



# General Assembly

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## International Law Commission

### Sixty-second session

Geneva, 3 May–4 June and 5 July–6 August 2010

## Report of the Planning Group

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

1. At its 3037th meeting, on 4 May 2010, the Commission established a Planning Group for the current session.<sup>1</sup>

2. The Planning Group held five 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-fourth session entitled “Other decisions and conclusions of the Commission”; the proposed Strategic Framework for the period 2012–2013 (A/65/6), covering “Programme 6: Legal Affairs”, General Assembly resolution 64/114 on the Report of the International Law Commission on the work of its sixty-first session, in particular paragraphs 7, 8 and 13 to 21; General Assembly resolution 64/116 of 16 December 2009 on the rule of law at the national and international levels, as well as chapter XIII, section A.3, of the report of the Commission at its sixty-first session concerning the consideration of General Assembly resolution 63/128 of 11 December 2008 on the rule of law at the national and international levels.

3. The Planning Group proposes that the Commission take note of the proposed Strategic Framework for the period 2012–2013 (A/65/6), covering “Programme 6: Legal Affairs, subprogramme 3, “Progressive development and codification of international law”.

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

4. At its 1st meeting, on 4 May 2010, the Planning Group decided to reconstitute the Working Group on the Long-term Programme of Work, under the chairmanship of Mr. Enrique Candiotti. The Chairman of the Working Group submitted an oral progress report to the Planning Group on 27 July 2010, concerning which the Planning Group took note.

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<sup>1</sup> The Planning Group was composed of Mr. C.J.R. Dugard (Chairman); Members: Mr. L. Caflisch, Mr. E. Candiotti, Mr. P. Comissario Afonso, Ms. P. Escarameia, Mr. G. Gaja, Mr. Z. Galicki, Mr. H.A. Hassouna, Mr. M.D. Hmoud, Ms. M.G. Jacobsson, Mr. M. Kamto, Mr. R.A. Kolodkin, Mr. D.M. McRae, Mr. S. Murase, Mr. G. Nolte, 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. M. Vázquez-Bermúdez, Mr. N. Wisnumurti, Mr. M. Wood, Ms. H. Xue, and Mr. S.C. Vasciannie (*ex officio*).

**2. Consideration of General Assembly resolution 64/116 of 16 December 2009 on the rule of law at the national and international levels**

5. The General Assembly, by the terms of its resolution 64/116 of 16 December 2009 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. At its sixtieth session, the Commission had occasion to comment comprehensively on its role in promoting the rule of law. The Planning Group notes that the substance of the comments contained in paragraphs 341 to 346 of the 2008 report of the Commission (A/63/10) remain relevant and it restated its comments in paragraph 231 of its 2009 report (A/64/10).

6. The rule of law constitutes the essence of the Commission, for its basic mission is to guide the development and formulation of the law. 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 64/116 on the rule of law at the national and international levels. 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, the Commission continues to promote the progressive development and codification of international law. The result of the work of the Commission is presented in its annual report to the General Assembly and debated annually in the Sixth Committee, primarily during the International Law Week. The Commission attaches great importance to the debates and exchange of views between the Commission and Member States of the United Nations and considers that these debates are important tools for the promotion of the rule of law.

7. The Commission has, in particular, taken note of the statement by the President of the Security Council of 29 June 2010 on behalf of the Council, in connection with the Council's consideration of the item entitled "The promotion and strengthening of the rule of law in the maintenance of international peace and security". The Commission also is committed to the peaceful settlement of disputes and actively supports that Member States settle their disputes by peaceful means as set forth in Chapter VI of the Charter of the United Nations.

8. The Commission is part of what has been characterized as a symbiotic relationship with the International Court of Justice, the highest judicial organ of the United Nations, and evidenced by the annual visit by the President of the Court to the Commission. As stated by President Owada it is "*an opportunity for interaction between the two most representative legal institutions of the international community working for the consolidation of the rule of law in international relations*".<sup>2</sup> Time and again, the Court has relied on treaties as binding instruments in themselves and other documents prepared by the Commission as evidence of customary international law. Conversely, the Commission attaches the highest authority to the jurisprudence of the Court; for instance, in its current work on issues such as Reservations to Treaties and the Responsibility of International Organizations, the Commission has in many cases formulated proposed rules with direct reference to Court decisions or on the basis of arguments by analogy from pronouncements of the Court. The relationship between the Court and the Commission helps to promote the rule of law not only through the consistent and transparent application of clear rules, but also by demonstrating that different law-determining agencies adopt the same approach to the identification of rules of international law. Regional and national courts, too, have been prepared to apply draft rules of the Commission as evidence of international law. Such

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<sup>2</sup> This statement is recorded in the summary record of the 3062nd meeting, on 9 July 2010.

reference gives enhanced status to the relevant draft rules, and underlines the practical nature of the current contribution made by the Commission to the rule of law.

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

### **3. Methods of work of the Commission**

10. The Planning Group noted that in view of the busy schedule of the Commission the open-ended working group of the Planning Group on the methods of work of the Commission could not be convened during the current session of the Commission. Such a working group will be convened early at the sixty-third session of the Commission.

### **4. Honoraria**

11. 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.<sup>3</sup> The Planning Group emphasizes that the above resolution especially affects Special Rapporteurs, as it compromises support for their research work.

### **5. Assistance to Special Rapporteurs**

12. The Planning Group wishes to reaffirm that Special Rapporteurs of the Commission have a special role to play in its working methods. The independent character of the Commission 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 Planning Group 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. 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, which constitutes an essential element of the Commission's deliberations, 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. The Planning Group 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.

### **6. Attendance of the General Assembly by Special Rapporteurs during the consideration of the Commission's report**

13. 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

<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; *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.

preparing their reports at an earlier stage.<sup>4</sup> It has also considered that the presence of Special Rapporteurs facilitates exchanges of views and consultations between them and representatives of Governments.<sup>5</sup> The Planning Group 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.

## 7. Documentation and publications

### (a) *Processing and issuance of reports of Special Rapporteurs*

14. 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 in the progressive development of international law and its codification. The Planning Group also wishes to stress that the Commission and its Special Rapporteurs are fully conscious of the need to achieve 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.<sup>6</sup> The Planning Group stressed also the importance of the timely preparation of reports by Special Rapporteurs for submission to the Commission and delivery to the Secretariat.

### (b) *Summary records of the work of the Commission*

15. 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 are now placed on the Commission's website. It stressed the need to expedite preparation of the summary records of the Commission.

### (c) *Trust fund on the backlog relating to the Yearbooks 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 with appreciation that the General Assembly in its resolution 64/114, 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) *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. In particular, the Planning Group expressed its appreciation to the Secretariat for its preparation of a Survey of multilateral conventions which may be of relevance for the Commission's work on the

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<sup>4</sup> *Yearbook ... 1988*, vol. II, Part 2, para. 582.

<sup>5</sup> *Ibid.*, ... 1989, vol. II, Part 2, para. 742.

<sup>6</sup> 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.

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topic “The obligation to extradite or prosecute (*aut dedere aut judicare*)” (A/CN.4/630) and a Note on Settlement of disputes clauses (A/CN.4/623).

(e) *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.<sup>7</sup> The Planning Group reiterated that this website and other websites maintained by the Codification Division<sup>8</sup> 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 notes 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.

**8. Communication from the Chairperson of the African Union Commission on International Law**

19. The Planning Group noted with interest the establishment of the African Union Commission on International Law (AUCIL) and welcomed the willingness of AUCIL to establish cooperation with the Commission.

**B. Date and place of the sixty-third session of the Commission**

20. The Planning Group recommended that the sixty-third session of the Commission be held in Geneva from 26 April to 3 June and 4 July to 12 August 2011.

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<sup>7</sup> Located at <http://www.un.org/law/ilc/>.

<sup>8</sup> See generally: <http://www.un.org/law/lindex.htm>.