



General Assembly

Distr.: Limited
25 July 2013

Original: English

International Law Commission

Sixty-fifth session

Geneva, 6 May–7 June and 8 July–9 August 2013

Report of the Planning Group

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

1. At its 3160th meeting, on 7 May 2013, the Commission established a Planning Group for the current session.¹

2. The Planning Group held 3 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-seventh session entitled “Other decisions and conclusions of the Commission”; General Assembly resolution 67/92 on the Report of the International Law Commission on the work of its sixty-third and sixty-fourth sessions, in particular paragraphs 23 to 28; General Assembly resolution 67/1 of 24 December 2012 containing the Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels and General Assembly resolution 67/97 of 14 December 2012 on the rule of law at the national and international levels.

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

3. At its 1st meeting, on 7 May 2013, the Planning Group decided to reconstitute for the current session the Working Group on the Long-term Programme of Work. In the absence of its chairman Mr. Donald M. McRae, the Working Group was chaired by Mr. Mahmoud D. Hmoud. Mr. Hmoud submitted an oral interim report to the Planning Group, at its 2nd meeting, on 6 June 2013 and another on The Working Group recommended the inclusion in the long-term programme of work of the Commission of the topic “Crimes against humanity” on the basis of the proposal prepared by Mr. Sean D. Murphy. The Working Group was guided by the recommendation of the Commission at its fiftieth session (1998) regarding the criteria for the selection of the topics:

¹ The Planning Group was composed of Mr. Pavel Šturma (Chairman); Members: Mr. L. Caflisch, Mr. P. Comissário Afonso, Mr. A. El-Murtadi Suleiman Goudier, Ms. C. Escobar Hernández, Mr. H.A. Hassouna, Mr. M.D. Hmoud, Ms. M.G. Jacobsson, Mr. M. Kamto, Mr. K. Kittichaisaree, Mr. A. Laraba, Mr. D.M. McRae, Mr. S. Murase, Mr. S.D. Murphy, Mr. G. Nolte, Mr. K.G. Park, Mr. E. Petrič, Mr. G.V. Saboia, Mr. N. Singh, Mr. D.D. Tladi, Mr. E. Valencia-Ospina, Mr. M. Vázquez-Bermúdez, Mr. N. Wisnumurti, Mr. M. Wood, and Mr. M. Forteau (*ex officio*).

- (a) The topic should reflect the needs of the States in respect of the progressive development and codification of international law;
- (b) The topic should be sufficiently advanced in stage in terms of State practice to permit progressive development and codification;
- (c) The topic is concrete and feasible for progressive development.

The Commission also agreed that it should not restrict itself to traditional topics, but could also consider those that reflect new developments in international law and pressing concerns of the international community as a whole.²

4. The Planning Group endorsed the recommendation for the inclusion of the topic in the long-term programme of work. The view was expressed that the consideration of the topic in the syllabus should have taken a broader perspective, including the coverage of all core crimes. The syllabus of the topic included by the Commission in its long-term programme of work at the present session is annexed to the present report.

2. Consideration of General Assembly resolution 67/97 of 14 December 2012 on the rule of law at the national and international levels

5. The General Assembly, 67/97 of 14 December 2012, 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 has commented annually on its role in promoting the rule of law since 2008. The Commission notes that the substance of the comprehensive comments contained in paragraphs 341 to 346 of its 2008 report (A/63/10) remains relevant and reiterates the comments in paragraph 231 of its 2009 report (A/64/10), paragraphs 390 to 393 of its 2010 report (A/65/10), paragraphs 392 to 398 of its 2011 report (A/66/10) and paragraphs 274 to 279 of its 2012 report (A/67/10).

6. The Commission welcomes the Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels contained in General Assembly Resolution (RES/67/1) and shares the commitment in the Declaration to an international order based on the rule of law, and the recognition that the rule of law applies to all States equally and to international organizations. The Commission also notes the appreciation expressed of the work of the International Law Commission in advancing the rule of law at the international level through the progressive development of international law and its codification.

7. The Commission recalls that the rule of law constitutes the essence of the Commission, for its basic mission is to work for the progressive development of international law and its codification, bearing in mind its implementation at the national level.

8. The Commission wishes to reiterate that the work of the Commission has led to the adoption by States of a significant number of conventions. For such conventions to serve their full purpose they need to be ratified and implemented. In addition to formulating draft articles, the Commission's output takes other forms, which also contribute to the progressive development of international law and its codification. Having in mind the principle of the rule of law in all its work, the Commission is fully conscious of the importance of the implementation of international law at the national level. The Commission considers that its work to promote the progressive development of

² *Yearbook ... 1998*, vol. II (Part Two), p. 10, para. 553.

international law and its codification demonstrates the manner in which the Commission aims at promoting the rule of law as a principle of governance at the international level.

9. The Commission also agrees with Member States on the positive contribution of the General Assembly, as the chief deliberative and representative organ of the United Nations, to the rule of law in all its aspects through policy making and standard setting, and through the progressive development of international law and its codification.

10. The Commission, 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, and in its Statute, and in line with views expressed by States in the Declaration of the High-level Meeting of the General Assembly on the Rule of Law, will continue to advance the rule of law through the progressive development of international law and its codification. The Commission also remains fully conscious of the importance of the implementation of international law at the national level.

11. The Commission welcomes the decision of the General Assembly to select “The rule of law and the peaceful settlement of international disputes” as the thematic subject for the debate in the Sixth Committee this year.

12. Bearing in mind the close interrelation of the rule of law at the national and international levels, the Commission, in fulfilling its mandate concerning the progressive development of international law and its codification, considers that its work should take into account, where appropriate, the principles of human rights that are fundamental to the international rule of law as reflected in the preamble and in Article 13 of the Charter of the United Nations and in the Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels.

13. Accordingly, the Commission has promoted awareness of the rule of law at the national and international levels, including through its work on such topics as expulsion of aliens; protection of persons in the event of disasters; the obligation to extradite or prosecute (*aut dedere aut judicare*) and immunity of State officials from foreign criminal jurisdiction.

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

3. Honoraria

15. 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.³ The Planning Group emphasizes that the above resolution especially affects Special Rapporteurs, as it compromises support for their research work.

³ 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; *ibid.*, *Sixty-fifth Session, Supplement No. 10* (A/65/10), para. 396, and *ibid.*, *Sixty-sixth Session, Supplement No. 10* (A/66/10), para. 399; and *ibid.*, *Sixty-fourth Session, Supplement 10* (A/64/10), para. 280.

4. Documentation and publications

16. The Planning Group reiterated its recognition of the particular relevance and significant value of the legal publications prepared by the Secretariat to its work.⁴ It noted with appreciation that the Codification Division was able to significantly expedite the issuance of its publications through the continuation and expansion of its desktop publishing initiative which greatly enhanced the timeliness and relevance of these publications to the Commission's work.

17. The Planning Group noted with satisfaction that the Summary records of the Commission, constituting crucial *travaux préparatoires* in the progressive development and codification of international law, would not be subject to arbitrary length restrictions. Given, however, that a shortage of staff in the units responsible for drafting Summary records might have an impact on the integrity and quality of the records, a number of experimental measures to streamline the processing of the Commission's Summary records were introduced following exchanges between the Secretariat of the Commission and the drafting units. The new arrangements entail more expeditious transmission of the provisional records to members of the Commission for timely correction, and prompt release of the final texts. It is hoped that they will result in a more rational use of resources and facilitate the preparation of the definitive records in all languages, without compromising their integrity.

18. The Commission is aware that in the present financial situation the continuation of several publications of the Codification Division may be in jeopardy.

19. In view of the extreme usefulness of the following publications to its work, the Commission decided to recommend that the General Assembly request the Secretary-General to continue these publications:

(a) *The Work of the International Law Commission* in all six official languages at the beginning of each quinquennium;

(b) *Reports of International Arbitral Awards* in English or French; and

(c) *Summaries of the Judgments, Advisory Opinions and Orders of the International Court of Justice* in all six official languages every five years.

20. The Commission further noted with appreciation that the Codification Division was able to expedite significantly the issuance of several of its publications through the continuation and expansion of its desktop publishing initiative, which greatly enhanced the timeliness and relevance of these publications to the Commission's work.

5. Trust fund on the backlog relating to the Yearbook of the International Law Commission

21. 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 took note that the General Assembly, in its resolution 67/92, expresses its appreciation to Governments that have made voluntary contributions to the Trust Fund on the backlog relating to the *Yearbook of the International Law Commission*, and encourages further contributions to the Trust Fund.

⁴ See *Official Records of the General Assembly, Sixty-second Session, Supplement No. 10 (A/62/10)*, paras. 387–395.

6. Assistance of the Codification Division

22. 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 Commission expressed its appreciation to the Secretariat for its preparation of two memoranda on the topic “Provisional application of treaties” (A/CN.4/658) and “Formation and evidence of customary international law” (A/CN.4/659). The Planning Group reiterated the particular relevance and significant value of the legal publications prepared by the Codification Division to its work, and reiterated its request that the Codification Division continue to provide the Commission with these publications.

7. Websites

23. 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.⁵ The Planning Group reiterated that this website and other websites maintained by the Codification Division⁶ constitute an invaluable resource for the Commission 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 welcomes the fact 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.

B. Commemoration of the 50th Anniversary of the International Law Seminar

24. The Planning Group expressed its satisfaction that in 2014 the International Law Seminar will hold its 50th session and recognized the valuable contribution that the Seminar has made in allowing successive generations of young international lawyers to follow the debates and better understand the functioning of the Commission.

25. It recommended that the Commission, in cooperation with the Legal Liaison Office of the United Nations in Geneva, organize an appropriate commemoration of the 50th anniversary, if possible inviting former participants of the Seminar, including those who later became members of the Commission and the International Court of Justice.

26. This commemoration could coincide with the visit to the Commission of the President of the International Court of Justice.

C. Date and place of the sixty-sixth session of the Commission

27. The Planning Group recommended that the sixty-sixth session of the Commission be held in Geneva from 5 May to 6 June and 7 July to 8 August 2014.

⁵ Located at <http://www.un.org/law/ilc/>.

⁶ Generally accessible through: <http://www.un.org/law/lindex.htm>.