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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 2971st meeting, on 4 June 2008, the Commission established a Planning Group for the current session.¹
2. The Planning Group held five 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 sixty-second session entitled “Other decisions and conclusions of the Commission”; and General Assembly resolution 62/66 of 6 December 2007 on the Report of the International Law Commission on the work of its fifty-ninth session, in particular paragraphs 8, 9 and 14 to 25, as well as General Assembly resolution 62/70 of 6 December 2007 on the rule of law at the national and international levels.

**1. Commemoration of the sixtieth anniversary of the Commission
and meeting with Legal Advisers**

3. The Planning Group notes that, as part of events to commemorate its sixtieth anniversary, the Commission convened on 19 May 2008 a solemn meeting, during which statements were made by Mr. Sergei Ordzhonikidze, Director-General of the United Nations Office at Geneva; Her Excellency, Ms. Micheline Calmy-Rey, Federal Counsellor of the Swiss Confederation; Mr. Nicolas Michel, Under-Secretary-General, the Legal Counsel of the United Nations; and the Chairman of the Commission, Mr. Edmundo Vargas Carreño. His Excellency, Mr. Srgian Kerim, President of the General Assembly of the United Nations delivered a video message, while Her Excellency, Judge Rosalyn Higgins, President of the International Court of Justice delivered a keynote address.²

¹ The Planning Group was composed of Mr. R.A. Kolodkin (Chairman); Mr. I. Brownlie; Mr. L. Caflisch; Mr. E. Candioti; Mr. P. Comissário Afonso; Mr. S. Fomba; Mr. Z. Galicki; Mr. H.A. Hassouna; Mr. M.D. Hmoud; Ms. M.G. Jacobsson; Mr. D.M. McRae; Mr. B. Niehaus; Mr. G. Nolte; Mr. A. Pellet; Mr. A.R. Perera; Mr. E. Petrič; Mr. G.V. Saboia; Mr. N. Singh; Mr. E. Vargas Carreño; Mr. S.C. Vascianne; Mr. M. Vásquez-Bermúdez; Mr. A.S. Wako; Mr. N. Wisnurmurti; Ms. H. Xue; Mr. C. Yamada; and Ms. P. Escarameia (*ex officio*).

² The keynote address of the President of the International Court of Justice and the statements of the Director General, the Legal Counsel and the Chairman of the Commission are available at the website on the Commission’s work: www.un.org/law/ilc/.

4. The solemn meeting was followed by a one-and-a-half-day meeting with legal advisers on 19 and 20 May. The meeting was dedicated to the work of the Commission under the overall theme: “*The International Law Commission: Sixty Years ... And Now?*” It comprised a series of panel discussions involving Legal Advisers of member States, other international law experts and the Commission members, present and former, focusing on practical matters concerning the Commission and its cooperation with member States in the progressive development of international law and its codification.³ The discussions proceeded on the basis of the Chatham House rule and no record was kept of the meeting.

5. The Planning Group deeply appreciates that many legal advisers, judges of the International Court of Judges, former members of the Commission and other international law experts joined the Commission in the celebrations. The Planning Group commends the Secretariat, together with the group of members of the Commission entrusted with the preparatory arrangements,⁴ for the organization of the successful commemorative event.

³ The general introduction entitled “*What Role for the International Law Commission in the 21st Century?*” was given by Mr. Georges Abi-Saab. (a) Mr. Michael Wood, gave an introduction and chaired the first cluster of issues under the sub-theme “*A Subsidiary Organ Composed of Independent Experts: Is the Commission Adapted to its Purposes?*”. The first panel on “*The Membership of the Commission: Profiles of a Codifier*” was led by Mr. A. Pellet and Mr. R.E. Fife (Norway). The second panel on “*The Commission and Governments: Mutual Indifference or Ongoing Interaction?*” was led by Mr. Z. Galicki and Mr. J.B. Bellinger (United States of America). (b) Mr. James Crawford gave an introduction and chaired the second cluster of issues under the sub-theme “*The Commission and its Methods of Work: How to Achieve the Mandate?*” Mr. D. Momtaz also chaired part of the session. The third panel on “*Within the Commission: Is There a Need to Renew the Methods of Work?*” was led by Mr. C. Yamada and A.E. Villalta (El Salvador). The fourth panel on “*Opening up the Commission: Sharing Experiences with Other Bodies?*” was led by Ms. P. Escarameia and Mr. A. Havas Oegroseno (Indonesia). Mr. Ahmed Mahiou gave an introduction and chaired the third cluster of issues under the sub-theme “*Prospects for the Commission: Which Outcomes for Future Topics?*”. The fifth panel on “*Future topics for the Commission: The End of the Golden Age?*” led by Mr. E. Candioti and Ms. L. Lijnzaad (The Netherlands). The sixth panel addressed “*The Outcomes of the Commission’s Work: Should Codification and Progressive Development Still Be Achieved Through Treaties?*” was led by Mr. J. Dugard and Ms. P. O’Brien (Ireland). Ms. Brigitte Stern offered general conclusions for the meeting.

⁴ The members of the Group were as follows: Mr. E. Candioti, Mr. P. Comissário Afonso, Mr. Z. Galicki, Mr. A. Pellet and Mr. C. Yamada. The Chairman of the Commission at the

6. The Planning Group also notes that the meeting with legal advisers provided a useful forum for interaction and considers it useful to have such meetings at least once during a quinquennium, preferably before the midpoint of the quinquennium.

7. The Planning Group also notes with appreciation that Member States, in association with existing regional organizations, professional associations, academic institutions and members of the Commission concerned, convened national or regional meetings, which were dedicated to the work of the Commission.⁵ The Planning Group notes that such meetings, particularly at national and regional levels assist in the better understanding and appreciation of the role of the Commission in the progressive development and codification of international law and encourages Member States, in association with regional organizations, professional associations, academic institutions and members of the Commission concerned, to continue convening such events as appropriate.

2. Consideration of General Assembly resolution 62/70 of 6 December 2007 on the rule of law at the national and international levels

8. The General Assembly, by the terms of its resolution 62/70 on the rule of law at the national and international levels, *inter alia*, invited the Commission to comment, in its report to the General Assembly, on its current role in promoting the rule of law.

[Paragraphs 8, second and third sentence and 9 to 13 on rule of law to be inserted]

fifty-ninth session, Mr. I. Brownlie; and the Chairman of the Planning Group at the fifty-ninth session Mr. E. Vargas Carreño, served *ex officio*.

⁵ Some of the activities made known to the Commission included: a Seminar organized by the Argentine Council of Foreign Relations and the Argentine Institute of Water resources concerning the Integrated management of transboundary aquifers in Buenos Aires on 5 October 2007 and a publication entitled “*Temas recientes de la Comisión de Derecho Internacional*” was issued in respect of the Seminar; a round table organized by the Latin American Society of International Law on “The 60th Anniversary of the International Law Commission: Contributions and Perspectives from Latin America” in Geneva on 21 May 2008; an event organized by the Graduate Institute of International and Development Studies on “The International Law Commission’s Sixtieth anniversary: Results and perspectives” in Geneva on 28 May 2008; Peace through law: The Role of the United Nations International Law Commission, A colloquy on the Occasion of the Sixtieth Anniversary in Munich on 11 July 2008.

3. Relations between the Commission and the Sixth Committee

14. The Planning Group continued its consideration of 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. The Planning Group wishes to reiterate that plenary meetings of the Commission are open to interested delegations and that its draft reports, issued in the A/CN.4/L... 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).⁶

15. The Planning Group welcomes the continued practice of informal consultations in the form of focused 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.

16. The Planning Group is also aware that the informal meeting of Legal Advisers which is convened during the Sixth Committee's consideration of Commission's report has, on its agenda, a variety of international law issues to discuss. In order to further enhance the discussion on the report of the Commission, it may be worthwhile to explore possibilities that the informal meeting of Legal Advisers identifies in advance of its meetings one or two topics on the agenda of the Commission which could be a subject of detailed discussion in such a forum, and where possible with the presence of the Special Rapporteur for the topic concerned.

17. The Planning Group agreed to keep under review the possibility of the Commission convening a part of its session in New York.

4. Working Group on Long-term Programme of Work

18. At its 1st meeting, on 4 June 2008, the Planning Group decided to reconstitute the Working Group on the Long-term Programme of Work, under the chairmanship of Mr. Enrique Candioti.⁷

⁶ <http://documents.un.org>.

⁷ The Working Group on Long-term programme of work for the quinquennium was established by the Planning Group and was composed of the following members: Mr. E. Candioti

At the same meeting, the Planning Group decided to refer to the Working Group for its consideration of the report of the Working Group on the most-favoured-nation clause.⁸ The Chairperson of the Working Group on the Long-term Programme of Work submitted an oral progress report to the Planning Group on 28 July 2008. The Working Group recommended the inclusion in the long-term programme of work of two topics, namely “Treaties over time” on the basis of a revised and updated proposal by Mr. G. Nolte and “The Most-favoured-Nation clause” on the basis of the report of the 2007 Working Group chaired by Mr. D.M. McRae on the subject (A/CN.4/L.719). Both topics met the relevant criteria outlined by the Commission most recently in its 2000 report, namely, *inter alia*, they were concrete and feasible and presented theoretical and practical utility in terms of codification and progressive development of international law.⁹

19. The Planning Group endorsed the recommendation for the inclusion of the two topics on the long-term programme of work of the Commission. It also proposed the inclusion of the two topics in the current programme of work of the Commission and recommended the establishment, at the sixty-first session of the Commission, of study groups on the two topics.

5. Meeting with Legal Advisers of specialized agencies

20. The Planning Group took note that the 2009 meeting of Legal Advisers of international organizations within the United Nations system will take place in Geneva at a time that coincides with the session of the Commission. In accordance with article 26 (1) of its Statute, the Planning Group recommends that a joint meeting be organized with the Legal Advisers during the sixty-first session of the Commission in order to hold discussions on matters of mutual interest and requested the Secretariat to make appropriate arrangements to this effect.

(Chairman), Mr. I. Brownlie, Mr. P. Comissário Afonso, 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. G. Nolte, Mr. A. Pellet, Mr. A.R. Perera, Mr. E. Petrič, Mr. G.V. Saboia, Mr. N. Singh, Mr. E. Valencia-Ospina, Mr. M. Vázquez-Bermúdez, Mr. A.S. Wako, Ms. H. Xue and Ms. P. Escarameia (*ex officio*).

⁸ The Planning Group recalled that at the 2944th meeting, on 27 July 2007, the Commission had considered the report of that Working Group and had decided to refer it to the Planning Group.

⁹ *Yearbook ... 2000*, vol. II, (Part 2), para. 728. See also *Yearbook ... 1997*, vol. II (Part 2), para. 238.

[6. Meeting with members of the Appellate Body of the WTO

...]

7. Financial matters

(a) Attendance of Special Rapporteurs in the General Assembly during the consideration of the Commission's report

21. 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 earlier stage.¹⁰ It has also considered that presence of Special Rapporteurs facilitates exchanges of views and consultations between them and representatives of Governments.¹¹ In accordance with paragraph 5 of General Assembly resolution 44/35, the General Assembly invited the Commission, whenever circumstances so warrant, to request a Special Rapporteur to attend the session of the General Assembly during the discussion of the topic which the Special Rapporteur is responsible and requested the Secretary-General to make the necessary arrangements within the existing resources. The Planning Group notes that due to financial constraints it has not been possible to make the necessary arrangements for more than one Special Rapporteur to attend meetings of the Sixth Committee. It wishes to emphasize that the post of Special Rapporteur is central to the work of the Commission and 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) Honoraria

22. The Planning Group also reiterates its views concerning the question of honoraria, resulting from the adoption by the General Assembly of its resolution 56/272 of 27 March 2002,

¹⁰ *Yearbook ... 1988*, vol. II (Part 2), para. 582.

¹¹ *Yearbook ... 1989*, vol. II (Part 2), para. 742.

which were expressed in its previous reports.¹² The Planning Group 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 Planning Group urges the General Assembly to reconsider this matter, with a view to restoring, at this stage, the honoraria for Special Rapporteurs.

8. Documentation and publications

(a) Processing and issuance of reports of Special Rapporteurs

23. 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 the Commission 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.¹³

(b) Establishment of a trust fund on the backlog relating to the *Yearbook* of the International Law Commission

24. The Planning Group notes with appreciation that, pursuant to paragraph 21 of General Assembly resolution 62/66, the Secretary-General had established a trust fund to receive voluntary contributions to address the backlog relating to the *Yearbook* of the International Law Commission.¹⁴ While reiterating the importance of ensuring that the necessary budgetary

¹² See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10 (A/57/10)*, paras. 525-531. *Ibid.*, *Fifty-eighth Session, Supplement No. 10 (A/58/10)*, para. 447; *ibid.*, *Fifty-ninth Session, Supplement No. 10 (A/59/10)*, para. 369; *ibid.*, *Sixtieth Session, Supplement No. 10 (A/60/10)*, para. 501; *ibid.*, *Sixty-first Session, Supplement No. 10 (A/61/10)*, para. 269; and *Sixty-second Session, Supplement No. 10 (A/62/10)*, para. 379.

¹³ 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.

¹⁴ As at 31 July 2008, the backlog for the period 1994-2001 was as follows: vol. II (Part One) in Arabic has not been issued since 1996. No volume has been issued in Chinese since 1994. Except for 1997, vol. II (Part One) in English has not been issued since 1996. Vol. II (Part One) in French has not been issued since 1998. Vol. II (Part One) has not been issued in Russian

resources are allocated for addressing the backlog under the relevant programme in the regular budget, the Planning Group appeals, in accordance with the terms of the trust fund, to Member States, non-governmental organizations, private entities and individuals to contribute to the trust fund. It 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.

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

25. 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. In particular, the Planning Group expressed its appreciation to the Secretariat for its preparation of two excellent memoranda on the topic "Protection of persons in the event of disasters" (A/CN.4/590 and Add.1-3) and on the topic "Immunity of State officials from foreign criminal jurisdiction" (A/CN.4/596).

26. 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.¹⁵ It acknowledged in particular the establishment of a new website on the *United Nations Juridical Yearbook*, including a full-text research option on all published volumes of the collection (currently in English). The Commission 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 Commission 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.

since 1998, except 2001. Vol. II (Part One) has not been issued in Spanish since 1996; vol. II (Part Two) in Spanish for 2001 has also not been issued. From 2002 to the present, no volume has been issued in all the six official languages.

¹⁵ Located at <http://www.un.org/law/ilc/>.

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

27. The Planning Group decided that the sixty-first session of the Commission be held in Geneva from 4 May to 5 June and 6 July to 7 August 2009.

C. Cooperation with other bodies

28. In order to optimize on a better appreciation of each other's activities, the Planning Group would explore possibilities of enhancing the cooperation of the Commission with other bodies by making the meetings more focused and issues oriented, paying particular attention to aspects that may have particular relevance to the work of the Commission or the body concerned.
