

Chapter XII

OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION

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

333. At its 2971st meeting, on 4 June 2008, the Commission established a Planning Group for the current session.

334. At its 2997th meeting, on 8 August 2008, the Commission took note of the proposed strategic framework for the period 2010–2011, concerning Programme 6: Legal Affairs, subprogramme 3 (Progressive development and codification of international law).

335. The Planning Group held five meetings. It had before it section G of the topical summary, prepared by the Secretariat, 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” (A/CN.4/588) 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

336. The Commission 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; Ms. Micheline Calmy-Rey, Federal Counsellor of the Swiss Confederation; Mr. Nicolas Michel, Under-Secretary-General, United Nations Legal Counsel; and the Chairperson of the Commission, Mr. Edmundo Vargas Carreño. Mr. Srgian Kerim, President of the General Assembly of the United Nations, delivered a video message, while Judge Rosalyn Higgins, President of the International Court of Justice, delivered a keynote address.⁶³⁸

337. 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, and focused on practical matters concerning the Commission and its cooperation with Member States in the progressive development of international law and its codification.⁶³⁹ The discussions proceeded on the basis of the Chatham House rules and no record was kept of the meeting.

338. The Commission deeply appreciates that many legal advisers, judges of the ICJ, former members of the Commission and other international law experts joined the Commission in the celebrations. The Commission commends the Secretariat, together with the group of members of the Commission entrusted with the preparatory arrangements,⁶⁴⁰ for the organization of the successful commemorative event.

339. The Commission 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.

340. The Commission 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 dedicated to the

⁶³⁹ The general introduction entitled “What role for the International Law Commission in the 21st century?” was given by Mr. Georges Abi-Saab. 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. Beltinger (United States of America). 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 Ms. A. E. Villalta (El Salvador). The fourth panel on “Opening up the Commission: sharing experiences with other bodies?” was led by Ms. P. Escameia 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?” and was led by Mr. J. Dugard and Ms. P. O’Brien (Ireland). Ms. Brigitte Stern offered general conclusions for the meeting.

⁶⁴⁰ 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 Chairperson of the Commission at the fifty-ninth session, Mr. I. Brownlie, and the Chairperson of the Planning Group at the fifty-ninth session, Mr. E. Vargas Carreño, served *ex officio*.

⁶³⁸ The keynote address of the President of the International Court of Justice and the statements of the Director-General, the United Nations Legal Counsel and the Chairperson of the Commission are available at the Commission’s website: www.un.org/law/ilc/.

work of the Commission.⁶⁴¹ The Commission 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

341. 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. The Commission is aware that the agenda item of the General Assembly on the rule of law at the national and the international levels covers a wider range of topics than those which are currently on its own agenda. The Commission is mindful of such other aspects of the General Assembly's agenda item.

342. In keeping with the mandate set out in Article 13, paragraph 1 (a), of the Charter of the United Nations, the Commission continues to promote the progressive development and codification of international law. In its current work, the Commission has sought to comply with requests from the General Assembly and is preparing draft treaty texts, guidelines and other instruments on a significant range of legal issues. For each of the topics on the current work programme,⁶⁴² the Commission has adopted a systematic approach to the identification of the sources of the law, paying particular attention to treaties, State practice, *opinio juris*, general principles and judicial decisions of both national and international tribunals. Thus, in its current work, the Commission promotes the rule of law in international relations by applying generally accepted methods for the identification of the law: these methods give prominence to State actions and perceptions, while taking into account the practice of international organizations and, in appropriate instances, the increasing role of NGOs and individuals in world affairs.

343. In promoting the rule of law in international relations, the Commission is committed to the premise that States, regardless of considerations such as size, power and prominence, are all subject to binding rules of law.

Generally, the Commission formulates draft rules that are designed to be universally applicable, and promotes the principle that, where disputes arise as to the interpretation or application of rules, these should be resolved by means of peaceful settlement. But although the Commission gives primacy to law in the conduct of international affairs, and seeks to formulate rules that give effect to this core principle of the rule of law, this approach does not always preclude a scope for reference to policy considerations on the part of international actors and the international community. In some instances, rules of law may themselves suggest or require the application of discrete policies, and in others the relative paucity of practice and other indicia of existing law encourage the Commission to make proposals *de lege ferenda*. In all instances, however, the Commission presupposes that the rule of law requires States, international organizations and other international entities to conduct their affairs with full deference to the law. This point is exemplified by the work of the Commission on the effects of armed conflict on treaties: implicit in the approach taken by the Commission here is the recognition that, even in the case of armed conflict, there are binding rules of law applicable to the behaviour of States.

344. At the international level, the rule of law also requires sensitivity to the content of particular rules. For matters on its current agenda, the Commission has been especially careful to ensure that the proposed rules reflect a balanced reconciliation of divergent State and non-State interests, bearing in mind established precedents. Thus, for example, with respect to rules being developed on transboundary aquifers, different perspectives are carefully weighed against each other in light of relevant technical and scientific information and broadly accepted principles of law. The importance of balancing different interests is also clearly reflected in the current programme of work in topics pertaining to the responsibility of international organizations, the obligation to extradite or prosecute, and reservations to treaties, among others. In essence, draft rules that balance different interests promote the rule of law by encouraging order, clarity and consistency in international relations. For some matters on its agenda, sensitivity to the content of rules may also provide the Commission with the opportunity to take directly into account human rights considerations, such as the dignity and security of the individual and fairness to individuals, in its formulation of draft rules. In this regard, topics such as the expulsion of aliens, the immunity of State officials from foreign criminal jurisdiction and the protection of persons in the event of disasters require the careful assessment of generally accepted human rights standards in light of well-established principles of State sovereignty and non-intervention. Where the Commission promotes rules that uphold concepts such as fairness, security and justice for individuals without limiting the proper authority of the State, it assists in the development of the rule of law.

345. As one of a number of United Nations bodies working directly on legal issues, the Commission continues to cooperate with other international agencies in promoting the rule of law. The Commission's main role lies in the formulation of rules, an undertaking which it carries out in close collaboration with States in the

⁶⁴¹ 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*; 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; and the colloquy "Peace through law: the role of the International Law Commission" in Munich, Germany, on 11 July 2008, on the occasion of the sixtieth anniversary of the Commission, to which all members of the Commission were invited.

⁶⁴² For the topics of the current programme of work of the Commission see chapter I, paragraph 11.

General Assembly. However, the nature of the functions performed by the Commission does not lend itself to the kind of coordination at the Secretariat level described in the Report of the Secretary-General “Uniting our strengths: enhancing United Nations support for the rule of law”.⁶⁴³ The Commission is also part of what has been characterized as a symbiotic relationship with the International Court of Justice, the highest judicial organ of the United Nations. Time and again, the Court has relied on treaties as binding instruments in themselves and other documents prepared by the Commission as cogent evidence of customary international law. Conversely, the Commission attaches the highest authority to the jurisprudence of the Court; for instance, in its current work on issues such as reservations to treaties and the responsibility of international organizations, the Commission has in many cases formulated proposed rules with direct reference to Court decisions or on the basis of arguments by analogy from pronouncements of the Court. The relationship between the Court and the Commission helps to promote the rule of law not only through the consistent and transparent application of clear rules, but also by demonstrating that different law-determining agencies adopt the same approach to the identification of rules of international law. Regional and national courts, too, have sometimes been prepared to apply draft rules of the Commission as evidence of international law. Thus, for example, various courts in recent years have expressly referred to propositions set out in the Commission’s draft rules on the responsibility of international organizations. Such reference gives enhanced status to the relevant draft rules, and underlines the practical nature of the current contribution made by the Commission to the rule of law.

346. Overall, therefore, the Commission remains committed to the rule of law in all of its activities. Indeed, it may be said that the rule of law constitutes the essence of the Commission, for its basic mission is to guide the development and formulation of the law. The Commission adopts a systematic approach to its work, and proposes practical solutions to international issues. In this way, it continues to build on a strong tradition that is now commemorating its sixtieth anniversary, a tradition that includes the preparation for major treaties such as the Vienna Convention on Diplomatic Relations and the Vienna Convention on the Law of Treaties. In drafting general rules based on State practice and relevant activities of other international persons, the Commission takes advantage of the fact that its composition requires membership from the main legal systems of the world and from all regional groupings recognized within the United Nations system. It remains committed to the idea that all States, regardless of their circumstances, are subject to the primacy of law. It is sensitive to the fact that proposed rules which disregard divergent State and non-State interests will be of limited value. And, finally, by cooperating with other bodies that help to determine and apply the law, the Commission assists in ensuring that, at a time when tendencies towards fragmentation in the law are quite pronounced, some rules of law are applied uniformly by a cross section of States and entities.

3. RELATIONS BETWEEN THE COMMISSION AND THE SIXTH COMMITTEE

347. The Commission 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 Commission wishes to reiterate that its plenary meetings 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).⁶⁴⁴

348. The Commission 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.

349. The Commission is also aware that the informal meeting of Legal Advisers which is convened during the Sixth Committee’s consideration of the 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 the possibility of the informal meeting of Legal Advisers identifying 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.

350. 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 THE LONG-TERM PROGRAMME OF WORK

351. 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 Chairpersonship of Mr. Enrique 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.⁶⁴⁵ 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. Georg Nolte and “The most-favoured-nation clause” on the basis of the report of the 2007 Working Group chaired by Mr. Donald McRae

⁶⁴⁴ Available from <http://documents.un.org>.

⁶⁴⁵ 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.

⁶⁴³ A/61/636-S/2006/980, paras. 48–50.

on the subject.⁶⁴⁶ 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.⁶⁴⁷ The syllabuses on the two topics are annexed to the present report. The inclusion of the two topics in the current programme of work of the Commission was proposed and the establishment, at the sixty-first session of the Commission, of study groups on the two topics was recommended.

352. The Commission endorsed the recommendation for the inclusion of the two topics on the long-term programme of work.

5. INCLUSION OF NEW TOPICS ON THE PROGRAMME OF WORK OF THE COMMISSION AND ESTABLISHMENT OF STUDY GROUPS

353. At its 2997th meeting, on 8 August 2008, the Commission decided to include in its programme of work the topic “Treaties over time” and to establish a study group therefor at its sixty-first session.

354. At the same meeting, the Commission decided to include in its programme of work the topic “The most-favoured-nation clause” and to establish a study group therefor at its sixty-first session.

6. MEETING WITH LEGAL ADVISERS OF SPECIALIZED AGENCIES

355. The Commission 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, paragraph 1, of its statute, the Commission 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.

7. MEETING WITH MEMBERS OF THE APPELLATE BODY OF THE WORLD TRADE ORGANIZATION

356. In accordance with article 26, paragraph 1, of its Statute, on 27 May 2008 the Commission held a joint meeting with present and former members of the Appellate Body of the World Trade Organization.⁶⁴⁸ During the meeting, members of the Commission and the present and former members of the Appellate Body held a useful

exchange of views on matters of mutual interest; in particular, discussions were held on alternative approaches to treaty interpretation: application of articles 31–32 of the 1969 Vienna Convention to ordinary treaties and constitutive instruments; procedures and guidelines for application of most-favoured-nation clauses; and the relationship between international and municipal law: the standard of review applied by international bodies reviewing domestic acts.

8. FINANCIAL MATTERS

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

357. The Commission notes that, with a view to strengthening its relationship with the General Assembly, it 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, take note of observations made and begin preparing their reports at an earlier stage.⁶⁴⁹ It has also considered that presence of Special Rapporteurs facilitates exchanges of views and consultations between them and representatives of Governments.⁶⁵⁰ In accordance with paragraph 5 of General Assembly resolution 44/35 of 4 December 1989, 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 for which the Special Rapporteur is responsible and requested the Secretary-General to make the necessary arrangements within the existing resources. The Commission 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*

358. The Commission 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, which were expressed in its previous reports.⁶⁵¹ The Commission 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 Commission urges the General Assembly to reconsider this matter, with a view to restoring, at this stage, the honoraria for Special Rapporteurs.

⁶⁴⁶ A/CN.4/L.719 (see footnote 8 above).

⁶⁴⁷ *Yearbook ... 2000*, vol. II (Part Two), p. 131, para. 728. See also *Yearbook ... 1997*, vol. II (Part Two), pp. 71–72, para. 238.

⁶⁴⁸ The present and former members attending were: Luiz Baptista (Brazil, current Chairperson of the Appellate Body), Georges Abi-Saab (outgoing Appellate Body member, Egypt), A. V. Ganesan (outgoing Appellate Body member, India), Julio Lacarte (former Appellate Body member, Uruguay), Mitsuo Matsushita (former Appellate Body member, Japan), Yasuhei Taniguchi (outgoing Appellate Body member, Japan), Giorgio Sacerdoti (Appellate Body member, Italy), David Unterhalter (Appellate Body member, South Africa), Lilia Bautista (Appellate Body member, the Philippines), Jennifer Hillman (Appellate Body member, United States), Yuejiao Zhang (incoming Appellate Body member, China) and Shotaro Oshima (incoming Appellate Body member, Japan).

⁶⁴⁹ *Yearbook ... 1988*, vol. II (Part Two), p. 112, para. 582.

⁶⁵⁰ *Yearbook ... 1989*, vol. II (Part Two), p. 138, para. 742.

⁶⁵¹ See *Yearbook ... 2002*, vol. II (Part Two), pp. 102–103, paras. 525–531; *Yearbook ... 2003*, vol. II (Part Two), p. 101, para. 447; *Yearbook ... 2004*, vol. II (Part Two), pp. 120–121, para. 369; *Yearbook ... 2005*, vol. II (Part Two), p. 92, para. 501; *Yearbook ... 2006*, vol. II (Part Two), p. 187, para. 269; and *Yearbook ... 2007*, vol. II (Part Two), p. 100, para. 379.

9. DOCUMENTATION AND PUBLICATIONS

(a) *Processing and issuance of reports of Special Rapporteurs*

359. The Commission 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 Commission also wishes to stress that it 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.⁶⁵²

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

360. The Commission notes with appreciation that, pursuant to paragraph 21 of General Assembly resolution 62/66 of 6 December 2007, 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*.⁶⁵³ While reiterating the importance of ensuring that the necessary budgetary resources are allocated for addressing the backlog under the relevant programme in the regular budget, the Commission appeals, in accordance with the terms of the trust fund, to Member States, NGOs, 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*

361. 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 the preparation of research projects, by providing legal materials and their analysis. In particular, the Commission expressed its appreciation to the Secretariat for its preparation of two excellent memorandums 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).

⁶⁵² 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. 123–124. See also General Assembly resolution 32/151 of 19 December 1977, para. 10, and resolution 37/111 of 16 December 1982, para. 5, as well as subsequent resolutions on the annual reports of the Commission to the General Assembly.

⁶⁵³ As at 31 July 2008, the backlog for the period 1994–2001 was as follows: volume II (Part One) of the *Yearbook* in Arabic has not been issued since 1996. No volume has been issued in Chinese since 1994. Except for 1997, volume II (Part One) in English has not been issued since 1996. Volume II (Part One) in French has not been issued since 1998. Volume II (Part One) has not been issued in Russian since 1998, except in 2001. Volume II (Part One) has not been issued in Spanish since 1996; volume II (Part Two) in Spanish for 2001 has also not been issued. From 2002 to the present, no volume has been issued in any of the six official languages.

362. The Commission also 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.⁶⁵⁴ 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.

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

363. The Commission 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

364. The Commission was represented by Mr. A. Rohan Perera at the forty-seventh session of the Asian–African Legal Consultative Organization (AALCO), held in New Delhi from 30 June to 4 July 2008.

365. At its 2982nd meeting, on 22 July 2008, Judge Rosalyn Higgins, President of the International Court of Justice, addressed the Commission and informed it of the Court's recent activities and of the cases currently before it,⁶⁵⁵ drawing special attention to aspects that have a particular relevance to the work of the Commission. An exchange of views followed.

366. The Inter-American Juridical Committee was represented at the present session of the Commission by Mr. Antonio Fidel Pérez, who addressed the Commission at its 2978th meeting, on 15 July 2008.⁶⁵⁶ He focused on the current activities of the Committee in different aspects of private and public international law. An exchange of views followed.

367. The European Committee on Legal Cooperation and the Council of Europe Committee of Legal Advisers on Public International Law (CAHDI) were represented at the present session of the Commission by the Chairperson of CAHDI, Mr. Michael Wood, and the Director of Legal Advice and Public International Law, Mr. Manuel Lezertua, who addressed the Commission at its 2985th meeting, on 25 July 2008.⁶⁵⁷ They focused on the current activities of CAHDI on a variety of legal matters. An exchange of views followed.

⁶⁵⁴ Located at www.un.org/law/ilc/.

⁶⁵⁵ This statement is recorded in the summary record of that meeting and is also placed on the website on the work of the Commission: www.un.org/law/ilc/.

⁶⁵⁶ This statement is recorded in the summary record of that meeting.

⁶⁵⁷ *Idem*.

368. The Asian–African Legal Consultative Organization was represented by Mr. Narinder Singh, President of AALCO at its forty-seventh session, who addressed the Commission at its 2988th meeting, on 31 July 2008.⁶⁵⁸ He briefed the Commission on the outcome of work of AALCO at its forty-seventh session held in New Delhi.

369. The International Tribunal for the Law of the Sea was represented at the present session of the Commission by the President of the Tribunal, Judge Rüdiger Wolfrum, who addressed the Commission at its 2988th meeting, on 31 July 2008.⁶⁵⁹ An exchange of views followed.

370. On 24 July 2008, an informal exchange of views was held between members of the Commission and the International Committee of the Red Cross on topics of mutual interest, such as responsibility of international organizations, the definition of armed conflict, the Convention on Cluster Munitions and rules pertaining to private security firms.

371. In order to ensure a better appreciation of each other's activities, the Commission would explore possibilities for enhancing the cooperation of the Commission with other bodies by making the meetings more focused and issues oriented, paying particular attention to the relationship between the work of the Commission and of the body concerned.

D. Casual vacancy

372. On 8 August 2008, the Commission elected Mr. Michael Wood (United Kingdom of Great Britain and Northern Ireland) to fill the casual vacancy caused by the resignation of Mr. Ian Brownlie.⁶⁶⁰

E. Representation at the sixty-third session of the General Assembly

373. The Commission decided that it should be represented at the sixty-third session of the General Assembly by its Chairperson, Mr. Edmundo Vargas Carreño.

374. At its 2997th meeting, on 8 August 2008, the Commission requested Mr. Giorgio Gaja, Special Rapporteur on the topic of "Responsibility of international organizations", to attend the sixty-third session of the General Assembly under the terms of paragraph 5 of Assembly resolution 44/35 of 4 December 1989.⁶⁶¹

F. International Law Seminar

375. Pursuant to General Assembly resolution 62/66 of 6 December 2007, the forty-fourth session of the International Law Seminar was held at the Palais des Nations from

7 to 25 July 2008, during the present session of the Commission. The Seminar is intended for advanced students specializing in international law and for young professors or government officials pursuing an academic or diplomatic career or in posts in the civil service in their country.

376. Twenty-seven participants of different nationalities, from all the regions of the world, were able to take part in the session.⁶⁶² The participants in the Seminar observed plenary meetings of the Commission, attended specially arranged lectures and participated in working groups on specific topics.

377. The Seminar was opened by Mr. Edmundo Vargas Carreño, Chairperson of the Commission. Mr. Ulrich von Blumenthal, Senior Legal Adviser of the United Nations Office at Geneva, was responsible for the administration, organization and conduct of the Seminar, assisted by Mr. Vittorio Mainetti, Legal Consultant at the United Nations Office at Geneva.

378. The following lectures were given by members of the Commission: Mr. Giorgio Gaja: "Responsibility of international organizations"; Mr. Chusei Yamada: "Codification of the law of shared natural resources"; Mr. Enrique Candioti: "Future topics for the International Law Commission"; Mr. Christopher John Robert Dugard: "The outcomes of the Commission's work"; Mr. Zdzisław Galicki: "The obligation to extradite or prosecute (*aut dedere aut judicare*)"; Mr. Lucius Caflisch: "The legal regime of maritime wrecks"; Ms. Marie Jacobsson: "The legal regime of historic wrecks and of maritime graves"; Mr. A. Rohan Perera: "Towards a comprehensive convention on terrorism"; Mr. Donald McRae: "The MFN Clause"; Mr. Georg Nolte: "Cultural diversity in international law"; Judge Bruno Simma of the International Court of Justice and former member of the Commission, addressed the participants of the Seminar on: "ILC and ICJ: a symbiotic relationship".

379. Lectures were also given by Mr. Vittorio Mainetti, Assistant to the Director of the International Law Seminar: "Introduction to the work of the International Law Commission"; Mr. Daniel Müller, Assistant to Special Rapporteur Mr. Alain Pellet: "Reservations to treaties"; and Ms. Jelena Pejić, Legal Adviser of the International Committee of the Red Cross: "Current challenges to international humanitarian law".

⁶⁶² The following persons participated in the forty-fourth session of the International Law Seminar: Ms. Adineh Abghari (Islamic Republic of Iran), Ms. Dace Apine (Latvia), Ms. Stacie-Anne Marie Brown (Jamaica), Ms. Lalii Chin (Palau), Ms. Iryna Chyzheuskaya (Belarus), Mr. Juan Andrés Fuentes Véliz (Peru), Mr. Charlie Garnjana-Goonchorn (Thailand), Ms. Ruwanthika Gunaratne (Sri Lanka), Ms. Izevbuwa Ikimiukor (Nigeria), Ms. Ivana Jelić (Montenegro), Mr. Klaus Keller (Germany), Mr. Blaise Koïvogui (Guinea), Mr. Paavo Kotiaho (Finland), Mr. Toufik Koudri (Algeria), Ms. Siami Leabo (Côte d'Ivoire), Ms. Helyati Mahmud Saedon (Brunei Darussalam), Ms. Rudo Makunike (Zimbabwe), Mr. Cláudio Mate (Mozambique), Mr. Thang Nguyen Dang (Viet Nam), Ms. Jeanette Sautner (Canada), Ms. Sabrina Urbinati (Italy), Mr. Gustavo Velasquez (Ecuador), Mr. Leandro Vieira Silva (Brazil), Mr. Andres Villegas Jaramillo (Colombia), Ms. Marise Warner (Trinidad and Tobago), Ms. Tahmina Yolchiyeva (Azerbaijan), Mr. Ahmed Zaki (Egypt) and Mr. Gentian Zyberi (Albania). The Selection Committee, chaired by Ms. Vera Gowlland-Debbas (Professor at the Graduate Institute of International and Development Studies, Geneva), met on 29 April 2008 and selected 28 candidates out of 107 applications for participation in the Seminar. At the last minute, the twenty-eighth candidate selected failed to attend.

⁶⁵⁸ *Idem.*

⁶⁵⁹ *Idem.*

⁶⁶⁰ The resignation of Mr. Brownlie was effective 8 August 2008; see A/CN.4/602 and Add.1 (A/CN.4/602, reproduced in *Yearbook ... 2008*, vol. II (Part One), A/CN.4/602/Add.1, mimeographed, available on the Commission's website).

⁶⁶¹ "The General Assembly, ... 5. Invites the International Law Commission, when circumstances so warrant, to request a special rapporteur to attend the session of the General Assembly during the discussion of the topic for which that special rapporteur is responsible and requests the Secretary-General to make the necessary arrangements within existing resources."

380. Seminar participants were invited to visit WTO and attended briefing sessions by Ms. Gabrielle Marceau, Counsellor to the Director General, and Mr. Werner Zdouc, Director of the WTO Appellate Body Secretariat. The discussion focused on the current legal issues at WTO and on the WTO disputes settlement system.

381. A special session dedicated to the peaceful settlement of international disputes was organized on the premises of the Graduate Institute of International and Development Studies of Geneva. Seminar participants attended lectures given by: Mr. Marcelo Kohen: "The notion of peaceful settlement of international disputes"; Ms. Vera Gowlland-Debbas: "The International Court of Justice as principal judicial body of the United Nations"; and Mr. Georges Abi-Saab (Member and former Chairperson of the WTO Appellate Body): "The transformation of the judicial function".

382. Two Seminar working groups on "The obligation to extradite or prosecute", and "Reservations to treaties" were organized. Each Seminar participant was assigned to one of them. Mr. Zdzislaw Galicki, member of the Commission, and Mr. Daniel Müller provided guidance to the working groups. Each group wrote a report and presented their findings to the Seminar in a special session organized for this purpose. A collection of the reports was compiled and distributed to all participants.

383. The Republic and Canton of Geneva offered its traditional hospitality to the participants with a guided visit of the Alabama Room at the City Hall followed by a reception.

384. The Chairperson of the Commission, the Director of the Seminar, Mr. Ulrich von Blumenthal and Ms. Adineh Abghari (Islamic Republic of Iran), on behalf of the participants, addressed the Commission and the participants at the close of the Seminar. Each participant

was presented with a certificate attesting to his or her participation in the forty-fourth session of the Seminar.

385. The Commission noted with particular appreciation that during the last three years the Governments of Austria, China, Cyprus, Finland, Germany, Hungary, Ireland, Mexico, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland had made voluntary contributions to the United Nations Trust Fund for the International Law Seminar. The financial situation of the Fund enabled the awarding of a sufficient number of fellowships to deserving candidates from developing countries in order to achieve adequate geographical distribution of participants. In 2008, full fellowships (travel and subsistence allowance) were awarded to 16 candidates and partial fellowships (subsistence only) were awarded to 4 candidates.

386. Since 1965, 1,006 participants, representing 162 nationalities, have taken part in the Seminar. Of them, 618 have received a fellowship.

387. The Commission stresses the importance it attaches to the Seminar, which enables young lawyers, especially from developing countries, to familiarize themselves with the work of the Commission and the activities of the many international organizations which have their headquarters in Geneva. The Commission recommends that the General Assembly should again appeal to States to make voluntary contributions in order to secure the holding of the Seminar in 2009 with as broad participation as possible.

388. The Commission noted with satisfaction that in 2008 comprehensive interpretation services were made available to the Seminar. It expresses the hope that the same services would be provided at the next session, within existing resources.