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REPORT OF THE PLANNING GROUP

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

1. At its 3013th meeting, on 2 June 2009, 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 sixty-third session entitled “Other decisions and conclusions of the Commission”; and General Assembly resolution 63/123 of 11 December 2008 on the Report of the International Law Commission on the work of its sixtieth session, in particular paragraphs 7, 8, and 14-24; General Assembly resolution 63/128 on the rule of law at the national and international levels, as well as chapter XII, section A.2 of the report of the Commission at its sixtieth session concerning the consideration of General Assembly resolution 62/70 of 6 December 2007 on the rule of law at the national and international levels. The Planning Group also had a proposal by Mr. Alain Pellet concerning the elections of the Commission.

1. Working Group on Long-term Programme of Work

3. At its 1st meeting, on 4 June 2009, the Planning Group decided to reconstitute the Working Group on the Long-term Programme of Work, under the chairmanship of Mr. Enrique Candioti.

**2. Consideration of General Assembly resolution 63/128 of 11 December 2008
on the rule of law at the national and international levels**

4. The General Assembly, by the terms of its resolution 63/128 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 had occasion to comment comprehensively on this matter at its sixtieth session.

¹ The Planning Group was composed of Mr. N. Wisnumurti (Chairman), Mr. L. Caflisch, Mr. E. Candioti, Mr. P. Comissario Afonso, Mr. C.J.R. Dugard, Ms. P. Escameia, Mr. S. Fomba, Mr. G. Gaja, Mr. Z. Galicki, Mr. H.A. Hassouna, Mr. M.D. Hmoud, Mr. R.A. Kolodkin, Mr. D.M. McRae, Mr. S. Murase, Mr. G. Nolte, Mr. B. Ojo, Mr. A. Pellet, Mr. A.R. Perera, Mr. E. Petrič, Mr. G.V. Saboia, Mr. N. Singh, Mr. E. Valencia-Ospina, Mr. E. Vargas Carreño, Mr. S.C. Vasciannie, Mr. M. Vázquez-Bermúdez, Mr. A.S. Wako, Mr. M. Wood, Ms. H. Xue and Ms. M.G. Jacobsson (*ex officio*).

The Planning Group notes that the comments contained in paragraphs 341 to 346 of the 2008 report of the Commission (A/63/10) remain relevant. The Commission reiterates its commitment to the rule of law in all of its activities. Indeed, it may be said that the rule of law constitutes the essence of the Commission, for its basic mission is to guide the development and formulation of the law.

3. Documentation and publications

(a) Processing and issuance of reports of Special Rapporteurs

5. 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. The Planning Group also wishes to stress that it and its Special Rapporteurs are fully conscious of the need for achieving economies whenever possible in the overall volume of documentation and will continue to bear such considerations in mind. While the Planning Group 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 the documentation and research projects relating to the Commission's work.²

(b) Summary Records of the work of the Commission

6. The Planning Group noted with appreciation that the edited Summary records (incorporating the corrections of members of the Commission, and editorial changes by the *Yearbook* editors and in the form prior to typesetting and publication) up to 2004 will, on a pilot basis, be placed on the Commission's website and stressed the need to expedite preparation of the Summary records of the Commission.

² For considerations relating to page limits on the reports of Special Rapporteurs, see for example, *Yearbook ... 1977*, vol. II, Part Two, p. 132 and *Yearbook ... 1982*, vol. II, Part Two, pp. 123-4. See also resolution 32/151, para. 10 and resolution 37/111, para. 5, as well as subsequent resolutions on the annual reports of the Commission to the General Assembly.

(c) Trust fund on the backlog relating to the *Yearbook* of the International Law Commission

7. The Planning Group reiterated that the *Yearbooks* were 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. The Commission notes with appreciation that the General Assembly in its resolution 63/123, acknowledged the establishment by the Secretary-General of a trust fund to accept voluntary contributions so as to address the backlog relating to the *Yearbook* of the International Law Commission and invited voluntary contributions to that end.

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

8. 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. In particular, the Planning Group expressed its appreciation to the Secretariat for its preparation of a memorandum on Reservations to treaties in the context of succession of States (A/CN.4/616).

9. 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.³ 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.

³ Located at <http://www.un.org/law/ilc/>.

4. Proposals on the elections of the Commission

10. The Planning Group considered proposals on various procedures and criteria concerning the elections of the Commission. These proposals were thoroughly discussed and it was felt that, at this stage, no conclusive result could be reached. Accordingly, the Planning Group was of this view that this item should not be kept on its agenda.

5. Settlement of disputes clauses

11. The Planning Group under “Other matters” considered a proposal concerning the question of settlement of disputes clauses, and held a debate on the proposal, including the underlying policy of the Commission in relation to such clauses and recommends that the Commission at its sixty-second session devote under “Other matters” at least one meeting to a discussion on “Settlement of disputes clauses”. In this connection, the Secretariat was requested to prepare a note on the history and past practice of the Commission in relation to such clauses, taking into account recent practice of the General Assembly.

6. Methods of work of the Commission

12. The Planning Group under “Other matters” also held a debate on the methods of work of the Commission and recommended that an open-ended working group of the Planning Group on the methods of work of the Commission be convened early during the sixty-second session of the Commission, subject to availability of time and space.

7. Honoraria

13. The Commission 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 have been expressed in its previous reports.⁴ The Commission emphasizes that the above resolution especially affects Special Rapporteurs, as it compromises support for their research work.

⁴ 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*

8. Assistance to Special Rapporteurs

14. The Commission welcomes the impetus provided by General Assembly resolution 63/123 and the opportunity that the report of the Secretary-General envisaged in that resolution presents and wishes to reaffirm that Special Rapporteurs of the Commission have a special role to play in its working methods. The Commission would like to recall that its independent character accords to its Special Rapporteurs a responsibility to work cooperatively with the Secretariat but also independently of it. While recognizing the invaluable assistance of the Codification Division, the Commission notes that the exigencies and the very nature of the work of Special Rapporteurs as independent experts, which continues year round, imply that some forms of assistance that they need go beyond that which could be provided by the Secretariat. It should be noted that in particular, the writing of the report by the Special Rapporteurs requires various forms of immediate research work associated therewith, the provision of which by the Secretariat located in Headquarters is entirely impracticable. Such work has to be accomplished within the parameters of already-existing responsibilities of the Special Rapporteurs in various professional fields, thereby adding an extra burden that may not be easily quantifiable in monetary terms and affecting the conditions of their work, which constitutes an essential element of the Commission's deliberations. The Commission expresses the hope that the General Assembly will view it appropriate to consider this matter anew in light of the real impact that it has on the proper functioning of the Commission as a whole.

9. Attendance of Special Rapporteurs in the General Assembly during the consideration of the Commission's report

15. The Planning Group notes that, with a view to strengthening its relationship with the General Assembly, the Commission has, on previous occasions, drawn attention to the possibility of enabling Special Rapporteurs to attend the Sixth Committee's debate on the report of the Commission so as to give them the opportunity to acquire a more comprehensive view of existing positions, to take note of observations made and to begin preparing their reports at an

(A/60/10), para. 501; *ibid.*, *Sixty-first Session*, (A/61/10), para. 269; *ibid.*, *Sixty-second Session*, (A/62/10), para. 379; *ibid.*, *Sixty-third Session* (A/63/10), para. 358; *ibid.*

earlier stage.⁵ It has also considered that the presence of Special Rapporteurs facilitates exchanges of views and consultations between them and representatives of Governments.⁶ The Commission wishes to reiterate the usefulness of Special Rapporteurs being afforded the opportunity to interact with representatives of Governments during the consideration of their topics in the Sixth Committee.

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

16. The Planning Group recommended that the sixty-second session of the Commission be held in Geneva from 3 May to 4 June and 5 July to 6 August 2010.

⁵ *Yearbook ... 1988*, vol. II, Part 2, para. 582.

⁶ *Ibid.*, ... 1989, vol. II, Part 2, para. 742.