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INTERNATIONAL LAW COMMISSION
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REPORT OF THE PLANNING GROUP

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

1. At its 2295th meeting, the Commission noted that in paragraph 9 of resolution 47/33, the General Assembly had requested it

"(a) To consider thoroughly:

- (i) The planning of its activities and programme for the term of office of its members bearing in mind the desirability of achieving as much progress as possible in the preparation of draft articles on specific topics;
- (ii) Its methods of work in all their aspects, bearing in mind that the staggering of the consideration of some topics might contribute, inter alia, to a more effective consideration of its report in the Sixth Committee;

(b) To continue to pay special attention to indicating in its annual report, for each topic, those specific issues on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest for the continuation of its work."

2. The Commission agreed that this request should be taken up under item 6 of its agenda entitled "Programme, procedures and working methods of the Commission, and its documentation", and that this agenda item should be considered in the Planning Group of the Enlarged Bureau.

3. The Planning Group held two meetings. It had before it the section of the topical summary of the discussion held in the Sixth Committee of the General Assembly during its forty-sixth session entitled "Programme and methods of work of the Commission" (A/CN.4/446, paras. 294 to 312).

Planning of the activities for the remainder of the
quinquennium

4. The current programme of work consists of the following topics: State responsibility; Draft Code of Crimes against the Peace and Security of Mankind; the law of the non-navigational uses of international watercourses; and international liability for injurious consequences arising out of acts not prohibited by international law.

5. In accordance with paragraph 9 (a) (i) of General Assembly resolution 47/33, the Planning Group considered the planning of the Commission's activities for the remainder of the term of office of its members. In doing so, it bore in mind, as requested by this resolution, the desirability of achieving as much progress as possible in the preparation of draft articles on specific topics.

6. The Planning Group agreed that, while the adoption of any rigid schedule would be impracticable, the setting up of goals in planning the Commission's activities would be useful.

7. Taking into account the progress of work achieved on the topics in the current programme as well as the state of readiness for making further progress, and bearing in mind the different degrees of complexity of the various topics, the Planning Group recommends that the Commission should endeavour to complete by 1994 the draft of a statute of an international criminal court and the second reading of the draft articles on the law of the non-navigational uses of international watercourses, and by 1996 the second reading of the draft articles on the Code of Crimes against the Peace and Security of Mankind and the first reading of the draft articles on State responsibility. It also recommends that the Commission should endeavour to make substantial progress on the topic "International liability for injurious consequences arising out of acts not prohibited by international law" and, subject to the General Assembly's approval, undertake work on one or more new topics (see para. 26 below).

8. Last year, the Planning Group recommended, in the tentative schedule of the work to be undertaken during each session of the quinquennium which it prepared for the Commission (A/CN.4/L.473/Rev.1, p. 9), that two weeks be set aside at the beginning of the 1994 session for concentrated work in the Drafting Committee to continue the second reading of the topic "The law of the non-navigational uses of international watercourses". While recommending that the Commission should abide by the decision it took last year to conclude the second reading of the draft articles on that topic in 1994, the Planning Group suggests that, rather than setting aside two weeks for concentrated work in the Drafting Committee on the topic in question at the beginning of the 1994 session, the Commission should devote the first week of that session to the consideration of the second report of the Special Rapporteur. The Drafting

Committee could in parallel proceed with the consideration of the articles covered by the Special Rapporteur's first report and then turn to the articles and issues covered by the second report. Every effort will be made to give the topic in question, both in the Drafting Committee and in plenary, as much time as is necessary for the completion of the second reading of the draft articles in 1994.

9. The Planning Group further recommends that every effort be made in the relevant Working Group and in plenary to complete the draft of a statute of an international criminal court in 1994.

10. The Planning Group has prepared for the internal use of the Commission a tentative schedule of the work to be undertaken during each remaining session of the quinquennium in order to achieve the above-mentioned goals, on the understanding that the schedule will be revised each year, in the light of the results achieved in its implementation. The tentative schedule is annexed to this report.

Long-Term Programme of Work

11. In accordance with the decision taken by the Commission at its forty-fourth session, 1/ the Working Group on the long-term programme of work established at that session 2/ pursued its efforts at the present session with a view to identifying topics which might be recommended to the General Assembly for inclusion in the Commission's programme of work. In accordance with the procedure proposed and endorsed by the Commission at the forty-fourth session, 3/ the Working Group was to discuss the outlines and explanatory summaries prepared by designated members on each of the topics which the Working Group had pre-selected at that same session for provisional analysis.

12. The composition of the Working Group was as follows: Mr. Derek Bowett (Chairman), Mr. Awn Al-Khasawneh, Mr. Mohamed Bennouna, Mr. Peter Kabatsi, Mr. Mochtar Kusuma-Atmadja, Mr. Guillaume Pambou-Tchivounda, Mr. Alain Pellet, Mr. Jiuyong Shi, Mr. Alberto Szekely, Mr. Vladlen Vereshchetin and Mr. Chusei Yamada.

13. The Planning Group noted that, after examining an informal compilation of the outlines and explanatory summaries prepared in accordance with the procedure referred to above, the Working Group had recommended the incorporation into the Commission's agenda, under conditions and at a time to be decided in further discussions of the Planning Group and the Commission, of

1/ Official Records of the General Assembly, Forty-seventh session, Supplement No. 10 (A/47/10), para. 370.

2/ Ibid., para. 369.

3/ Ibid.

the topics "The law and practice relating to reservations to treaties" and "State succession and its impact on the nationality of natural and legal persons", it being understood that the order in which the two topics are mentioned does not suggest any priority.

14. The Planning Group noted that various delegations at the forty-sixth session of the General Assembly 4/ had suggested "The law and practice relating to reservations to treaties" as a possible topic for study by the Commission and that it had also been of particular interest among some members of the Commission last year. 5/ Although the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out some principles concerning reservations to treaties, they do so in terms that are far too general to act as a guide for State practice and leave a number of important matters in the dark. The questions to which these instruments provide ambiguous answers include differentiating between reservations and declarations of interpretation, the scope of declarations of interpretation, the validity of reservations (a question which encompasses that of the conditions for the lawfulness of reservations and that of their applicability to another State) and the regime of objections to reservations (in particular the question of the admissibility and scope of objections to a reservation which is neither prohibited by the treaty nor contrary to its object and purpose). These same instruments are entirely silent about the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties (including the constituent instruments of international organizations and human rights treaties), reservations to codification treaties and problems resulting from particular treaty techniques (elaboration of additional protocols, bilateralization techniques).

15. The Planning Group takes the view that the topic meets the criteria for selection established by the Commission and generally endorsed in the Sixth Committee. First, it seems to respond to a need of the international community, since it has been suggested by State representatives in the Sixth Committee, doubtless because of the obscurities and lacunae mentioned above. Second, the international climate is propitious, since the ideological obstacles in 1969 are now less of a problem. In addition, it falls within the competence of the Commission, where the doctrinal aspects and practice can be properly discussed. Lastly, it stands a good chance of producing concrete results within a reasonable period, namely the adoption on first reading, by the end of the present quinquennium, of a draft intended for the General Assembly.

16. The Planning Group is aware of the need not to challenge the regime established in articles 19 to 23 of the 1969 Vienna Convention on the Law of Treaties. It none the less considers that these provisions could be clarified

4/ See document A/CN.4/L.469, para. 422.

5/ See document A/CN.4/L.473/Rev.1, para. 23.

and developed either in the context of draft protocols to existing conventions or a guide on practice to which States, international organizations and legal writers could refer.

17. As for the topic "State succession and its impact on the nationality of natural and legal persons", it is part of one of the three sub-topics identified by the Commission under the topic "Succession of States", namely the sub-topic "Succession in respect of matters other than treaties". It is not however among the issues which have so far been dealt with under that sub-topic.

18. According to the prevailing opinion, State succession does not result in an automatic change of nationality. It is the prerogative of a successor State to determine on its own whom it claims as its nationals and to indicate the methods through which its nationality is acquired (see inter alia article 1 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws). The legislative competence of the successor State must, nevertheless, be exercised within the limitations which are imposed by general international law, such as the principle of effective nationality, as well as international treaties.

19. The criteria and other conditions for the acquisition of the nationality of a successor State have, in some cases, been determined by an international treaty. The peace treaties following the First World War, provided at the same time for the recognition, by the conquered State, of a new nationality acquired ipso facto by their former nationals under the laws of the successor State and for the consequent loss of the allegiance of these persons to their country of origin. According to other instruments, the transfer of territory did not necessarily entail the automatic acquisition of a new nationality and the loss of the original nationality.

20. A number of treaties provided for a right of option which, in certain cases, was granted for a considerable period of time during which the persons concerned enjoyed a kind of dual nationality.

21. A survey of recent State practice should cover inter alia the solutions adopted further to the decolonization process, the dismemberment of the Soviet Union and Yugoslavia, and the dissolution of Czechoslovakia.

22. The recent tendency to place emphasis on the ethnic origin, when determining the criterion for granting the new State's nationality and to ignore the importance of the domicile criterion, is an alarming one. It not only favours statelessness but is in many respects questionable on the basis of the fundamental human rights standards.

23. It appears that the formulation, on the basis of a comprehensive examination of State practice, of minimum standard criteria for "ex lege" acquisition of nationality could provide useful guidelines to legislators of new States that are in the process of drafting laws in this area. It should furthermore be recalled that by virtue of customary rules of international law, a large number of treaty rights and obligations are automatically binding on the successor State and that the application of many such treaties directly concerns individuals, or more precisely nationals of the treaty parties.

Sometimes there is a need for the application of these treaties even before the nationality law is adopted by the successor State. Thus a "preliminary" determination of the nationality of individuals or moral persons residing in the territory where the change of sovereignty occurred becomes a pre-condition for the continued application of the mentioned treaties.

24. The Planning Group is of the view that this topic also meets the criteria for selection established by the Commission.

25. The outcome of the work of the Commission on this topic could be a study or a draft declaration to be adopted by the General Assembly.

26. The Planning Group recommends that, subject to the approval of the General Assembly, the two topics discussed above be included in the Commission's agenda and that arrangements for their consideration be made at the next session of the Commission.

27. The Planning Group further noted the Working Group's recommendation that the Commission should consider whether to request the Special Rapporteur on the topic "Non-navigational uses of international watercourses" to undertake a study in order to determine the feasibility of incorporating into the topic the question of "confined underground waters", without prejudice to the completion of the topic as a whole in 1994 as envisaged by the Commission last year.

28. The Planning Group agreed to recommend that such a request be addressed to the Special Rapporteur, on the understanding that the feasibility study would be before the Commission at its next session.

29. The Planning Group recommends that in accordance with the Working Group's recommendation, the outlines and summaries compiled in the document referred to in paragraph 13 above be published as an official Commission document in the A/CN.4 series with a view to its inclusion in the Yearbook of the International Law Commission for 1993.

Contribution of the International Law Commission
to the Decade of International Law

30. In accordance with the arrangements agreed upon at the forty-fourth session 6/ the Working Group set up at that session to consider the question of the contribution of the International Law Commission to the Decade of International Law met under the Chairmanship of Mr. Pellet and discussed the possible contents of a publication containing a number of studies to be prepared by members of the Commission.

31. The Planning Group noted that the Working Group had proposed the following procedure:

(a) Initially, the Chairman of the Working Group would prepare, on the basis of proposals received and of his own plan, a list of possible topics

6/ Ibid., para. 374.

which, while addressing international legal problems of general interest, could be treated from the standpoint of the Commission;

(b) The list would be distributed to all members of the Commission, who would be invited to indicate whether they were willing to take part in preparing such a publication and, if so, to choose from the list three (alternative) topics on which they were willing to write, it being understood that each author would alone be responsible for the contents of his contribution, which would not commit the Commission as a whole.

(c) In the light of the replies, the Working Group would adopt an overall plan for the publication.

32. The Planning Group recommends that the Commission approve those arrangements, and that, in the light of the replies to the invitation referred to in subparagraph (b) above, the Working Group be requested to submit to the Planning Group proposals concerning the plan of the publication and the practical ways and means of carrying out the project.

Other matters

33. The Planning Group observes that commentaries to the articles adopted by the Commission are very important for a proper understanding of the articles and that sufficient time should be allowed for their consideration by the Commission before they are adopted. The Planning Group recommends that the Commission, while expressing full confidence in the Special Rapporteurs' ability to produce satisfactory commentaries, should review the conditions under which the commentaries are discussed and adopted and envisage the formulation of guidelines on the matter.

34. The Planning Group was informed of various steps taken by the Office of Legal Affairs in the framework of its publication programme. It noted that the Handbook on Peaceful Settlement of Disputes had now come out in final form and that a new publication entitled "Summaries of Judgments, Advisory Opinions and Orders of the International Court of Justice (1948-1991)" had been issued or was about to be issued in the six working languages of the United Nations. It also noted that a new volume of the United Nations Reports of International Arbitral Awards was in the press, that the backlog in the production of the Juridical Yearbook was gradually being eliminated and that the Official Records of the 1983 Conference on Succession of States in respect of State Property, Archives and Debts and the Official Records of the 1986 Conference on the Law of Treaties between States and International Organizations or between International Organizations, both long overdue, were in the process of being edited and issued in printed form. It finally noted that efforts had continued to be exerted to eliminate the backlog in the Treaty Series and to computerize the contents of the publication entitled "Multilateral Treaties deposited with the Secretary-General" as well as the Treaty Series itself.

35. The Planning Group recommends that the Commission take note with appreciation of the efforts made and the results achieved by the Office of Legal Affairs in the implementation of its publication programme, efforts which are particularly welcome in the framework of the current Decade of

International Law, which places special emphasis on the teaching, study, dissemination and wider appreciation of international law.

36. As far as the Yearbook of the International Law Commission is concerned, the Planning Group noted that the Division of Conference Services at the United Nations Office in Geneva and in particular its Official Records Editing Section were now able to produce internally a print quality text at much lower cost and within a considerably shorter time. The new techniques will make it possible to produce the final "printed" version of volume I of the 1991 and 1992 Yearbooks in English, French and Spanish within the next few months and the calendar of production of the other parts of the Yearbook will also be improved.

37. The Planning Group recommends that the Commission endorse the new arrangements made for the production of the Yearbook and express its appreciation to the competent services for their innovative spirit.

ANNEX

1994

PLENARY

Water courses (Second report of Special Rapporteur, including feasibility study on confined groundwaters)

Liability (Tenth report of the Special Rapporteur on remedial measures with respect to activities involving risk)

State responsibility (Sixth report of Special Rapporteur on crimes)

Draft Code of crimes against the peace and security of mankind (beginning of the second reading)

Draft Statute of an international criminal court (to be completed in the framework of a Working Group to be established at the beginning of the session; the outcome of the work of the Working Group would be considered in plenary during the latter part of the session)

New topics (organizational matters)

DRAFTING COMMITTEE

Watercourses (Conclusion of second reading; the Drafting Committee would first deal with articles covered in the Special Rapporteur's first report and then address articles and issues covered in the second report)

Liability (conclusion of the articles on prevention)

State responsibility

1995

State responsibility	*Draft Code: second reading
International liability	State responsibility
Draft Code (second reading)	International liability
New topic(s) (preliminary report(s))	

1996

Draft Code	*Draft Code: second reading - <u>conclusion</u>
International liability	State responsibility - <u>conclusion of the first reading</u>
New topic(s)	International liability

* The asterisk indicates that the topic will be given two weeks of concentrated work in the Drafting Committee at the beginning of the session.