



## General Assembly

Distr.  
LIMITED

A/CN.4/L.645  
29 July 2003

Original: ENGLISH

---

INTERNATIONAL LAW COMMISSION  
Fifty-fifth session  
Geneva, 5 May-6 June and 7 July-8 August 2003

### REPORT OF THE PLANNING GROUP

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

1. At its 2758th meeting on 16 May 2003, 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 G of the Topical Summary of the discussion held in the Sixth Committee of the General Assembly during its fifty-seventh session entitled “Other decisions and conclusions of the Commission” and paragraphs 7, 8, 10, 12 and 15 of General Assembly resolution 57/21 on the Report of the International Law Commission on the work of its fifty-fourth session.

---

<sup>1</sup> The Planning Group was composed of Mr. T.V. Melescanu (Chairman), Mr. E.A. Addo, Mr. J.C. Baena Soares, Mr. I. Brownlie, Mr. C.I. Chee, Mr. C.J.R. Dugard, Ms. P. Escameia, Mr. C.P. Economides, Mr. S. Fomba, Mr. G. Gaja, Mr. Z. Galicki, Mr. P.C.R. Kabatsi, Mr. M. Koskenniemi, Mr. J. Matheson, Mr. D. Opertti Badan, Mr. A. Pellet, Mr. P.S. Rao, Mr. V. Rodríguez Cedeño, Mr. R. Rosenstock, Mr. B. Sepulveda, Mr. C. Yamada and Mr. W. Mansfield (ex-officio).

## **1. Working Group on long-term programme of work**

The Planning Group reconstituted its Working Group on the long-term programme of work and appointed Mr. Pellet as Chairman of this Working Group.<sup>2</sup> The Working Group held four meetings during which three proposals for future topics to be included in the long-term programme of work were submitted to it. The Working Group welcomed these proposals and decided to continue discussion on them during the fifty-sixth session of the Commission. The Chairman of the Working Group reported orally to the Planning Group on 25 July 2003.

## **2. Documentation of the Commission**

The Planning Group considered the question of the documentation of the Commission in light of the Secretary-General's report "Improving the performance of the Department of General Assembly Affairs and Conference Services" (A/57/289) as well as paragraph 15 of General Assembly resolution 57/21 and recommends that the following text be included in the Report of the International Law Commission on the work of its fifty-fifth session:

"The Commission understands the background to the Secretary General's report 'Improving the performance of the Department of General Assembly Affairs and Conference Services' (A/57/289), which aims to establish page limits for reports of subsidiary bodies. The Commission would like to recall, however, the particular characteristics of its work that make it inappropriate for page limits to be applied to the Commission's documentation.

The Commission notes that it was established to assist the General Assembly in the discharge of its obligation under Article 13, paragraph 1 (a), of the Charter of the United Nations, to encourage the progressive development and codification of international law. That obligation in turn, stemmed from the recognition by those involved in drafting the Charter that if international legal rules were to be arrived at by agreement, then in many areas of international law a necessary part of the process of

---

<sup>2</sup> The Group was composed of Mr. Alain Pellet (Chairman), Mr. J.C. Baena Soares, Mr. Z. Galicki, Mr. M. Kamto, Mr. M. Koskenniemi, Ms. H. Xue and Mr. W. Mansfield (ex-officio).

arriving at agreement would involve an analysis and precise statement of State practice. Accordingly, by its Statute, the Commission must justify its proposals to the General Assembly and ultimately States, on the evidence of existing law and the requirements of its progressive development in the light of the current needs of the international community. This means that the draft articles or other recommendations contained in the reports of the Special Rapporteurs and the Report of the Commission itself have to be supported by extensive references to State practice, doctrine and precedents and accompanied by extensive commentaries. The Commission is in fact required by Article 20 of its Statute to submit its draft articles to the General Assembly together with a commentary containing: (a) adequate presentation of precedents and other relevant data, including treaties, judicial decisions and doctrine; (b) conclusions relevant to (i) the extent of agreement on each point in the practice of States and doctrine; (ii) divergencies and disagreement which exist, as well as arguments invoked in favour of one or another solution.

In addition to the above legal requirements the Commission wishes further to note that its Report, the reports of its Special Rapporteurs and the related research projects, studies, working documents and questions directed to States are indispensable also for the following reasons:

- (i) they are a critical component of the process of consulting States and obtaining their views;
- (ii) they assist individual States in the understanding and interpretation of the rules embodied in codification conventions;
- (iii) they are part of the *travaux préparatoires* of such conventions, and are frequently referred to, or quoted in the diplomatic correspondence of States, in argument before the International Court of Justice and by the Court itself in its judgments;
- (iv) they contribute to the dissemination of information about international law in accordance with the relevant United Nations programme; and

- (v) they form as important a product of the Commission's work as the draft articles themselves and enable the Commission to fulfil, in accordance with its Statute, the tasks entrusted to it by the General Assembly.

Accordingly, as the Commission has pointed out on previous occasions,<sup>3</sup> it considers that it would be entirely inappropriate to attempt in advance and *in abstracto* to fix the maximum length of reports of Special Rapporteurs or of its own Report or of the various related research projects, studies and other working documents. As explained above, the length of a given Commission document will depend on a number of variable factors, such as the nature of the topic and the extent of relevant State practice, doctrine and precedent. The Commission considers therefore that new regulations on page limits such as those contained in document A/57/289 should not apply to its own documentation, which should continue to remain exempted from page limitations as endorsed by previous resolutions of the General Assembly.<sup>4</sup> The Commission wishes to stress however, 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."

### **3. Procedures and methods of work**

Two proposals on procedures and methods of work were submitted to the Planning Group. Due to lack of time, the Planning Group will revert to this issue at the fifty-sixth session of the Commission.

---

<sup>3</sup> See *ILC Yearbook 1977*, Vol. II, Part Two, p. 132 and *ILC Yearbook 1982*, Vol. II, Part Two, pp. 123-4.

<sup>4</sup> See resolution 32/151, para. 10, resolution 37/111, para. 5, and all subsequent resolutions on the annual reports of the International Law Commission to the Assembly.

#### **4. Relations of the Commission with the Sixth Committee**

As one of the means of facilitating a better and more effective dialogue between the Commission and the Sixth Committee, the Commission, in its 1996 report,<sup>5</sup> proposed that it should:

“strive to extend its practice of identifying issues on which comments is specifically sought, if possible in advance of the adoption of draft articles on the point. These issues should be of a more general ‘strategic’ character rather than relating to issues of drafting technique.”

The suggestion was welcomed by the Sixth Committee which requested the Commission, in paragraph 14 of its resolution 51/163, to identify the specific issues for each topic on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest in providing effective guidance for the Commission in its further work.

Consequently, the Commission, in its 1997 report, added two additional chapters (Chapters II and III). Chapter II was to provide a very broad view of the work accomplished by the Commission at the current session on a particular topic and Chapter III was intended to provide in a single chapter issues relevant to specific topics on which views of Governments were particularly useful to the Commission. In addition in view of the size of the report of the Commission which lead to delay in its official production and circulation, the Secretariat of the Commission was requested to circulate informally Chapters II and III to Governments.

In order to improve further the utility of Chapter III, the Planning Group proposes that in preparing their questions and issues on which Governments’ views are particularly sought, the Special Rapporteurs may wish to provide sufficient background and substantive elaboration to better assist Governments in developing their responses.

---

<sup>5</sup> *Yearbook ... 1996*, vol. II (Part Two), para. 181.

## **5. Cost-saving measures**

The Planning Group after considering the question of cost-saving measures recommends that the following text be included in the Report of the International Law Commission:

“With regard to paragraph 8 of General Assembly resolution 57/21, the Commission notes that it is continuing to apply cost-saving measures in organizing its work programme and also to review its methods of work with a view to identifying further cost-effective efficiency gains.”

## **6. Honoraria**

The Planning Group reverted to the question of honoraria and recommends the following text to be included in the Report of the International Law Commission:

“The Commission reiterated the views it had expressed in paragraphs 525 to 531 of its Report on the work of its fifty-fourth session. It re-emphasized that the decision of the General Assembly in resolution A/56/272 was (i) in direct contradiction to the conclusions and recommendations of the Report of the Secretary-General in document A/53/643, (ii) taken without consultation with the Commission and (iii) not consistent in procedure or substance with either the principle of fairness on which the United Nations conducts its affairs or with the spirit of service with which members of the Commission contribute their time and approach their work. The Commission stressed that the above resolution especially affects Special Rapporteurs, in particular those from developing countries, as it compromises the support for their necessary research work.”

## **7. Date and place of the fifty-sixth session of the Commission**

The Planning Group proposes that the fifty-sixth 10-week split session of the Commission be held at the United Nations Office in Geneva from 3 May to 4 June and 5 July to 6 August 2004.

-----