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### REPORT OF THE PLANNING GROUP

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

1. At its 2918 meeting, held on 11 May 2007, the Commission established a Planning Group for the current session.<sup>1</sup>
2. The Planning Group held six 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 sixty-first session entitled “Other decisions and conclusions of the Commission”; General Assembly resolution 61/34 of 4 December 2006 on the Report of the International Law Commission on the work of its fifty-eighth session, in particular paragraphs 7, 8, 9, 14, 15 and 19.

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<sup>1</sup> The Planning Group was composed of Mr. E. Vargas Carreno (Chairman), Mr. A.M. Al-Marri, Mr. L. Caflisch, Mr. E. Candioti, Mr. P. Comissário Afonso, Ms. P. Escarameia, Mr. S. Fomba, Mr. G. Gaja, Mr. Z. Galicki, Mr. H.A. Hassouna, Mr. M.D. Hmoud, Ms M.G. Jacobsson, Mr. B. Niehaus, Mr. G. Nolte, Mr. A. Pellet, Mr. A.R. Perera, Mr. G.V. Saboia, Mr. N. Singh, Mr. E. Valencia-Ospina, Mr. M. Vásquez-Bermúdez, Mr. N. Wisnurmurti, and Ms. H. Xue, Mr. C. Yamada and Mr. E. Petrič (ex officio).

## **1. Relations between the Commission and the Sixth Committee**

3. The Planning Group considered it useful to discuss, on a regular basis, ways in which the dialogue between the Commission and the Sixth Committee could be further enhanced in the light of calls contained in annual resolutions of the General Assembly and in this regard its Planning Group held discussions on the relationship between the Commission and the Sixth Committee of the General Assembly. These discussions will be continued at the Commission's session next year. Meanwhile, the Planning Group wishes to recall that the plenary meetings of the Commission are open to interested delegations and that its draft reports, issued in the A/CN.4/... series as documents for limited distribution (L-documents) and usually adopted during the last week of the Commission's session, are available for advance perusal, subject to changes that may be made during the adoption stage. The draft reports are available on the Official Documents System of the United Nations (ODS). The Planning Group also welcomes the continued practice of informal consultations in the form of discussions between the members of the Sixth Committee and the members of the Commission attending sessions of the General Assembly as a useful means to enhance dialogue on the various topics on the Commission's agenda and would appreciate that, as far as possible, the number of such meetings be increased and some topics selected to guide the debate.

4. The Planning Group is considering ways of improving chapters II and III of the Commission's report to make them more user friendly.

## **2. Working Group on Long-term Programme of Work**

5. At its 1st meeting, held on 14 May 2007, the Planning Group decided to establish a Working Group on the Long-term Programme of Work for the present quinquennium, chaired by Mr. Enrique Candioti.<sup>2</sup> The Working Group will submit its final report at the end of the

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<sup>2</sup> The Working Group was composed of Mr. E. Candioti (Chairman), Mr. I. Brownlie, Mr. P. Comissário Afonso, Ms. P. Escameia, Mr. S. Fomba, Mr. G. Gaja, Mr. Z. Galicki, Mr. H.A. Hassouna, Mr. M.D. Hmoud, Ms. M.G. Jacobsson, Mr. R.A. Kolodkin, Mr. D.M. McRae, Mr. B. Niehaus, Mr. G. Nolte, Mr. A. Pellet, Mr. A.R. Perera, Mr. G.V. Saboia, Mr. N. Singh, Mr. E. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. A.S. Wako, Ms. H. Xue and Mr. E. Petrič (ex officio).

quinquennium. The Chairperson of the Working Group submitted an oral progress report to the Planning Group on 25 July 2007, noting, *inter alia*, that the Working Group had held four meetings during which it considered some possible topics, including a topic concerning “Subsequent agreement and practice with respect to treaties”.

### **3. Work programme of the Commission for the remainder of the quinquennium**

6. The Planning Group 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 (2008-2011)**

##### **(a) Reservations to treaties**

###### **2008:**

The Special Rapporteur will submit his thirteenth report on validity of reservations.

###### **2009:**

The Special Rapporteur will submit his fourteenth report on effects of reservations and of objections to reservations.

###### **2010-2011:**

The Special Rapporteur will submit his fifteenth report on succession of States and international organizations with regard to reservations, with a view of having achieved the first reading of the draft guidelines in 2011.

**(b) Expulsion of aliens**

**2008:**

The Special Rapporteur will submit an addendum to his third report on expulsion of aliens, dealing with the question of expulsion in case of dual or multiple nationals, and the question of expulsion following deprivation of nationality. He will also submit his fourth report on expulsion of aliens, dealing with the limits to the right of expulsion which relate to the fundamental rights of the human person.

**2009:**

The Special Rapporteur will submit his fifth report on expulsion of aliens, dealing with the limits relating to the procedure to be followed in case of expulsion.

**2010:**

The Special Rapporteur will submit his sixth report on expulsion of aliens, dealing with the grounds for expulsion.

**2011:**

The Special Rapporteur will submit his seventh report on expulsion of aliens, dealing with the duration of stay as well as the property rights of the expelled person.

**(c) Effects of armed conflicts on treaties**

**2008:**

Consideration by the Drafting Committee of the draft articles submitted by the Special Rapporteur, followed by the adoption of the draft articles.

**2009:**

Work on the topic to be deferred so as to allow time for Governments to submit comments on draft articles adopted on first reading.

**2010-2011:**

Further reports will be submitted by the Special Rapporteur containing proposals for the second reading of the draft articles, taking into account the comments and observations of Governments.

**(d) Shared natural resources****2008:**

The Special Rapporteur will submit his fifth report containing the whole set of revised draft articles on transboundary aquifers. It is hoped that the Commission would complete the second reading of the draft articles in 2008.

**2009:**

The Special Rapporteur does not plan to submit any report on transboundary aquifers. If the Commission could not complete the second reading of the draft articles in 2008, it is hoped that will complete such a reading in the first part of the session in 2009.

**2010-2011:**

The Special Rapporteur would prepare studies in the light of any decision by the Commission on how to proceed with natural resources other than transboundary aquifers.

**(e) Responsibility of international organizations****2008:**

The Special Rapporteur will submit his sixth report on the implementation of the responsibility of an international organization.

**2009:**

The Commission would complete the first reading of the draft articles on responsibility of international organizations.

**2010-2011:**

The Commission would proceed to the second reading of the draft articles following receipt of comments by Governments and international organizations.

**(f) The obligation to extradite or prosecute (*aut dedere aut judicare*)**

**2008:**

The Special Rapporteur will submit his third report on the obligation to extradite or prosecute (*aut dedere aut judicare*).

**2009:**

The Special Rapporteur will submit his fourth report on the obligation to extradite or prosecute (*aut dedere aut judicare*).

**2010-2011:**

The Special Rapporteur will submit his fifth report, if necessary, and the Commission would complete his first reading of the draft articles on the obligation to extradite or prosecute (*aut dedere aut judicare*).

**(g) Immunity of State officials from foreign criminal jurisdiction**

**2008:**

The Special Rapporteur will submit his preliminary report.

**2009:**

The Special Rapporteur would submit his second report.

**2010-2011:**

The Special Rapporteur would submit his subsequent reports in the light of developments in the Commission.

**(h) Protection of persons in the event of disasters**

**2008:**

The Special Rapporteur will submit a preliminary report.

**2009:**

The Special Rapporteur would submit the second report.

**2010-2011:**

The Special Rapporteur would submit his subsequent reports in the light of developments in the Commission.

#### **4. Honoraria**

7. The Commission reiterated 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 were expressed in its previous reports.<sup>3</sup> The Commission emphasized again that the above resolution especially affects the Special Rapporteurs, in particular those from developing countries, as it compromises support for their research work. The Commission urges the General Assembly to reconsider this matter, with a view to restoring, at this stage, the honoraria for Special Rapporteurs.

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<sup>3</sup> 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 and *ibid.*, *Sixty-first Session*, para. 269.

## **5. Documentation and publications**

### **(a) External publication of International Law Commission documents**

8. The Planning Group established a Working Group on the question of external publication of International Law Commission documents, under the chairmanship of Mr. Giorgio Gaja. The Chairperson of the Working Group submitted an oral report to the Planning Group on 25 July 2007.

9. The Planning Group endorsed the following draft Guidelines on the Publication of Commission Documents prepared by the Working Group:

#### **“Draft Guidelines on the Publication of Commission Documents**

“In order to ensure the proper attribution of the work of the International Law Commission, the following policy guidelines apply when present or former members of the Commission seek to publish documents relating to the work of the Commission:

“1. Documents of the Commission should be appropriately attributed, with a clear indication whether the author is the Commission as a whole, a body established by the Commission, a Special Rapporteur or any other member of the Commission;

“2. When the publication reproduces in whole or in part a document of the Commission this should be appropriately acknowledged;

“3. If the document to be published relates to a subject on which the Commission has come to some collective conclusion, even if provisional, reference should be made in the publication to that conclusion;

“4. Documents of the Commission which are intended for publication by the United Nations should not be published, on the initiative of individual members, before the documents have been officially released, including through the website on the work of the Commission;

“5. A copy of the publication should be provided to the Commission.”

**(b) Processing and issuance of reports of Special Rapporteurs**

10. The Planning Group considered the question of the 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. In this connection, the Planning Group was reminded that the processing of documentation by the Secretariat was subject to very strict timetables on the basis of a slotting system within the Secretariat for the processing of documentation, established at the request of Member States.

11. The Planning Group recalls operative paragraph 8 of General Assembly resolution 47/202 B of 22 December 1992, in which the Assembly urged the substantive departments of the Secretariat to comply with the rule which requires them to submit pre-session documents to the relevant Secretariat Unit responsible for document processing at least 10 weeks before the beginning of sessions, in order to permit processing in time in all official languages. The Commission recognized the special circumstances surrounding the timely submission of reports of Special Rapporteurs and took into consideration the recommendation made by the Department for General Assembly and Conference Management and it formally endorse a time frame shorter than 10 weeks for the submission of such documents. Bearing in mind the principles governing the submission and issuance of documents in order to permit timely processing, the Commission requested that its documentation be exempted from the 10-week rule for submission of pre-session documents, on the understanding that the time for processing documents within the established word-limit is 4 weeks.

12. The Planning Group reiterates 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 and reports of Special Rapporteurs.

**(c) Backlog relating to the *Yearbook* of the International Law Commission**

13. The Planning Group expressed concern about the backlog relating to the *Yearbook* of the International Law Commission,<sup>4</sup> noting that the late publication of the *Yearbook* in the official languages of the United Nations had a negative impact on the work of the Commission, as well as in the teaching, training, research, dissemination and wider appreciation of the codification efforts of international law undertaken by the Commission. The Planning Group was cognizant of the need for concerted efforts to reduce the backlog. It stresses the importance of ensuring that the necessary budgetary resources are allocated for addressing the backlog under the relevant programme in the regular budget. It also proposed the establishment of a trust fund to address the backlog. In accordance with the relevant financial regulations and rules, voluntary contributions would be made by members, non-governmental organizations and private entities to such a worthy cause which was critical to the understanding of the Commission's work in the progressive development and codification of international law, as well as in the strengthening of the rule of law in international relations.

**(d) Other publications and the assistance of the Codification Division**

14. 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 in preparation of research projects, by providing legal materials and their analysis.

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<sup>4</sup> As at 30 June 2007, the backlog for the period 1994-2001 was as follows: *Yearbook* ... 1994, vol. I and vol. II (Part 1 and 2): Chinese; *ibid* ... 1995, vol. I and vol. II (Part 1 and 2): Chinese; *ibid* ... 1996, vol. II (Part 1): Arabic, English, French, Russian and Spanish; and vol. I and vol. II (Part 1 and 2): Chinese; *ibid* ... 1997, vol. II (Part 1): Arabic, English, French, Russian and Spanish; and vol. I and vol. II (Part 1 and 2): Chinese; *ibid* ... 1998, vol. II (Part 1): Arabic, English, French, Russian and Spanish; and vol. I and vol. II (Part 1 and 2): Chinese; *ibid* ... 1999, vol. II (Part 1): Arabic, English, French, Russian and Spanish; and vol. I and vol. II (Part 1 and 2): Chinese; *ibid* ... 2000, vol. II (Part 1): Arabic, English, French, Russian and Spanish; and vol. I and vol. II (Part 1 and 2): Chinese; *ibid* ... 2001, vol. II (Part 1 and 2): Arabic, English, French and Spanish; and vol. I and vol. II (Part 1 and 2): Russian and Chinese. From 2002 to the present, no volume has been issued in all the six official languages.

15. The Planning Group recognized the particular relevance and significant value of the legal publications prepared by the Secretariat to the work of the Commission, namely: *The Work of the International Law Commission*, the United Nations, *Juridical Yearbook*, the United Nations, *Reports of International Arbitral Awards*, the *Analytical Guide to the Work of the International Law Commission*, the United Nations *Legislative Series* and the *Repertory of Practice of United Nations Organs* and reiterated its request that the Secretariat continue to provide the Commission with these publications.

16. Taking into account the importance of disseminating information about the Commission, the Planning Group welcomed the publication by the Codification Division of the seventh 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. It noted with appreciation that, as a result of its expanding desktop publishing initiative, the Codification Division issued this publication for the first time at the beginning of the quinquennium and included the work of the Commission through the end of its previous quinquennium, a practice which the Codification Division should be encouraged to continue at future quinquennia. In addition, the Secretariat was requested to make every effort to issue this publication in the other five official languages prior to the beginning of the sixtieth session of the Commission.

17. Noting the relevance to the Commission’s consideration of present and future topics concerning international organizations, the Planning Group recognized the significant value of the *Juridical Yearbook* prepared by the Secretariat which provides the most comprehensive and authoritative information on major legal developments and activities within the United Nations system as well as State practice with regard to international organizations. It noted that, as a result of its expanding desktop publishing initiative, the Codification Division was able to publish the *Juridical Yearbook* for 2003 in less than a year as compared to five years for the most recently issued volume. The Secretariat was encouraged to continue this initiative with a view to expediting the preparation of future editions of this publication.

18. In view of the importance of State practice in the work of the Commission, the Planning Group noted the usefulness of the publication entitled “*Reports of International Arbitral Awards*” prepared by the Codification Division which contains international decisions involving substantive issues of public international law which have an enduring legal or historical significance. The Planning Group requested the Secretariat to continue its preparation of this publication.

19. Bearing in mind the value of the publication “*Analytical Guide to the Work of the International Law Commission*” as an indispensable research guide and the fact that the first edition was published in 2004, the Planning Group requested the Codification Division to begin the preparation of the second edition of the publication in commemoration of the sixtieth anniversary of the Commission in 2008.

20. Mindful of the significance and utility of the Codification Division’s publication “*Legislative Series*” for the Commission’s work on several topics, by means of studying relevant national legislation, decisions of national tribunals, diplomatic and other official correspondence as well as treaty provisions, which has enabled the Commission to meaningfully carry out its responsibility of codification and progressive development of international law in several areas, the Planning Group requested the Secretariat to continue the publication of the *Legislative Series*.

21. Recognizing the importance and usefulness of the Secretariat publication “*Repertory of Practice of United Nations Organs*”, as the principal source of records for the analytical studies of the application and interpretation of the provisions of the Charter, the Planning Group took note of the progress made in the preparation of studies of the *Repertory* and their posting on the Internet in three languages.

22. Recalling that the International Court of Justice as the principal judicial organ of the United Nations has played an important role in adjudicating disputes among States in accordance

with international law, the Planning Group requested the Secretariat to make every effort to continue the publication “*Summaries of Judgements, Advisory Opinions and Orders of the International Court of Justice*”, in all the official languages of the United Nations.

23. The Planning Group also expressed its appreciation for the results of activity of the Secretariat in its continuous updating and management of its website on the International Law Commission.<sup>5</sup> It acknowledged in particular the establishment of a new website on the United Nations, *Reports of International Arbitral Awards*, including a full-text research option on all published volumes of the collection (so far 25 volumes), which will then be updated to include any new volume. The Planning Group reiterated that the websites constitute an invaluable resource for the Commission in undertaking its work 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. The Planning Group would welcome the further development of the website on the work of the Commission with the inclusion of information on the current status of the topics on the agenda of the Commission.

#### **6. Commemoration of the sixtieth anniversary of the Commission**

24. The Planning Group discussed various possibilities of commemorating the Commission’s sixtieth anniversary session in 2008, and agreed upon the following recommendations:

(a) That there should be a solemn meeting of the Commission at which the dignitaries, including the Secretary-General, the President of the General Assembly, the President of the International Court of Justice, the United Nations High Commissioner for Human Rights, and representatives of the host Government, should be invited;

(b) That there should be a one and a half day meeting with legal advisers dedicated to the work of the Commission;

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

(c) That Member States, in association with existing regional organizations, professional associations and members of the Commission concerned, should be encouraged to convene national or regional meetings, which would be dedicated to the work of the Commission.

25. The Planning Group recommended that the Secretariat, in consultation with a group of members of the Commission, assist in making arrangements for the implementation of (a) and (b).

**B. Date and place of the sixtieth session of the Commission**

26. The Planning Group proposes that the sixtieth session of the Commission be held in Geneva from 5 May to 6 June and 7 July to 8 August 2008.

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