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REPORT OF THE PLANNING GROUP

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

1. At its 2899th meeting, held on 25 July 2006, the Commission established a Planning Group for the current session.¹
2. The Planning Group held three meetings. It had before it Section I of the Topical summary of the discussion held in the Sixth Committee of the General Assembly during its sixtieth session entitled "Other decisions and conclusions of the Commission" and General Assembly resolution 60/22, in particular paragraphs 6, 7, 8, 13 and 16 of the Report of the International Law Commission on the work of its fifty-seventh session. It also had before it the proposed strategic framework for the period 2008-2009, concerning Programme 6 - Legal Affairs, Sub-programme 3, Progressive development and codification of international law, which it took note of.

¹ The Planning Group was composed of Mr. G. Gaja (Chairman), Mr. E.A. Addo, Mr. E. Candioti, Mr. P. Comissário Afonso, Mr. R. Daoudi, Ms. P. Escarameia, Mr. S. Fomba, Mr. Z. Galicki, Mr. P. Kabatsi, Mr. J.L. Kateka, Mr. M. Kamto, Mr. F. Kemicha, Mr. R.A. Kolodkin, Mr. T. Melescanu, Mr. D. Momtaz, Mr. B. Niehaus, Mr. A. Pellet, Mr. P.S. Rao, Mr. E. Valencia-Ospina, Mr. C. Yamada and Ms. H. Xue (*ex officio*).

1. Working Group on Long-term Programme of Work

3. The Working Group on the Long-term Programme of Work, established by the Planning Group during the fifty-fourth session of the Commission (2002), with Mr. Pellet as Chairman, was reconstituted during the current session.² The Working Group submitted its report to the Planning Group on 27 July 2006. The Working Group, in accordance with the established practice, was requested to report at the end of the quinquennium, at the fifty-eighth session (2006) of the Commission. The Working Group, during the quinquennium considered a number of topics, and requested members of the Working Group, other members of the Commission and the Secretariat to prepare drafts on those topics. The Working Group was guided by the recommendation of the Commission, at its forty-ninth session (1997), regarding the criteria for the selection of the topics:

(a) The topic should reflect the needs of the States in respect of the progressive development and codification of international law;

(b) The topic should be sufficiently advanced in stage in terms of State practice to permit progressive development and codification;

(c) The topic is concrete and feasible for progressive development

[and]

... the Commission should not restrict itself to traditional topics, but could also consider those that reflect new developments in international law and pressing concerns of international community.³

² *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10 (A/57/10)*, para. 521. For the membership of the Working Group see para. ... above.

³ *Yearbook ... 1997*, vol. II (Part Two), pp. 71-72, para. 238.

4. Bearing in mind the criteria above, during the present quinquennium the Working Group recommended and the Planning Group endorsed the inclusion of the following topics in the long-term programme of work of the Commission:

- (a) The obligation to extradite or prosecute (*aut dedere aut judicare*);
- (b) Immunity of State officials from foreign criminal jurisdiction;
- (c) Jurisdictional immunity of international organizations;
- (d) Protection of persons in the event of disasters;
- (e) Protection of personal data in the transborder flow of information;
- (f) Extraterritorial jurisdiction.

5. The syllabuses on the topics that have been recommended for inclusion in the long-term programme of work, except for the topic “the obligation to extradite or prosecute (*aut dedere aut judicare*)”, are annexed to the present report. It will be recalled, with respect to the topic “the obligation to extradite or prosecute (*aut dedere aut judicare*)”, that an interim report, together with a syllabus, was submitted during the Commission’s fifty-sixth session (2004) and its inclusion was recommended in the long-term programme of work.⁴ At the same session, the Commission agreed with the inclusion of this topic in its long-term programme of work.⁵

6. The Planning Group noted that the Working Group also considered the topic “The Most-favoured-nation clause”, but was not in a position to make a final

⁴ *Official Records of the General Assembly, Fifty-ninth Session, Supplement 10 (A/59/10)*, para. 362 and Annex.

⁵ *Ibid.*, para. 363.

recommendation. It endorsed the Working Group's recommendation that the Commission seek the views of Governments as to the utility of further work by the Commission on this topic.⁶

7. The Planning Group agreed with the Working Group's recommendation that a consolidated list of topics that have been recommended by the Working Groups on the long-term programme of work, for the last three quinquennia appear in the report. The consolidated list included in the long-term programme of work since the forty-fourth session of the Commission (1992) is as follows:⁷

- (a) Law and practice relating to reservations to treaties;⁸
- (b) State succession and its impact on the nationality of natural and legal persons;⁹

⁶ The Commission included the topic "The Most-favoured-nation clause" in its programme of work at its twentieth session (1967) and appointed Endre Ustor and Nikolai A. Ushakov as the successive Special Rapporteurs. The Commission completed the second reading of the topic at its thirtieth session (1978). The General Assembly at its thirty-fifth, thirty-sixth, thirty-eighth, fortieth and forty-third sessions (1980, 1981, 1983, 1985 and 1988) invited comments from Governments and intergovernmental organizations, on the draft articles proposed by the Commission. At its forty-sixth session (1991) the General Assembly, in its decision 46/416, took note with appreciation of the work of the Commission as well as views and comments by Governments and intergovernmental organizations and decided to bring the draft articles to the attention of Member States and intergovernmental organizations for their consideration in such cases and to the extent as they deemed appropriate.

⁷ In order to establish a global view of the main fields of public international law, the Commission, at its forty-eighth session (1996) established a general scheme of topics classified under 13 main fields. The list was not intended to be exhaustive and was to serve as a general reference. For the list see *Yearbook ... 1996*, vol. II (Part Two), Annex II.

⁸ *Yearbook ... 1993*, vol. II (Part Two), para. 427. The Commission included this topic on its agenda at its forty-fifth session (1993), *ibid.*, para. 440. See also General Assembly resolution 48/31 of 9 December 1993. The title was subsequently changed to "Reservations to Treaties", *Yearbook ... 1995*, vol. II (Part Two), para. 487 (a).

⁹ *Ibid.*, para. 427. The Commission included this topic on its agenda at its forty-fifth session (1993), *ibid.*, para. 440. See also General Assembly resolution 48/31 of 9 December 1993. The title was subsequently changed to "Nationality in relation to the succession of States", *Yearbook ... 1996*, vol. II (Part Two), para. 88. See also General Assembly resolution 51/160 of 11 December 1996.

- (c) Diplomatic protection;¹⁰
- (d) Ownership and protection of wrecks beyond the limits of national maritime jurisdiction;¹¹
- (e) Unilateral acts of States;¹²
- (f) Responsibility of international organizations;¹³
- (g) Shared natural resources of States;¹⁴
- (h) Risks ensuing from fragmentation of international law;¹⁵
- (i) Effects of armed conflict on treaties;¹⁶

¹⁰ *Yearbook ... 1995*, vol. II (Part Two), para. 501. Pursuant to General Assembly resolution 51/160 of 11 December 1996, the Commission included this topic on its agenda at its forty-ninth session (1997), *Official Records of the General Assembly, Fifty-second Session, Supplement No. 10* (A/52/10), paras. 169-171.

¹¹ *Yearbook ... 1996*, vol. II (Part Two), para. 248.

¹² *Ibid.* Pursuant to General Assembly resolution 51/160 of 11 December 1996, the Commission included this topic on its agenda at its forty-ninth session (1997), *Official Records of the General Assembly, Fifty-second Session, Supplement No. 10* (A/52/10), paras. 191-194.

¹³ *Yearbook ... 2000*, vol. II (Part Two), para. 729. The Commission included this topic on its agenda at its fifty-fourth session (2002), *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10 and Corr.1), para. 517.

¹⁴ *Ibid.* The Commission included this topic on its agenda at its fifty-fourth session (2002), *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10 and Corr.1), para. 518.

¹⁵ *Ibid.* The Commission included this topic on its agenda at its fifty-fourth session (2002), *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10 and Corr.1), para. 518. The title was subsequently changed to "Fragmentation of international law: difficulties arising from the diversification and expansion of international law", see *ibid.*, paras. 492-494.

¹⁶ *Ibid.* The Commission included this topic on its agenda at its fifty-sixth session (2004), *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10* (A/59/10), para. 364.

- (j) Expulsion of aliens;¹⁷
- (k) The obligation to extradite or prosecute (*aut dedere aut judicare*);¹⁸
- (l) Immunity of State officials from foreign criminal jurisdiction;¹⁹
- (m) Jurisdictional immunity of international organizations;²⁰
- (n) Protection of persons in the event of disasters;²¹
- (o) Protection of personal data in the transborder flow of information;²² and
- (p) Extraterritorial jurisdiction.²³

8. The Planning Group recommends that the Commission express its appreciation for the valuable assistance rendered by the Codification Division in the preparation of proposals on “Protection of persons in the event of disasters”, “Protection of personal data in transborder flow of information”, “Extraterritorial jurisdiction”, and “Acquiescence and its effects on the legal rights and obligations of States”, at the request, and for the consideration, of the Working Group of the Long-term Programme of Work.

¹⁷ *Ibid.* The Commission included this topic on its agenda at its fifty-sixth session (2004), *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10 (A/59/10)*, para. 364.

¹⁸ *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10 (A/59/10)*, paras. 362 and 363 and Annex.

¹⁹ See para. ... above.

²⁰ *Ibid.*

²¹ *Ibid.* It would be recalled that a proposal entitled “International protection of persons in critical situations” (2004) was prepared by Mr. M. Kamto for the consideration of the Working Group on the Long-term Programme of Work. Copies are on file with the Codification Division.

²² *Ibid.*

²³ *Ibid.* It would be recalled that a proposal entitled “Extra-territorial application of national legislation” (1993) was prepared by Mr. P.S. Rao for the consideration of the Working Group on the Long-term Programme of Work. Copies are on file with the Codification Division.

2. Documentation and publications

9. The Planning Group considered the issue of timely submission of reports by Special Rapporteurs. Bearing in mind the rules and regulations relating to the submission of documents in the United Nations as well as the heavy workload of the relevant services of the Organization, the Planning Group emphasizes once more the importance that it attaches to the timely submission of reports by Special Rapporteurs both in view of their processing and distribution sufficiently in advance to allow members to study the reports.

10. The Planning Group requests that the Commission reiterate the importance of providing and making available all evidence of State practice and other sources of international law relevant to the performance of the Commission's function of progressive development and codification of international law. While the Commission is aware of the advantages of being as concise as possible, it strongly believes that an *a priori* limitation cannot be placed on the length of its documentation and research projects, in particular reports of Special Rapporteurs.

11. The Planning Group recommends that the Commission express its appreciation for the valuable assistance of the Codification Division in its substantive servicing of the Commission and in preparation of research projects, by providing legal materials and their analysis. In particular, appreciation should be expressed for the extensive research reflected in the Secretariat memorandum on "Expulsion of aliens".

12. The Planning Group recommends that the Commission request the Secretariat to provide the Commission with information on publications that relate to the work of the Commission.

13. Taking into account the usefulness of the publication "Work of the International Law Commission" and the fact that the sixth edition was published in 2004, the Planning Group recommends that the Commission request the Codification Division to prepare the seventh edition of the publication.

14. The Planning Group also recommends that the Commission express its appreciation for the results of activity of the Secretariat in establishing the Commission's new website.²⁴ The

²⁴ Located at <http://www.un.org/law/ilc/>.

new site constitutes an invaluable resource for the Commission in undertaking its work and represents an information tool for research on the work of the Commission, thereby contributing to the overall strengthening of the teaching, study, dissemination and wider appreciation of international law. The Commission would further encourage the Secretariat to continue to develop the electronic database on the work of the Commission (including the Commission's new website) and to explore further options for its electronic dissemination.

3. Meeting with United Nations human rights experts

15. In accordance with article 25 (1) of the Statute of the Commission,²⁵ the Planning Group recommends that the Secretariat, in consultation with the Special Rapporteur on Reservations to treaties, organize a Meeting during the fifty-ninth session of the Commission, with United Nations experts in the field of human rights including representatives from human rights monitoring bodies, in order to hold a discussion on issues relating to reservations to human rights treaties.

B. Date and place of the fifty-ninth session of the Commission

16. The Planning Group proposes that the fifty-ninth session of the Commission be held in Geneva from 7 May to 8 June and 9 July to 10 August 2007.

²⁵ The Commission may consult, if it considers it necessary, with any of the organs of the United Nations on any subject which is within the competence of that organ.

Annexes

- Annex A. Immunity of State officials from foreign criminal jurisdiction
- Annex B. Jurisdictional immunity of international organizations
- Annex C. Protection of persons in the event of disasters
- Annex D. Protection of personal data in the transborder flow of information
- Annex E. Extraterritorial jurisdiction
