A.M.F. Al-Marri, Mr. J.C. Baena Soares, Mr. I. Brownlie, Mr. Ch. Chee, Mr. P. Comissario Afonso, Ms. P. Escarameia, Mr. S. Fomba, Mr. Z. Galicki, Mr. J.L. Kateka, Mr. F. Kemicha, Mr. M. Koskenniemi, Mr. W. Mansfield, Mr. D. Momtaz, Mr. B.H. Niehaus, Mr. D. Operti Badan, Mr. G. Pambou-Tchivounda, Mr. A. Pellet, Mr. P. Tomka and Mr. V. Kuznetsov (ex-officio).

² Document A/CN.4/521, paras. 122-123.

1. New Topics

3. On 1 May 2002, the Planning Group decided to recommend to the Plenary the following:
 - the inclusion on the Programme of work of the Commission of the item “International liability for injurious consequences arising out of acts not prohibited by international law” and the establishment of a Working Group on this topic;
 - the inclusion on the Programme of work of the Commission of the item entitled “Responsibility of international organizations”, appointment of a Special Rapporteur on this item and establishment of a Working Group to assist the Special Rapporteur during this session of the Commission.
4. On 6 May 2002, the Planning Group decided to recommend to the Plenary the following:
 - the inclusion on the Programme of work of the Commission of the item entitled “Shared natural resources”, appointment of a Special Rapporteur on this item and establishment of a Working Group to assist the Special Rapporteur;
 - the inclusion on the Programme of work of the Commission of the item entitled “The risk of the fragmentation of international law” and the establishment of a Study Group on this topic.

2. Work Programme of the Commission for the remainder of the quinquennium

5. Since this is the first year of the quinquennium and following its usual practice the Planning Group found it useful to establish a work programme for the ensuing four years setting out in general terms the goals with respect to each topic to be achieved during this period. (See Annex.) It is the understanding of the Planning Group that this work programme has a tentative character since the nature and the complexities of the work preclude any certain prediction a long time in advance.

3. Working Group on Long-term programme of work

6. At its first meeting on 1 May 2002, the Planning Group also decided to reconstitute its Working Group on the Long-term programme and appointed Professor Pellet as Chairman of this Working Group.³ The Working Group met on 31 July 2002, and the Chairman made a progress report orally to the Planning Group on 1 August 2002.

³ The Group was composed of the Chairman: Mr. Alain Pellet, members: Mr. J.C. Baena Soares, Mr. Z. Galicki, Mr. M. Kamto, Mr. M. Koskenniemi, Ms. H. Xue and Mr. V. Kuznetsov (ex-officio).

4. Procedures and methods of work

7. The Planning Group considered various proposals on issues relating to procedural aspects of the work of the Commission. It discussed in particular a proposal which had already been presented at the fifty-third session of the International Law Commission. The proposal was composed of three aspects pertaining to a system of partial renewal of the Commission, to the observance of improved attendance at the ILC and to measures for a more balanced gender representation among ILC members. Another proposal related to the rotation of geographical distribution of seats in the Bureau. These proposals were discussed in depth but finally it was felt that they would be extremely difficult to implement in practical terms, in addition to various sensitive political issues that they might raise. Consideration was also given to an oral proposal concerning continued improvement of informal discussions between the members of the Commission attending sessions of the General Assembly as referred in paragraph 12 of resolution A/56/62.

8. The Planning Group had also an exchange of views on the mechanism of short, thematic debates or exchange of views in the plenary on particular issues or questions raised in the course of the consideration of a topic, the so-called “mini-debates”. The Planning Group is of the view that the “mini-debates” were useful and constitute an important innovation in the working methods of the Commission. They should however be kept brief and focused and not be abused in the sense of allowing speakers to make long statements falling outside the scope of the mini-debate.

5. Cost-saving measures

9. The Planning Group considered again cost-saving measures in view of the current financial situation of the United Nations and recommends that the following text be included in the Report of the International Law Commission on the work of its fifty-fourth session:

“With regard to paragraph 10 of General Assembly resolution 56/82 encouraging the Commission, at its future sessions, to continue taking cost-saving measures in organizing its programme of work, the Commission wishes to note that it is making every effort aiming towards the most cost-effective and economical way to conduct its work. The Commission

considers that the shortening of its current and next (fifty-fifth) sessions to 10 weeks represented a significant cost-saving measure. The Commission also intends, once it returns to its sessions of 12 weeks' duration, to consider organizing its work in a manner similar to that it applied at its fifty-third session.”

6. Honorariums

10. The Planning Group considered the question of honorariums in light of General Assembly resolution A/RES/56/272 and recommends that the following text be included in the Report of the International Law Commission on the work of its fifty-fourth session:

“The Commission noted that after the date on which members were appointed to their position the General Assembly adopted resolution A/56/272 which reduced the honorariums payable to them and to members of certain other bodies.

The Commission draws attention to the point made in the Report of the Secretary-General (document A/53/643) that the level of the honorariums had not been reviewed since 1981 and that the decision of the General Assembly was taken in direct contradiction to the conclusions and recommendations in that report to the effect that the honorariums should be reviewed.

The Commission notes that the decision by the General Assembly was taken without consultation with the Commission and considers that the decision is not consistent in procedure or substance with either the principles of fairness on which the United Nations conducts its affairs or with the spirit of service with which members of the Commission contribute their time and approach their work.

Moreover, the Commission feels compelled to stress that the above resolution especially affects Special Rapporteurs, in particular those from developing countries, as it compromises the support for their research work.

The Commission decided to bring its concerns to the attention of Member States in the hope that the above-mentioned resolution will be duly reconsidered.

The Commission, concerned about the administrative costs involved in the payment of the current symbolic honorarium, also decided that it would not collect it.”

The Planning Group recommends also that a letter from the Chairman of the International Law Commission containing the above be sent to the appropriate authorities.

7. Date and place of the fifty-fifth session

11. The Planning Group recommends the following dates for the fifty-fifth session of the Commission which would take place in Geneva and will be split into two parts of equal duration: 5 May-6 June 2003 and 7 July-8 August 2003.

Annex

Work programme (2003-2006)

2003:

Reservations to treaties

Eighth report of the Special Rapporteur on validity of reservations.

Diplomatic protection

Fourth report of the Special Rapporteur on nationality of corporations.

Unilateral acts of States

Sixth report of the Special Rapporteur on general rules applicable to unilateral acts (conclusion of first part).

Responsibility of international organizations

First report of the Special Rapporteur on the scope of the study and on attribution of conduct.

Shared natural resources

First report on outline.

International liability

Further development of the conceptual outline of the topic.

Fragmentation of international law

First report (paper) on IL ways and means to deal with fragmentation (e.g. on *lex specialis* and “self-contained regimes”).

2004:

Reservations to treaties

Ninth report of the Special Rapporteur on effects of reservations and of objections to reservations.

Diplomatic protection

Fifth report on miscellaneous outstanding matters and completion of the first reading on Diplomatic protection. Adoption of draft articles and commentaries thereto on first reading.

Unilateral acts of States

Seventh report of the Special Rapporteur on specific rules applicable to certain unilateral acts (second part).

Responsibility of international organizations

Second report of the Special Rapporteur on the question of the responsibility of member States for conduct attributed to international organizations.

Shared natural resources

Second report on confined groundwater.

International liability

To be determined at a later stage.

Fragmentation of international law

Second report (paper) on IL ways and means to deal with fragmentation (e.g. on VCLOT rule on interpretation of notices in light of applicable general IL).

2005:

Reservations to treaties

Tenth report of the Special Rapporteur on succession of States in respect of reservations. “Toilette finale” of the guidelines and adoption on first reading.

Diplomatic protection

Comments by Governments on draft articles and commentaries thereto on first reading.

Unilateral acts of States

Eighth report of the Special Rapporteur on rules applicable to unilateral acts not referred to in the second part.

Responsibility of international organizations

Third report of the Special Rapporteur on residual matters concerning the arising of responsibility for international organizations.

Shared natural resources

Third report on oil and gas.

International liability

To be determined at a later stage.

Fragmentation of international law

Third report (paper) on IL ways and means to deal with fragmentation (e.g. on application of successive treaties and modification of multilateral treaties *inter se*).

2006:

Reservations to treaties

Second reading.

Diplomatic protection

Sixth report dealing with comments of Sixth Committee and Governments and adoption of draft articles and commentaries thereto on second reading.

Unilateral acts of States

Adoption of the draft articles and commentaries thereto on first reading.

Responsibility of international organizations

Fourth report of the Special Rapporteur. Adoption of draft articles and commentaries thereto on first reading.

Shared natural resources

Fourth report on comprehensive review.

International liability

To be determined at a later stage.

Fragmentation of international law

Fourth (final) report (paper) on practical role of ILC.
