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REPORT OF THE PLANNING GROUP

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

1. At its 2571st meeting, on 12 May 1999, the Commission established a Planning Group for the current session. [1]

2. The Planning Group held three meetings. It had before it the section G of the topical summary of the discussion held in the Sixth Committee of the General Assembly during its fifty-third session, entitled "Other decisions and conclusions of the Commission". [2]

Response to the General Assembly's requests (paragraphs 9, 10 and 12 of General Assembly resolution 53/102 of 8 December 1998)

1. The relations between the Commission and the Sixth Committee

3. The Commission started implementing what it had proposed in 1996. [3] Subsequently it expanded its practice of identifying issues on which comment

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1/ The Group was composed of Mr. R. I. Goco (Chairman), Mr. E. A. Addo, Mr. J. C. Baena Soares, Mr. C. P. Economides, Mr. N. Elaraby, Mr. G. Gaja, Mr. M. Herdocia Sacasa, Mr. J. E. Illueca, Mr. P. C. R. Kabatsi, Mr. M. Kamto, Mr. J. L. Kateka, Mr. M. Kusuma-Atmadja, Mr. T. V. Melescanu, Mr. G. Pambou-Tchivounda, Mr. P. S. Rao, Mr. B. Simma and Mr. R. Rosenstock (ex officio).

2/ Document A/CN.4/496, paras. 175-189.

3/ See Report of the International Law Commission on the work of its forty-eighth session, Official records of the General Assembly, Fifty-first session, Supplement No. 10 (A/51/10), para. 182.

is specifically sought by highlighting these issues in each session on a special chapter of its Report entitled “Specific issues on which comments would be of particular interest to the Commission”. These issues are either of a general character or concern specific questions on which the views of Governments would be of great assistance to the Commission.

4. This presentation of specific issues has inter alia contributed to a more structured and focused debate within the Sixth Committee itself. The thematic presentation of the report by the Chairman of the Commission in two or three parts is another element of this process. This practice should be encouraged and further improved on for the sake of greater clarity of the exchanges between the Commission and the Sixth Committee. Another positive development which took place recently was the presence in the Sixth Committee - besides the Chairman - of several Special Rapporteurs who could thus proceed to a direct dialogue with the Sixth Committee whenever their topic was being discussed. This practice already proved to be useful and should therefore be maintained.

5. The indispensable part of the dialogue between the Commission and the Governments is the procedure of written comments by Governments in response to particular Commission’s requests. The Commission also authorizes the Special Rapporteurs to address questionnaires to Governments, when appropriate, seeking information or their views on a specific topic.

6. The Commission is however concerned that not a sufficient number of Governments reply to these requests for written comments or questionnaires. [4] It wishes to stress how important it is for the Commission to have the views of Governments from all parts of the world on various topics under consideration.

2. The Commission's relationship with other bodies concerned with international law

7. In paragraph 12 of its resolution 53/102, the General Assembly requested the International Law Commission “... to continue the implementation of article 16, paragraph (e) and article 26, paragraphs 1 and 2, of its Statute

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4/ The number of Governments which provided such written comments or responses to questionnaires on some recent topics have been as follows: State responsibility, 19 (1998, 1999); Nationality in relation to succession of States, 13; Reservations to treaties, 33; Jurisdictional immunities of States and their property, 5; Diplomatic protection, 3.

in order to further strengthen cooperation between the Commission and other bodies concerned with international law, having in mind the usefulness of such cooperation, and invites the Commission to provide the Sixth Committee with updated information in this regard at the fifty-fourth session of the General Assembly".

(a) Consultations with scientific institutions and individual experts and international or national organizations

8. Article 16 (e) of the Commission's Statute provides that:

> "When the General Assembly refers to the Commission a proposal for the progressive development of international law, the Commission shall follow in general a procedure on the following lines:
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> (...)
>
> (e) It may consult with scientific institutions and individual experts; these experts need not necessarily be nationals of Members of the United Nations. The Secretary-General will provide, when necessary and within the limits of the budget, for the expenses of these consultations of experts."

9. Article 26, paragraph 1 provides that:

> "The Commission may consult with any international or national organizations, official or non-official, on any subject entrusted to it if it believes that such a procedure might aid it in the performance of its functions."

10. At various occasions, the Commission had held consultations with individual experts on specific topics pursuant to decisions of the Commission or on the initiative of its individual members. Such consultations took different forms. [5]

11. Recent examples are consultations with experts of the United Nations High Commissioner for Refugees which took place in 1996-1997 with regard to the topic "Nationality in relation to succession of States", in the framework

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5/ The examples in the past are numerous. The Commission or the Special Rapporteurs consulted with experts either in a "formal" way (as in the case of the delimitation of the territorial sea of two adjacent States where the Special Rapporteur met with a group of experts) or more informally (e.g. experts of the United Nations High Commissioner for Refugees offered their assistance to the Commission with regard to the topic "Nationality including Statelessness" in 1952; in 1960, the Commission invited professors of the Harvard Law School to comment on the draft on Responsibility of States being prepared under the auspices of that school).

of the Working Group established by the Commission on that topic. Moreover, in this last case, the Commission benefited from the fact that two of its members had recently served as Rapporteurs of the Council of Europe on the topic “Effects of State Succession on Nationality”. In relation to the Commission’s work on State Responsibility, study groups have been established by the Government of Japan, the International Law Association and the American Society of International Law, and they have provided useful feedback to the Commission and the Special Rapporteur.

12. For a number of years, the practice of annual meetings of the Commission with representatives and experts of the International Committee of the Red Cross has been established and is still continuing. In the course of these meetings, an exchange of views takes place on an agenda including both the current topics under consideration by the Commission but also issues of international humanitarian law. It should be mentioned that on some occasions (as for the preparation of the Draft Code of Crimes against the Peace and Security of Mankind) these exchanges of views have proved very valuable for the work of the Commission.

13. The Commission maintains close relations with academic institutions, universities, etc. which also provide an input to the Commission’s reflection on certain topics. A recent example is the participation of the Geneva Institute for International Studies to the Commission’s seminar held on the occasion of the fiftieth session, in 1998, during which a useful dialogue took place between scholars and the Commission concerning mainly topics on the Commission's agenda. [6]

14. In this context, the Colloquium on the Progressive Development and Codification of International Law held on 28 and 29 October 1997 should also be mentioned. It was organized by the Secretary-General of the United Nations pursuant to General Assembly resolution 51/160 of 16 December 1996 to commemorate the Fiftieth Anniversary of the establishment of the Commission and demonstrated the continuous and long-standing cooperation of the Commission with academic and scientific institutions, researchers and other experts from all over the world. In this case also, the participants included

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6/ The proceedings of this seminar will be shortly published.

members of the Commission, members of the academic community, diplomats and legal advisers of Governments and international organizations who held a fruitful and open dialogue. [7]

15. Along the same lines, the United Kingdom Study Group was organized under the auspices of the British Institute of International and Comparative Law as part of the British celebration of the Commission's fiftieth anniversary. The Group considered the question of the Commission's future agenda and produced a report. [8]

16. Moreover, numerous consultations also take place in an informal manner, especially in view of the personal contacts of many members of the Commission with scientific institutions. The practice of consultations which can take many forms should continue. The need for them, however, depends upon the consideration of particular topics involving specific technical issues for which the Commission would need the opinion of experts or specific agencies. The above examples should be viewed as concrete manifestations of an ongoing process of consultations, exchange of views and mutual information between the members of the Commission and scientific institutions, experts, professors of international law, etc. The fact that this process is often informal should not detract from its intrinsic value in keeping the Commission abreast of new developments and trends in scholarly research on international law.

17. Finally, the financial implications - already present in article 16 (e) of the Statute - of consultations with scientific institutions and experts should not be overlooked. In its recent practice, the Commission had recourse to consultations which did not involve additional costs. It would not be realistic to advocate any further expansion and, in particular, institutionalization of consultations with scientific institutions and experts at a time of severe financial constraints in the United Nations resulting even

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7/ The proceedings of the Colloquium "Making better International Law: the International Law Commission at 50" were published in June 1998. Another example of the exchanges between the Commission and the academic community is the recent (October 1998) Colloquium of Aix-en-Provence on the codification of international law organized by the "Société française pour le droit international", in the course of which again current and former members of the Commission and its secretariat and academics exchanged their ideas on the topic of codification of international law.

8/ The role and future of the International Law Commission (British Institute of International and Comparative Law, 1998).

in the curtailing of long-standing activities and programmes. The situation could undoubtedly be reviewed in the future in the hope of a less precarious financial situation of the Organization.

(b) Distribution of documents of the Commission

18. Article 26, paragraph 2 of the Statute provides that:

> "For the purpose of distribution of documents of the Commission, the Secretary-General, after consultation with the Commission, shall draw up a list of national and international organizations concerned with questions of international law. The Secretary-General shall endeavour to include on this list at least one national organization of each member of the United Nations."

19. The exchange and distribution of documents of the Commission follow the principles approved by the Commission in 1965. [9] One of these principles requires that the Yearbook and documents should not normally be sent to individuals, but should rather be confined to organizations, institutes and libraries, in particular, law school libraries, which should be placed on the mailing list at the request of members of the Commission or of permanent missions to the United Nations. The current mailing list of documents of the Commission is composed of 161 organizations, libraries, etc., and 101 individuals, mostly former members of the Commission, Judges at the International Court of Justice, law professors, etc. The Secretariat is currently reviewing this mailing list as it had done periodically in the past, with a view to updating it.

20. The "distribution of documents", according to article 26, paragraph 2 of the Statute, aims mainly towards disseminating the Commission's documentation rather than constituting a flow of information between the Commission and other bodies. It should be noted that, in practice, the amount of documentation received by the Commission from national or international organizations, scientific institutions, etc., has been rather low.

21. While in the past the provision of article 26 of paragraph 2 of the Statute was of great practical significance, with the growing use of electronic information and of computerization, the purpose of the above

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9/ Yearbook of the International Law Commission, 1965, vol. II, pp. 194-195. It should be noted that these principles concern the additional distribution of documents of the Commission, going beyond the usual distribution of all official documents of the United Nations.

provision becomes to a large extent obsolete. Indeed, the International Law Commission Website was created by the Codification Division on the occasion of the Commission's fiftieth anniversary. The primary purpose of the Website is to disseminate information regarding the activities of the Commission to as wide an audience as possible, through the electronic medium. This Website includes, apart from general information on the history and composition of the Commission, on-line copies of the reports of the Commission (starting in 1996), as well as of various other texts adopted by the Commission or based on its work. [10]

22. The Commission's interest in achieving a broad dissemination of its documentation is obvious. In particular, in view of the fact that some national institutions do not yet have an easy access to electronic information, it is desirable that respective Governments provide information which would allow the Secretariat to update the addresses of such institutions on the existing mailing list of the Commission while the developing and refining of the International Law Commission Website continues.

3. Split sessions

23. The General Assembly, in paragraph 9 of its resolution 53/102, asked the International Law Commission to indicate the advantages and disadvantages of a split session.

24. The Commission recommends split sessions because it believes they would be more efficient and effective and facilitate the uninterrupted attendance of more members. The Commission does not believe there are any disadvantages to a split session but recognizes that budgetary considerations may be regarded by some as a factor. The Commission believes that this problem can, if necessary, be ameliorated and even reduced to minimal proportions. The Commission will continue to maintain a flexible need-based position on the duration and nature of its sessions.

(i) More efficient work

25. A split session would allow intra-sessional preparation to be carried out in a way that would make the second part of a split session more productive. For example, work completed in the Drafting Committee requiring

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10/ Paragraph 15 of General Assembly resolution 53/102 refers to the International Law Commission's Website.

the elaboration of commentaries would benefit by the preparation of commentaries in the interim. Problems which had arisen in the first part of the session, in either the Plenary or the Drafting Committee, could benefit from more focused consideration and informal exchanges (e.g. e-mail) among members and with the Secretariat than is the case at present. Special rapporteurs could have the opportunity to reflect on proposals or problems raised at the first part of the session without loss of focus caused by waiting a full year or the alternative need to give over hasty consideration and/or need to be absent from work on other topics to the Commission's loss while producing responses under time pressure. Finally, experience suggests that more intense and productive concentration is likely in two sessions with a pause for reflection in between them rather than one marathon session.

(ii) Better attendance

26. Though members are well aware of their duties to attend, many members have over the years experienced major difficulties in squaring 12 straight weeks of the Commission with their other responsibilities. It is inherent in the nature of the experience and special qualifications needed for the ILC that the members will have other responsibilities and demands on their time that would make it easier for them to attend two shorter sessions rather than one 12-week session. It was the desire to attract highly active and busy experts from differing backgrounds that contributed to the decision not to make the Commission a full-time, year-round operation. Splitting the session will increase attendance and thus contribute to the original benefit perceived to flow from the nature of the Commission as a non-full-time responsibility for the members. Past experience (1998) with a split session supports this view.

(iii) Flexibility

27. The Commission will, of course, maintain flexibility with regard to the nature and duration of its sessions. While the workload for the last two years of its current quinquennium (2000 and 2001) will clearly require 12 weeks and benefit from split sessions, the Commission may be able to complete its tasks in a unitary session of 10 weeks as was the case in 1997 in the initial year of its five-year term.

(iv) Disadvantages

28. The members of the Commission do not believe there are any disadvantages to a split session. Any cost increase flowing from a split session should be more than offset by way of results based analysis by increased productivity.

4. Work programme of the Commission for the quinquennium

[to be added at a later stage]

5. Long-term programme of work

[to be added at a later stage]
