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REPORT OF THE PLANNING GROUP

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

Introduction

1. At its 2253rd meeting, the Commission noted that in paragraph 6 of resolution 46/54 of 9 December 1991, the General Assembly had requested it

"(a) To consider thoroughly:

- (i) The planning of its activities and programme for the term of office of its members bearing in mind the desirability of achieving as much progress as possible in the preparation of draft articles on specific topics;
- (ii) Its methods of work in all their aspects, including the possibility of dividing its annual session into two parts, bearing in mind that the staggering of the consideration of some topics might contribute, inter alia, to a more effective consideration of its report in the Sixth Committee;

(b) To continue to pay special attention to indicating in its annual report, for each topic, those specific issues on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest for the continuation of its work."

2. The Commission agreed that this request should be taken up under item 7 of its agenda entitled "Programme, procedures and working methods of the Commission, and its documentation", and that this agenda item should be considered in the Planning Group of the Enlarged Bureau.

3. The Planning Group of the Enlarged Bureau was composed as follows: Mr. Carlos Calero Rodrigues (Chairman), Mr. Awn Al-Khasawneh, Mr. Gaetano Arangio-Ruiz, Mr. Julio Barboza, Mr. Mohamed Bennouna, Mr. Mehmet Güney, Mr. Kamil Idris, Mr. Andreas Jacovides, Mr. Peter Kabatsi, Mr. Mochtar Kusuma-Atmadja, Mr. Vaclav Mikulka, Mr. Guillaume Pambou-Tchivounda, Mr. Alain Pellet, Mr. Penmaraju Sreenivasa Rao, Mr. Patrick Lipton Robinson, Mr. Doudou Thiam, Mr. Edmundo Vargas Carreño, Mr. Chusei Yamada.

4. The Planning Group was open-ended and other members attended its deliberations.

5. The Planning Group held 11 meetings. It had before it, in addition to the section of the topical summary of the discussion held in the Sixth Committee of the General Assembly during its forty-sixth session entitled "Programme and methods of work of the Commission" (A/CN.4/L.469, paras. 427 to 446), a number of proposals submitted by members of the Commission.

(1) Planning of activities

(a) The topic "Relations between States and international organizations: (second part of the topic)"

6. The Planning Group established a Working Group to review the progress so far achieved on the topic and to make a recommendation as to whether the Commission should continue with it and, in the affirmative, in what direction.

7. The Working Group held three meetings. The following members attended its deliberations: Mr. Ahmed Mahiou (Chairman), Mr. John De Saram, Mr. Mehmet Güney, Mr. Kamil Idris, Mr. Vaclav Mikulka, Mr. Robert Rosenstock and Mr. Penmaraju Sreenivasa Rao.

8. The Working Group submitted its report to the Planning Group on 7 July 1992.

9. The Planning Group noted that the discussion of the first part of the topic, dealing with the status, privileges and immunities of representatives of States to international organizations had resulted in draft articles which had formed the basis of the 1975 Convention of the Representation of States in their Relations with International Organizations of a Universal Character. States had been slow to ratify the Convention or adhere to it and doubts had therefore arisen as to the advisability of continuing the work undertaken in 1976 on the second part of the topic, dealing with the status, privileges and immunities of international organizations and their personnel, a matter which seemed to a large extent covered by existing agreements.

10. The passage of time had failed to bring any sign of increased acceptance of the Convention by Member States and the Commission had not given very

active consideration to the topic. Eight reports had been presented by two successive Special Rapporteurs and all of the 22 articles contained therein had been referred to the Drafting Committee, but the Committee had not taken any action on them. Neither in the Commission nor in the Sixth Committee the view was expressed that the topic should be more actively considered.

11. Under the circumstances and bearing in mind that, in the next few years, the Commission and the Drafting Committee will be fully occupied with the finalization of draft articles on at least three topics and the preparation of articles on other topics, the Planning Group, accepting the recommendation of the Working Group that the topic not be pursued further (for the time being), considered it wise to put aside for the time being the consideration of a topic which does not seem to respond to a pressing need of States or international organizations. Therefore, the Planning Group agreed to recommend to the Commission that it should decide - subject to the approval of the General Assembly - not to pursue further, during the present term of office of its members, the consideration of the topic.

12. Subject to the approval by the Commission and by the General Assembly of the recommendation reflected in paragraph 11 above concerning the topic "Relations between States and International Organizations (second part of the topic)", the current programme of work consists of the following topics: State responsibility; Draft Code of crimes against the peace and security of mankind; The law of the non-navigational uses of international watercourses; and International liability for injurious consequences arising out of acts not prohibited by international law.

(b) Planning of the activities for the quinquennium

13. In accordance with paragraph 6 (a) (i) of General Assembly resolution 46/54, the Planning Group considered extensively the planning of the Commission's activities for the term of office of its members. In doing so, it bore in mind, as requested by this resolution, the desirability of achieving as much progress as possible in the preparation of draft articles on specific topics.

14. The Planning Group agreed that, while the adoption of any rigid schedule would be impracticable, the use of goals in planning the Commission's activities would be useful.

15. Taking into account the progress of work achieved on the topics in the current programme as well as the state of readiness for making further progress, and bearing in mind the different degrees of complexity of the various topics, the Planning Group decided to recommend that the Commission should endeavour to complete by 1994 the second reading of the draft articles on the law of the non-navigational uses of international watercourses, and by 1996 the second reading of the draft articles on the Code of Crimes against the peace and security of mankind and the first reading of the draft articles on State responsibility. The Planning Group also agreed to recommend that the Commission should express the intention to make substantial progress on the

topic "International liability for injurious consequences arising out of acts not prohibited by international law" and, subject to the General Assembly's approval, to undertake work on one or more new topics.

16. A tentative schedule of the work to be undertaken in each session of the quinquennium was prepared, for the internal use of the Commission. It must be emphasized that the schedule is of a tentative character and should be revised every year, in the light of the results achieved in its implementation. The schedule appears as an annex to the present report.

(2) Long-term programme of work

17. The Planning Group established a Working Group to consider a limited number of topics to be recommended to the General Assembly for inclusion in the programme of work of the Commission.

18. The Working Group held three meetings. The following members attended its deliberations: Mr. Derek Bowett (Chairman), Mr. Awn Al-Khasawneh, Mr. Mohamed Bennouna, Mr. Peter Kabatsi, Mr. Mochtar Kusuma Atmadja, Mr. Guillaume Pambou-Tchivounda, Mr. Alain Pellet, Mr. Jiuyong Shi, Mr. Alberto Szekely, Mr. Vladlen Vereshchetin and Mr. Chusei Yamada.

19. The Working Group submitted its report to the Planning Group on 6 July 1992.

20. The Planning Group noted that the Working Group had not thought exclusively in terms of topics suitable for codification but had also contemplated topics which could be the subject of a report or study and had furthermore identified some topics in the context of a possible contribution of the Commission to the Decade of International Law.

21. On that basis, the Working Group had made the selection reflected below.

Short list of topics for the purposes set out in paragraph 4 above

1. Ownership and protection of wrecks beyond the limits of national maritime jurisdiction.
2. Right and duties of States for the protection of the human environment.
3. Global commons.
4. The law and practice relating to reservations to treaties.
5. State succession in respect of membership to international organizations.
6. State succession and its impact on the nationality of natural and legal persons.

7. The legal conditions of capital investment and agreements pertaining thereto.

8. Jus cogens.

Reserve topics

1. The law of (confined) international groundwaters.

2. Legal mechanisms necessary for the registration of sales or other transfers of arms, weapons and military equipment between States.

3. Extraterritorial application of national legislation.

4. The law concerning international migrations.

22. The Planning Group also noted that the Working Group had identified three topics which might be suitable as contributions by the Commission to the United Nations Decade of International Law, namely "Effective mechanisms to promote universal (wider) participation in international conventions", "The changing structure of the international community and its consequences for the codification and progressive development of international law" and "Modern constitutional development and the practice of States pertaining to the inter-relationship between international and national law", and was furthermore of the view that some aspects of the topic "Extradition and judicial assistance" would have to be dealt with under the question concerning the possible establishment of an international criminal court.

23. With respect to the Working Group's conclusion that the topic "The law and practice relating to reservations to treaties" could be appropriate for a speedy incorporation into the Commission's agenda and might form the subject of an instrument of codification, the Planning Group, while not disagreeing with that conclusion, decided not to make any recommendation at this stage and to revert to the matter after the prospects offered by other topics have been assessed.

24. The Planning Group endorsed the procedure recommended by the Working Group for the further discharge of the Group's mandate. Under that procedure, the Commission, with Mr. Derek Bowett as coordinator, would invite various members of the Commission to prepare a short outline, or explanatory summary of each topic included in the above-mentioned list, preferably of four to six pages and of no more than 10 pages, to be completed within the next four months. The outline would indicate

(a) the major issues raised by the topic;

(b) any applicable treaties, general principles or relevant national legislation or judicial decisions;

(c) existing doctrine;

(d) the advantages and disadvantages of preparing a report, a study or a draft convention, if it is decided to proceed with the topic.

25. The Commission would request the Secretariat (i) to circulate the outlines to all members of the Working Group in November/December, so that comments could be received by January 1993 and (ii) to circulate the revised outlines to the members of the Working Group prior to the next session. The outlines would be discussed within the Group in May 1993 with a view to reporting to the Planning Group in June 1993.

26. The Planning Group decided to recommend that the Commission should

(1) endorse the above procedure;

(2) inform the Assembly that serious consideration was given at the present session to the question of the long-term programme of work and that efforts will be pursued next year with a view to identifying topics which might be recommended to the Assembly for inclusion in the Commission's programme of work.

(3) Drafting Committee

27. The Planning Group agreed to recommend to the Commission that it should adopt the following guidelines concerning the composition and working methods of the Drafting Committee:

(1) The Drafting Committee, which shall continue to be a single body, under one Chairman, may have a different membership for its work on each topic.

(2) The Drafting Committee should, as a general rule, concentrate its work on two to three topics at any given session of the Commission, in order to attain greater efficiency.

(3) At the beginning of each session of the Commission, each member may indicate for which topics he would like to serve on the Drafting Committee. The Chairman of the Committee, in consultation with the Bureau of the Commission, shall then recommend the membership for each topic.

(4) The membership for each topic shall be limited to no more than 14 members and shall ensure as far as possible representation of members familiar with the different working languages.

(5) Members of the Commission who are not members of the Drafting Committee for a given topic may attend the meetings and may occasionally be authorized to speak, but restraint is recommended.

(6) During the sessions of the Commission, the Drafting Committee shall be given as much time as needed for the timely performance of the tasks entrusted to it.

(7) When the workload of the Commission indicates the need for a concentrated drafting effort, the Drafting Committee may be given additional time for that purpose, preferably at the beginning of a session.

(8) The Drafting Committee shall present to the Commission a report as early as possible after the conclusion of its consideration of each topic.

28. The Planning Group further agreed to recommend to the Commission that the first two weeks of the forty-fifth session be entirely devoted to the work of the Drafting Committee on articles of the topic "State responsibility". Arrangements for the implementation of that decision should be made during the present session.

(4) Report of the Commission to the General Assembly

29. The Planning Group agreed to recommend to the Commission that it should adopt the following guidelines concerning the preparation and content of its report:

(1) The General Rapporteur should play an active part in the preparation of the Commission's report, particularly in seeking coordination and consistency in approach and style between the different parts, which may be drafted by the Special Rapporteurs and the Secretariat.

(2) He should have particularly in mind that efforts should continue in order to avoid an excessively long report, without prejudice to the inclusion of the essential information needed by the Sixth Committee and by readers interested in the work of the Commission.

(3) The report should include a chapter providing, in summary form, a general view of the work of the session to which it refers, including a list of questions on which the Commission would find the views of the Sixth Committee particularly helpful.

(4) Parts of the report indicating previous work on each topic should continue to be as brief as possible.

(5) The summary of debates should be more compact, giving emphasis to trends of opinions, rather than to a detailed recording of individual views. However, reservations expressed by members on decisions taken by the Commission should be indicated. Questions on which the Commission would particularly appreciate comments or views of the Sixth Committee should, wherever possible, be identified.

(6) When only fragmentary results have been achieved in the consideration of a topic or an issue, and such results can only be properly assessed by the Sixth Committee after further elements have been added, the information contained in the report should be very summary, with the indication that the matter will be more fully presented in a future report.

(5) Contribution of the Commission to the Decade of International Law

30. The Planning Group considered the question of the Commission's contribution to the Decade of International Law.

31. One suggestion was to prepare a publication, containing a series of articles contributed by members of the Commission, which would aim at presenting an overview of the main problems of international law on the eve of the twenty-first century. The Planning Group agreed that the Commission should accept in principle this suggestion and authorize that preparatory work on this project be immediately undertaken. Before the beginning of the forty-fifth session, a group of members, to be coordinated by Mr. Alain Pellet, should endeavour to draw up a tentative outline of the contents of the suggested publication and at the beginning of that session a Working Group should be established to finalize the outline and to submit a report to the Commission which will take a decision on the project.

32. The same Working Group would also consider other suggestions which have been made or may be made for other possible contributions of the Commission to the Decade, including the holding of symposia or seminars and the possibility of a conference on international Law.

(6) Possibility of dividing the Commission's annual session in two parts

33. The Planning Group considered thoroughly this question and presents below its conclusions, in the form of a text which it recommends to the approval of the Commission and for inclusion in the Commission's Report to the General Assembly:

"Resuming discussions already held in previous sessions, and complying with the wishes expressed by the General Assembly in resolution 46/54, operative paragraph 6 (a) (ii), the Commission considered the possibility of dividing its annual session in two parts.

The administrative and financial implications of such a division were examined on the basis of data contained in a preliminary study prepared by the Secretariat, at the request of the Commission.

The Commission came to the conclusion that there would be some administrative and financial problems in the division of the session, but that such problems, although serious, would not be unsurmountable.

The Commission then considered what should be the main element for a decision: the advantages that might result for the effectiveness of its work if the division was adopted.

Arguments were presented aimed at demonstrating that the productivity of the Commission would be improved under a régime of two annual meetings. Arguments against the idea were also analysed.

The Commission came to the conclusion that the suggestion of dividing the annual session into two parts had not received enough support at this time, and that improvements in the effectiveness of the work of the Commission should continue, for the time being, to be sought under the present arrangements."

	PLENARY	DRAFTING COMMITTEE
1992	Code/Court (10th report - WG) Responsibility (3rd/4th reports) (Countermeasures) Liability (8th report) (Prevention) (WG)	Responsibility: art. 6/10 Liability: art. 1/10
1993	Liability (Prevention) Responsibility Code (Report for Second Reading) (Court) Watercourses (1st report) New topics (Question of)	*Responsibility (Countermeasures)* Two weeks Liability (Prevention) Watercourses: art. 1/19 (Second Reading) Code: beginning of second reading
1994	Responsibility Watercourses (2nd report) Code: Court New topics	*Watercourses: art. 20/32 - Two weeks <u>conclusion</u> Responsibility Liability Code: second reading
1995	Responsibility Liability Code: Court New topics	Code: second reading Responsibility Liability
1996	Code: Court Liability New topics	*Code: second reading - <u>conclusion</u> (two weeks) Responsibility - <u>conclusion of the first reading</u> Liability

