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Draft report of the International Law Commission on the work of its sixty-seventh session

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Chapter XIII

Other decisions and conclusions of the Commission

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Chapter XIII

Other decisions and conclusions of the Commission

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

1. At its 3248th meeting, on 8 May 2015, the Commission established a Planning Group for the current session.¹

2. The Planning Group held three meetings. It had before it Section I, entitled “Other decisions and conclusions of the Commission”, of the Topical Summary of the discussion held in the Sixth Committee of the General Assembly during its sixty-ninth session; General Assembly resolution 69/118 of 10 December 2014 on the Report of the International Law Commission on the work of its sixty-sixth session; and General Assembly resolution 69/123 of 10 December 2014 on the rule of law at the national and international levels.

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

3. At its 1st meeting, on 11 May 2015, the Planning Group decided to reconstitute for the current session the Working Group on the Long-term Programme of Work, under the chairmanship of Mr. Donald M. McRae. The Chairman of the Working Group submitted an oral progress report on the work of the Working Group at the current session to the Planning Group, at its 3rd meeting, on 30 July 2015.

3. Consideration of General Assembly resolution 69/123 of 10 December 2014 on the rule of law at the national and international levels

4. The General Assembly, in resolution 69/123 of 10 December 2014 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. Since its sixtieth session (2008), the Commission has commented annually on its role in promoting the rule of law. The Commission notes that the comments contained in paragraphs 341 to 346 of its 2008 report (A/63/10) remain relevant and reiterates the comments made at its previous sessions.²

5. The Commission recalls that the rule of law is of the essence of its work. The Commission’s object, as set out in Article 1 of its Statute, is the promotion of the progressive development of international law and its codification.

6. 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

¹ The Planning Group was composed of: Mr. A.S. Wako (Chairman), Mr. L. Caflisch, Mr. P. Comissário Afonso, Mr. A. El-Murtadi Suleiman Gouider, Ms. C. Escobar Hernández, Mr. M. Forteau, Mr. H.A. Hassouna, Mr. M.D. Hmoud, Mr. H. Huang, Ms. M.G. Jacobsson, Mr. K. Kittichaisaree, Mr. A. Laraba, Mr. D.M. McRae, Mr. S. Murase, Mr. S.D. Murphy, Mr. B.H. Niehaus, Mr. G. Nolte, Mr. K.G. Park, Mr. E. Petrič, Mr. P. Šturma, Mr. D.D. Tladi, Mr. N. Wisnumurti, Mr. M. Wood, and Mr. M. Vázquez-Bermúdez (*ex officio*).

² *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 10 (A/64/10)*, para. 231; *ibid.*, *Sixty-fifth Session, Supplement No. 10 (A/65/10)*, paras. 390 to 393; *ibid.*, *Sixty-sixth Session, Supplement No. 10 (A/66/10)*, paras. 392 to 398; *ibid.*, *Sixty-seventh Session, Supplement No. 10 (A/67/10)*, paras. 274 to 279; *ibid.*, *Sixty-eighth Session, Supplement No. 10 (A/68/10)*, paras. 171 to 179; *ibid.*, *Sixty-ninth Session, Supplement No. 10 (A/69/10)*, paras. 273-280.

national level, and aims at promoting respect for the rule of law at the international level.

7. In fulfilling its mandate concerning the progressive development of international law and its codification, the Commission will continue to take into account, where appropriate, the rule of law as a principle of governance and the human rights that are fundamental to the 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.³

8. In its current work, the Commission, is aware of “the interrelationship between the rule of law and the three pillars of the United Nations (peace and security, development, and human rights)”,⁴ without emphasizing one at the expense of the other. In fulfilling its mandate concerning the progressive development and codification of international law, the Commission is conscious of current challenges for the rule of law.

9. In the course of the present session the Commission has continued to make its contribution to the rule of law, including by working on the topics “The protection of the atmosphere”, “Crimes against humanity”, “Identification of customary international law”, “Subsequent agreements and subsequent practice in relation to the interpretation of treaties”, “The protection of the environment in relation to armed conflicts”, “The immunity of state officials from foreign criminal jurisdiction”, “Provisional application of treaties” and “The Most-Favoured-Nation clause”. In addition, the Commission has appointed a Special Rapporteur for the topic “*Jus cogens*”.

10. The Commission notes that the General Assembly has invited Member States to comment in particular on “The role of multilateral treaty processes in promoting and advancing the rule of law”.⁵ The Commission wishes to recall the work of the Commission on different topics which, on the basis of proposals under articles 16 and 23 of its Statute, have become subject to multilateral treaty processes, such as the *Draft Articles on Jurisdictional Immunities of States and Their Property, 2001*, the *Draft Code of Crimes against the Peace and Security of Mankind, 1996*, the *Draft Statute for an International Criminal Court, 1994*, and the *Draft Articles on the Law of Non-Navigational Watercourses, 1994*. The Commission also draws attention to its recent work on different topics, including the

- Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001;
- Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, 2001;
- Draft Articles on Diplomatic Protection, 2006;
- Draft Articles on the Law of Transboundary Aquifers, 2008;
- Draft Articles on the Effects of Armed Conflicts on Treaties, 2011;
- Draft Articles on the Responsibility of International Organizations, 2011;
- Draft Articles on the Expulsion of Aliens, 2014.

³ Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, A/RES/67/1, 30 November 2012, para. 41.

⁴ Report of the Secretary-General on Measuring the effectiveness of the support provided by the United Nations system for the promotion of the rule of law in conflict and post-conflict situations, S/2013/341, 11 June 2013, para. 70.

⁵ UNGA 69/123 para 20.

Furthermore, the Commission recalls the Guide to Practice on Reservations to Treaties.

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

4. Consideration of paragraph 10 to 13 of General Assembly resolution 69/118 of 10 December 2014 on the Report of the International Law Commission on the work of its sixty-sixth session

12. The Commission took note of paragraphs 10 to 13 of General Assembly resolution 69/118, by the terms of which the Assembly welcomed the efforts of the Commission to improve its methods of work, and encouraged it to continue this practice; recalled that the seat of the Commission is at the United Nations Office at Geneva; noted that the Commission was considering the possibility of holding part of its future sessions in New York, underlined, to that purpose, the importance of the Commission taking into account estimated costs and relevant administrative, organizational and other factors, and called upon the Commission to deliberate thoroughly the feasibility of holding part of its sixty-eighth session in New York; and decided, without prejudice to the output of those deliberations, to revert to the consideration of the recommendation contained in paragraph 388 of the report of the Commission on the work of its sixty-third session during the seventieth session of the General Assembly.

13. The Commission recalled that, during its sixty-third session, in the context of the discussion of its relationship with the Sixth Committee, it had expressed the wish that consideration be given to the possibility of having one half session each quinquennium in New York so as to facilitate direct contact between the Commission and delegates of the Sixth Committee. The Commission further recalled that it had on previous occasions held sessions other than at its Headquarters. In particular, the Commission noted that, as part of the overall arrangements concerning the convening of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, it held the first part of its fiftieth session at its seat at the United Nations Office at Geneva, from 20 April to 12 June 1998, and the second part at United Nations Headquarters in New York, from 27 July to 14 August 1998.

14. The Commission considered the feasibility of holding part of its sixty-eighth session in New York based on information provided by the Secretariat regarding estimated costs and relevant administrative, organizational and other factors, including its anticipated workload in the final year of the present quinquennium. Having regard to all the factors at its disposal, the Commission came to the conclusion that it would not be feasible for it to hold part of its sixty-eighth session in New York without causing undue disruptions. The Commission nevertheless affirmed its wish that consideration be given to the possibility of having one half session in the next quinquennium in New York. Such a possibility ought to be anticipated in the planning of future sessions of the Commission for the next quinquennium. In that regard, the Commission noted that such convening, taking into account the estimated costs and relevant administrative, organizational and other factors, could be anticipated during the first segment of a session either during the first (2017) or second (2018) year of the next quinquennium. Based on the information made available to it, the Commission recommends that preparatory work and estimates proceed on the basis that the first segment of its seventieth session (2018) would be convened at the United Nations Headquarters in New York. Accordingly, the Commission requested the Secretariat to proceed to make the necessary arrangements for that purpose so as to facilitate the taking of the appropriate decision by the Commission at its sixty-eighth session in 2016.

5. Honoraria

15. The Commission 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, which has been expressed in the previous reports of the Commission.⁶ The Commission emphasizes that resolution 56/272 especially affects Special Rapporteurs, as it compromises support for their research work.

6. Documentation and publications

16. The Commission reiterated its recognition of the particular relevance and significant value to the work of the Commission of the legal publications prepared by the Secretariat.⁷ It recalled that the Codification Division had been able significantly to expedite the issuance of its publications through its highly successful desktop publishing initiative which greatly enhanced the timeliness and relevance of these publications to the Commission's work for more than a decade. The Commission reiterated its regret as regards the curtailment and possible discontinuation of this initiative due to lack of resources and that consequently that no new legal publications were distributed at its current session. The Commission reiterated its view that the continuation of this initiative was essential to ensure the timely issuance of these legal publications, in particular *The Work of the International Law Commission* in the various official languages. The Commission again 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 it with those publications.

17. The Commission reiterated its 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. The Commission noted with satisfaction that the experimental measures to streamline the processing of the Commission's Summary records introduced at the 2013 session had resulted in the more expeditious transmission of the provisional records to members of the Commission for timely correction, and prompt release. The Commission also welcomed the fact that the new working methods had led to the more rational use of resources and called on the Secretariat to continue its efforts to facilitate the preparation of the definitive records in all languages, without compromising their integrity.

18. The Commission expressed its gratitude to all Services involved in the processing of documents, both in Geneva and in New York, for their timely and efficient processing of the Commission's documents, often under narrow time constraints. It noted that such timely and efficient processing contributed to the smooth conduct of the Commission's work.

⁶ 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; *ibid.*, *Sixty-seventh Session, Supplement 10 (A/67/10)*, para. 280; *ibid.*, *Sixty-eighth Session, Supplement 10 (A/68/10)*, para. 181; and *Sixty-ninth Session, Supplement 10 (A/69/10)*, para. 281.

⁷ See *Official Records of the General Assembly, Sixty-second Session, Supplement No. 10 (A/62/10)*, paras. 387-395. See also *ibid.*, *Sixty-eighth Session, Supplement No. 10 (A/68/10)*, para. 185.

19. The Commission expressed its appreciation to the United Nations Office at Geneva Library, which assisted members of the Commission very efficiently and competently.

7. *Yearbook of the International Law Commission*

20. The Commission reiterated that the *Yearbook of the International Law Commission* was 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 Commission took note that the General Assembly, in its resolution 69/118, expressed its appreciation to governments that had made voluntary contributions to the Trust Fund on the backlog relating to the *Yearbook*, and encouraged further contributions to the Trust Fund.

21. The Commission recommends that the General Assembly, as in its resolution 69/118, *express its satisfaction* with the remarkable progress achieved in the last few years in catching up with the backlog of the *Yearbook* in all six languages, and welcome the efforts made by the Division of Conference Management, especially its Editing Section of the United Nations Office at Geneva in effectively implementing relevant resolutions of the General Assembly calling for the reduction of the backlog; and encourage the Division of Conference Management to continue providing all necessary support to the Editing Section in advancing work on the *Yearbook*.

8. Assistance of the Codification Division

22. The Commission expressed its appreciation for the valuable assistance of the Codification Division of the Secretariat in its substantive servicing of the Commission and, in particular, the ongoing assistance provided to Special Rapporteurs and the preparation of in-depth research studies pertaining to aspects of topics presently under consideration, as requested by the Commission.

9. Websites

23. The Commission expressed its deep appreciation to the Secretariat for the establishment of a new website for the Commission, and called on it to continue updating and managing the website.⁸ The Commission reiterated that the website and other websites maintained by the Codification Division⁹ constitute an invaluable resource for the Commission and for researchers of the 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 welcomed the fact that the website on the work of the Commission included information on the current status of the topics on the agenda of the Commission, as well as advance edited versions of the summary records of the Commission. The Commission also expressed its gratitude to the Secretariat for the successful completion of the digitization and posting on the website of the *Yearbooks* of the Commission in Russian.

10. United Nations Audiovisual Library of International Law

24. The Commission noted with appreciation the very great value of the United Nations Audiovisual Library of International Law in promoting a better knowledge of international law and the work of the United Nations in this field, including the International Law Commission.

⁸ Located at <http://legal.un.org/ilc>.

⁹ Generally accessible through: <http://www.un.org/law/lindex.htm>.

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

25. The Commission recommends that the sixty-eighth session of the Commission be held in Geneva from 2 May to 10 June and 4 July to 12 August 2016.
