



General Assembly

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International Law Commission

Sixty-fourth session

Geneva, 7 May–1 June and 2 July–3 August 2011

Report of the Planning Group

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

1. At its 3132nd meeting, on 22 May 2012, the Commission established a Planning Group for the current session.¹

2. The Planning Group held four meetings. It had before it Section G of the Topical Summary of the discussion held in the Sixth Committee of the General Assembly during its sixty-sixth session entitled “Other decisions and conclusions of the Commission”; General Assembly resolution 66/98 on the Report of the International Law Commission on the work of its sixty-third session, in particular paragraphs 22 to 28; General Assembly resolution 66/102 of 9 December 2011 on the rule of law at the national and international levels.

1. Working Group on the Long-term Programme of Work

3. At its 1st meeting, on 22 May 2012, the Planning Group decided to establish a Working Group on the Long-term Programme of Work for the present quinquennium, chaired by Mr. Donald M. McRae. The Working Group will submit its final report at the end of the quinquennium. The Chairperson of the Working Group submitted an oral progress report to the Planning Group on 24 July 2012, noting, *inter alia*, that the Working Group had held four meetings during which it considered some possible topics.

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

4. The Planning Group recalled its decision in 2011 that the Group should cooperate with Special Rapporteurs and coordinators of Study Groups to define, at the beginning of any new topic, a tentative schedule for the development of the topic over a number of years as may be required, and periodically review the attainment of annual targets in such

¹ The Planning Group was composed of Mr. B. Niehaus (Chairman); Members: Mr. E. Candioti, Mr. P. Comissário Afonso, Mr. A. El-Murtadi Suleiman Gouider, Ms. C. Escobar Hernández, Mr. M. Forteau, Mr. H.A. Hassouna, Mr. M.D. Hmoud, Ms. M.G. Jacobsson, Mr. M. Kamto, Mr. K. Kittichaisaree, Mr. A. Laraba, Mr. D.M. McRae, Mr. S. Murase, Mr. S.D. Murphy, Mr. G. Nolte, Mr. K.G. Park, Mr. E. Petrič, Mr. G.V. Saboia, Mr. N. Singh, Mr. D.D. Tladi, Mr. E. Valencia-Ospina, Mr. A.S. Wako, Mr. N. Wisnumurti, Sir M. Wood, and Mr. P. Šturma (*ex officio*).

schedule, updating it when appropriate.² The Planning Group further recalled that it was customary at the beginning of each quinquennium to prepare the Commission's work programme for the remainder of the quinquennium setting out in general terms the anticipated goals in respect of each topic on the basis of indications by the Special Rapporteurs. It is the understanding of the Commission that the work programme has a tentative character since the nature and the complexities of the work preclude certainty in making predictions in advance.

Work programme (2013–2016)

(a) Expulsion of aliens

2013

Projet d'articles devant les Etats.

2014

Commencement de la deuxième lecture du Projet d'articles à la CDI.

2015

Finalisation et adoption en second lecture par la CDI.

2016

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(b) Protection of persons in the event of disasters

2013

Sixth report – the pre-disaster phase.

2014

Seventh report – protection of relief personnel, use of terms, miscellaneous provisions, first reading, complete draft.

2015

First reading draft comments of Governments.

2016

Eighth and final report – second reading, adoption of complete set of articles.

(c) Immunity of State officials from foreign criminal jurisdiction

2013

Premier rapport substantif à la CDI avec de projets d'articles. Examen et adoption des projets d'articles, le cas échéant, par le Comité de Rédaction.

2014

Second rapport avec des projets d'articles. Considération et adoption des projets d'articles, le cas échéant, par le Comité de Rédaction.

2015

Troisième rapport avec de projets d'articles. Considération et adoption des projets d'articles, le cas échéant, par le Comité de Rédaction.

² A/66/10, para. 378.

2016

Quatrième rapport avec de projets d'articles. Considération et adoption des projets d'articles, le cas échéant, par le Comité de Rédaction. Adoption des projet d'articles en première lecture, le cas échéant, par la Commission.

(d) Provisional application of treaties**2013**

First Report.

2014

Second Report with Draft Articles/Guidelines/Model Clauses.

2015

Third Report with Draft Articles/Guidelines/Model Clauses.

2016

Fourth Report.

(e) Formation and evidence of customary international law**2013**

First report: preliminary or background points/materials.

2014

Second report: State practice and *opinio juris*, with draft conclusions or guidelines.

2015

Third report: particular topics, such as the 'persistent objector', with draft conclusions or guidelines.

2016

Fourth report: revised consolidated set of conclusions or guidelines, for discussion and adoption.

(f) Subsequent agreements and subsequent practice in relation to the interpretation of treaties**2013**

First Report.

2014

Second Report.

2015

Third Report – Provisional adoption of draft conclusions.

2016

Finalization of draft conclusions.

(g) Most-Favoured-Nation-Clause

2013

Presentation of a draft of a potential final report with additional research on specific topics.

2014

Revision of draft report and adoption with amendment or request for further amendments and research.

2015

Adoption of final report.

2016

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(h) **Obligation to extradite or prosecute (*aut dedere aut judicare*)**

The Commission will determine during the 65th session whether to continue with the topic, and if so, how.

3. Consideration of General Assembly resolution 66/102 of 9 December 2011 on the rule of law at the national and international levels

5. The General Assembly, in resolution 66/102 of 9 December 2011 on the rule of law at the national and international levels, *inter alia*, reiterated its invitation to the Commission to comment, in its report to the General Assembly, on its current role in promoting the rule of law. The Commission has commented annually on its role in promoting the rule of law since 2008. The Commission notes that the substance of the comprehensive comments contained in paragraphs 341 to 346 of its 2008 report (A/63/10) remains relevant and reiterates the comments in paragraph 231 of its 2009 report (A/64/10) as well as the comments in paragraphs 390 to 393 of its 2010 report (A/65/10), and paragraphs 392 to 398 of its 2011 report (A/66/10).

6. The Commission recalls that the rule of law constitutes the essence of the Commission, for its basic mission is to work for the progressive development and codification of international law, bearing in mind its implementation at the national level. The Commission notes that the role of the General Assembly in encouraging the progressive development of international law and its codification is reaffirmed in General Assembly resolution 66/102 on the rule of law at the national and international levels.

7. The Commission recalls that as an organ established by the General Assembly and in keeping with the mandate set out in Article 13 (1) (a) of the Charter of the United Nations, and in its statute, the Commission continues to promote the progressive development and codification of international law through its work. The work of the Commission has led to the adoption by States of a significant number of conventions. For such conventions to serve their full purpose they need to be ratified and implemented. In addition to formulating draft articles, the Commission's output takes other forms, which also contribute to the progressive development and codification of international law. Having in mind the principle of the rule of law in all its work, the Commission is fully conscious of the importance of the implementation of international law at the national level. The Commission considers that its work to promote the progressive development and codification of international law demonstrates the manner in which the Commission works to promote the rule of law at the international level.

8. The Commission welcomes the decision of the General Assembly to declare the "Rule of law at the national and international levels" as the thematic subject for this year and to hold the high-level meeting.

9. Bearing in mind the close interrelation of the rule of law at the national and international levels, the Commission, in fulfilling its mandate of codification and progressive development, considers that its work should be informed where appropriate by the principles of human rights that are fundamental to the international rule of law as reflected in the preamble and in Article 13 of the Charter of the United Nations. Accordingly, the Commission has promoted awareness of the rule of law at the national and international levels through its work on topics like Expulsion of aliens; Protection of persons in the event of disasters; and Immunity of State officials from foreign criminal jurisdiction.

10. The General Assembly could recall in this context the Commission's contribution to the rule of law.

11. The Commission reiterates its commitment to the rule of law in all of its activities.

4. Honoraria

12. The Planning Group reiterates once more its views concerning the question of honoraria, resulting from the adoption by the General Assembly of its resolution 56/272 of 27 March 2002, which has been expressed in the previous reports of the Commission.³ The Planning Group emphasizes that the above resolution especially affects Special Rapporteurs, as it compromises support for their research work.

5. Documentation and publications

13. The Commission reiterated its recognition of the particular relevance and significant value of the legal publications prepared by the Secretariat to its work.⁴ In particular, the Commission welcomed the publication of the eighth edition of the "*The Work of the International Law Commission*", a publication which provides a comprehensive, authoritative and up-to-date review of the Commission's contribution to the progressive development and codification of international law. The Commission noted, with appreciation, the Codification Division's intention to continue the practice of issuing new editions of the publication at the beginning of each quinquennium. In addition, the Secretariat was requested to make every effort to issue this publication in the other five official languages as soon as possible. The Commission also welcomed the publication of the 2010 volume of the *United Nations Juridical Yearbook*, as well as of a new edition of the *United Nations Legislative Series*, entitled "Materials on the Responsibility of States for Internationally Wrongful Acts". The Commission underlines the usefulness of the continuation of the publication of the *Legislative Series*. The Commission requested the Secretariat to continue to provide the Commission with such publications in hard copy format.

14. The Commission further noted with appreciation that the Codification Division was able to significantly expedite the issuance of these publications through the continuation and expansion of its desktop publishing initiative which greatly enhanced the timeliness and relevance of these publications to the Commission's work.

³ See *Official Records of the General Assembly, Fifty-seventh Session, Supplement 10* (A/57/10), paras. 525-531; *ibid.*, *Fifty-eighth Session, Supplement 10* (A/58/10), para. 447; *ibid.*, *Fifty-ninth Session, Supplement 10* (A/59/10), para. 369; *ibid.*, *Sixtieth Session, Supplement 10* (A/60/10), para. 501; *ibid.*, *Sixty-first Session, Supplement 10* (A/61/10), para. 269; *ibid.*, *Sixty-second Session, Supplement 10* (A/62/10), para. 379; *ibid.*, *Sixty-third Session, Supplement 10* (A/63/10), para. 358; *ibid.*, *Sixty-fourth Session, Supplement 10* (A/64/10), para. 240.

⁴ See *Official Records of the General Assembly, Sixty-second Session, Supplement No. 10* (A/62/10), paras. 387-395.

15. The Commission recommends that in its documents and publications, and particularly in the legal instruments it has adopted, including the versions appearing in the *Official Records of the General Assembly*, the United Nations Editors adopt the style of commencing the first word of a subsidiary part of a sentence set as a subparagraph in *lowercase*, where the text is run on from the sentence.

6. Trust fund on the backlog relating to the Yearbook of the International Law Commission

16. The Planning Group reiterated that the *Yearbooks* were critical to the understanding of the Commission's work in the progressive development of international law and its codification, as well as in the strengthening of the rule of law in international relations. The Planning Group noted that the General Assembly in its resolution 66/98, expresses its appreciation to Governments that have made voluntary contributions to the trust fund on the backlog relating to the *Yearbook of the International Law Commission*, and encourages further contributions to the fund.

7. Assistance of the Codification Division

17. The Planning Group expressed its appreciation for the valuable assistance of the Codification Division of the Secretariat in its substantive servicing of the Commission and its involvement in research projects on the work of the Commission. The Planning Group reiterated the particular relevance and significant value of the legal publications prepared by the Codification Division to its work, and reiterated its request that the Codification Division continue to provide the Commission with these publications.

8. Websites

18. The Planning Group once again expressed its appreciation for the results of the activity of the Secretariat in its continuous updating and management of its website on the International Law Commission.⁵ The Planning Group reiterated that this website and other websites maintained by the Codification Division⁶ constitute an invaluable resource for the Commission and for researchers of work of the Commission in the wider community, thereby contributing to the overall strengthening of the teaching, study, dissemination and wider appreciation of international law as recalled in paragraph 412 of the 2011 ILC Report. The Planning Group welcomes the fact that the website on the work of the Commission includes information on the current status of the topics on the agenda of the Commission, as well as advance edited versions of summary records of the Commission.

B. Date and place of the sixty-fifth session of the Commission

19. The Planning Group recommended that the sixty-fifth session of the Commission be held in Geneva from 6 May to 7 June and 8 July to 9 August 2013.

⁵ Located at <http://www.un.org/law/ilc/>.

⁶ Generally accessible through: <http://www.un.org/law/lindex.htm>.