

## Chapter XIII

### OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION

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

385. At its 3037th meeting, on 4 May 2010, the Commission established a Planning Group for the current session.<sup>1395</sup>

386. The Planning Group held five meetings. It had before it section I of the topical summary, prepared by the Secretariat, of the discussion held in the Sixth Committee of the General Assembly during its sixty-fourth session, entitled “Other decisions and conclusions of the Commission” (A/CN.4/620 and Add.1); the proposed strategic framework for the period 2012–2013,<sup>1396</sup> covering “Programme 6: Legal Affairs”; General Assembly resolution 64/114 of 16 December 2009 on the report of the International Law Commission on the work of its sixty-first session, in particular paragraphs 7, 8 and 13 to 21; General Assembly resolution 64/116 of 16 December 2009 on the rule of law at the national and international levels; and chapter XIII, section A.3, of the report of the Commission to the General Assembly on the work of its sixty-first session concerning the consideration of General Assembly resolution 63/128 of 11 December 2008 on the rule of law at the national and international levels.<sup>1397</sup>

387. The Commission took note of the proposed strategic framework for the period 2012–2013, covering “Programme 6: Legal Affairs, subprogramme 3: Progressive development and codification of international law”.

#### 1. SETTLEMENT OF DISPUTES CLAUSES

388. Pursuant to its decision taken at its sixty-first session, the Commission at its 3070th meeting on 29 July 2010 held, under agenda item “Other matters”, a discussion on “Settlement of disputes clauses”. It had before it a note on settlement of disputes clauses, prepared by the Secretariat at the request of the Commission (A/CN.4/623), focusing on topics relating to the settlement of disputes already considered by

the Commission and the history and past practice of the Commission in relation to such clauses, taking into account the recent practice of the General Assembly. Several points were raised, including the need for the Commission to examine the question of inclusion of settlement of dispute clauses in a set of draft articles on a case-by-case basis, the usefulness of seeking information from regional bodies on the way they address dispute settlement issues and the possible utility of drafting model clauses for inclusion in acceptances of the jurisdiction of the International Court of Justice under Article 36 of its Statute. The Commission decided to continue the discussion under “Other matters” at its next session. It was also agreed that Sir Michael Wood would prepare a working paper in advance of the session.

#### 2. CONSIDERATION OF GENERAL ASSEMBLY RESOLUTION 64/116 OF 16 DECEMBER 2009 ON THE RULE OF LAW AT THE NATIONAL AND INTERNATIONAL LEVELS

389. The General Assembly, in resolution 64/116 of 16 December 2009 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. At its sixtieth session, the Commission had occasion to comment comprehensively on its role in promoting the rule of law. The Commission notes that the substance of the comments contained in paragraphs 341 to 346 of its 2008 report<sup>1398</sup> remains relevant and reiterates the comments in paragraph 231 of its 2009 report.<sup>1399</sup>

390. 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 notes that the role of the General Assembly in encouraging the progressive development of international law and its codification is reaffirmed in General Assembly resolution 64/116 on the rule of law at the national and international levels. As an organ established by the General Assembly and 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. The result of the work of the Commission is presented in its annual report to the General Assembly and debated annually in the Sixth Committee, primarily during International Law Week. The Commission attaches great importance to the debates and exchange of views between the Commission and Member States of the United Nations and considers that these debates are important tools for the promotion of the rule of law.

<sup>1395</sup> The Planning Group was composed of Mr. Christopher John Robert Dugard (Chairperson); Members: Mr. Lucius Caflisch, Mr. Enrique Candioti, Mr. Pedro Comissário Afonso, Ms. Paula Escameia, Mr. Giorgio Gaja, Mr. Zdzisław Galicki, Mr. Hussein Hassouna, Mr. Mahmoud Hmoud, Ms. Marie Jacobsson, Mr. Maurice Kamto, Mr. Roman Kolodkin, Mr. Donald McRae, Mr. Shinya Murase, Mr. Georg Nolte, Mr. Alain Pellet, Mr. A. Perera, Mr. Ernest Petrič, Mr. Gilberto Saboia, Mr. Narinder Singh, Mr. Eduardo Valencia-Ospina, Mr. Edmundo Vargas Carreño, Mr. Marcelo Vázquez-Bermúdez, Mr. Nugroho Wisnumurti, Sir Michael Wood, Ms. Hanqin Xue and Mr. Stephen Vasciannie (*ex officio*).

<sup>1396</sup> A/65/6.

<sup>1397</sup> *Yearbook ... 2009*, vol. II (Part Two), p. 150, para. 231.

<sup>1398</sup> *Yearbook ... 2008*, vol. II (Part Two).

<sup>1399</sup> *Yearbook ... 2009*, vol. II (Part Two).

391. The Commission has, in particular, taken note of the statement by the President of the Security Council of 29 June 2010 on behalf of the Council, in connection with the Council's consideration of the item entitled "The promotion and strengthening of the rule of law in the maintenance of international peace and security".<sup>1400</sup> The Commission also is committed to the peaceful settlement of disputes and actively supports that Member States settle their disputes by peaceful means as set forth in Chapter VI of the Charter of the United Nations.

392. The Commission is part of what has been characterized as a symbiotic relationship with the ICJ, the highest judicial organ of the United Nations. This is evidenced, for instance, by the annual visit by the President of the Court to the Commission. As stated by President Owada, this visit provides an opportunity for interaction between the two most representative legal institutions of the international community working for the consolidation of the rule of law in international relations.<sup>1401</sup> Time and again, the Court has relied on treaties as binding instruments in themselves and other documents prepared by the Commission as 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 been prepared to apply draft rules of the Commission as evidence of international law. 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.

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

### 3. WORKING GROUP ON THE LONG-TERM PROGRAMME OF WORK

394. At its 1st meeting, on 4 May 2010, the Planning Group decided to reconstitute the Working Group on the long-term programme of work, under the chairpersonship of Mr. Enrique Candioti. The Planning Group took note of an oral progress report presented by the Chairperson of the Working Group to the Planning Group on 27 July 2010.

### 4. METHODS OF WORK OF THE COMMISSION

395. The Commission noted that in view of its full schedule, the open-ended Working Group of the Planning Group on the methods of work of the Commission could not be convened during the current session. The Working Group will be convened at the beginning of the sixty-third session of the Commission.

<sup>1400</sup> S/PRST/2010/11.

<sup>1401</sup> This statement is recorded in the summary record of the 3062nd meeting, on 9 July 2010.

### 5. HONORARIA

396. The Commission 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 have been expressed in the previous reports of the Commission.<sup>1402</sup> The Commission emphasizes that the above resolution especially affects Special Rapporteurs, as it compromises support for their research work.

### 6. ASSISTANCE TO SPECIAL RAPORTEURS

397. The Commission wishes to reaffirm that its Special Rapporteurs have a special role to play in its working methods. The independent character of the Commission accords to its Special Rapporteurs a responsibility to work cooperatively with the Secretariat but also independently of it. While recognizing the invaluable assistance of the Codification Division, the Commission notes that the exigencies and the very nature of the work of Special Rapporteurs as independent experts, which continues year-round, imply that some forms of assistance that they need go beyond that which could be provided by the Secretariat. In particular, the writing of the report by the Special Rapporteurs requires various forms of immediate research work associated therewith, the provision of which by the Secretariat located in Headquarters is entirely impracticable. Such work, which constitutes an essential element of the Commission's deliberations, has to be accomplished within the parameters of already existing responsibilities of the Special Rapporteurs in various professional fields, thereby adding an extra burden that may not be easily quantifiable in monetary terms and affecting the conditions of their work. The Commission expresses the hope that the General Assembly will view it appropriate to consider this matter anew in light of the real impact that it has on the proper functioning of the Commission as a whole.

### 7. ATTENDANCE OF SPECIAL RAPORTEURS IN THE GENERAL ASSEMBLY DURING THE CONSIDERATION OF THE COMMISSION'S REPORT

398. The Commission notes that, with a view to strengthening its relationship with the General Assembly, the Commission has, on previous occasions, drawn attention to the possibility of enabling Special Rapporteurs to attend the Sixth Committee's debate on the report of the Commission so as to give them the opportunity to acquire a more comprehensive view of existing positions, to take note of observations made and to begin preparing their reports at an earlier stage.<sup>1403</sup> It has also considered that the presence of Special Rapporteurs facilitates exchanges of views and consultations between them and representatives of Governments.<sup>1404</sup> The Commission wishes to reiterate the usefulness of Special Rapporteurs being

<sup>1402</sup> 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), p. 120–121, para. 369; *Yearbook ... 2005*, vol. II (Part Two), p. 92, para. 501; *Yearbook ... 2006*, vol. II (Part Two), p. 187, para. 269; *Yearbook ... 2007*, vol. II (Part Two), p. 100, para. 379; *Yearbook ... 2008*, vol. II (Part Two), para. 358; and *Yearbook ... 2009*, vol. II (Part Two), p. 151, para. 240.

<sup>1403</sup> *Yearbook ... 1988*, vol. II (Part Two), pp. 112–113, para. 582.

<sup>1404</sup> *Yearbook ... 1989*, vol. II (Part Two), p. 138, para. 742.

afforded the opportunity to interact with representatives of Governments during the consideration of their topics in the Sixth Committee.

## 8. DOCUMENTATION AND PUBLICATIONS

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

399. 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 in the progressive development of international law and its codification. The Commission also wishes to stress that it and its Special Rapporteurs are fully conscious of the need to achieve economies whenever possible in the overall volume of documentation and will continue to bear such considerations in mind. While the Commission is aware of the advantages of being as concise as possible, it strongly believes that an *a priori* limitation cannot be placed on the length of the documentation and research projects relating to the Commission's work.<sup>1405</sup> The Commission stressed also the importance of the timely preparation of reports by Special Rapporteurs for submission to the Commission and delivery to the Secretariat.

### (b) *Summary records of the work of the Commission*

400. The Commission noted with appreciation that the edited summary records (incorporating the corrections of members of the Commission, and editorial changes by the *Yearbook* editors and in the form prior to typesetting and publication) up to 2004 are now placed on the Commission's website and stressed the need to expedite preparation of the summary records of the Commission.

### (c) *Trust fund on the backlog relating to the Yearbook of the International Law Commission*

401. The Commission 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 Commission noted with appreciation that the General Assembly, in its resolution 64/114, acknowledged the establishment by the Secretary-General of a trust fund to accept voluntary contributions so as to address the backlog relating to the *Yearbook* of the International Law Commission and invited voluntary contributions to that end.

### (d) *Assistance of the Codification Division*

402. The Commission 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 a survey of multilateral conventions which may be of relevance for the Commission's work on the topic "The obligation to extradite or prosecute (*aut dedere aut judicare*)" (A/CN.4/630) and of a note on settlement of disputes clauses (A/CN.4/623).

### (e) *Websites*

403. The Commission 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.<sup>1406</sup> The Commission reiterated that this website and other websites maintained by the Codification Division<sup>1407</sup> 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 notes 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.

## 9. COMMUNICATION FROM THE CHAIRPERSON OF THE AFRICAN UNION COMMISSION ON INTERNATIONAL LAW

404. The Commission noted with interest the establishment of the African Union Commission on International Law and welcomed its willingness to establish cooperation with the Commission.

## B. Date and place of the sixty-third session of the Commission

405. The Commission decided that its sixty-third session would be held in Geneva from 26 April to 3 June and 4 July to 12 August 2011.

## C. Cooperation with other bodies

406. At its 3062nd meeting, on 9 July 2010, Judge Hisashi Owada, 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,<sup>1408</sup> drawing special attention to aspects that have a particular relevance to the work of the Commission. An exchange of views followed.

407. The Inter-American Juridical Committee was represented at the present session of the Commission by Mr. Freddy Castillo, who addressed the Commission at its 3047th meeting, on 19 May 2010.<sup>1409</sup> He focused on the current activities of the Committee on global issues as well as issues affecting the region. An exchange of views followed.

<sup>1405</sup> 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 9 December 1977, paragraph 10, and resolution 37/111 of 16 December 1982, paragraph 5, as well as subsequent resolutions on the annual reports of the Commission to the General Assembly.

<sup>1406</sup> Located at <http://legal.un.org/>.

<sup>1407</sup> See generally <http://legal.un.org/cod/>.

<sup>1408</sup> This statement is recorded in the summary record of that meeting.

<sup>1409</sup> *Idem*.

408. The Secretary-General of the Asian-African Legal Consultative Organization (AALCO), Mr. Rahmat Bin Mohamad, addressed the Commission at its 3064th meeting, on 14 July 2010.<sup>1410</sup> He briefed the Commission on the recent and forthcoming activities of AALCO. An exchange of views followed. At its 3071st meeting, on 30 July 2010, the Commission decided that it would be represented at the forty-ninth annual session of AALCO, to be held in Dar es Salaam (United Republic of Tanzania) from 5 to 8 August 2010, by Mr. Shinya Murase.

409. The European Committee on Legal Cooperation and the Committee of Legal Advisers on Public International Law (CAHDI) of the Council of Europe were represented at the present session of the Commission by the Director of Legal Advice and Public International Law (Jurisconsult), Mr. Manuel Lezertua, and the Chairperson of CAHDI, Mr. Rolf Einar Fife, who addressed the Commission at its 3067th meeting, on 20 July 2010.<sup>1411</sup> They focused on the current activities of CAHDI on a variety of legal matters, as well as the Council of Europe. An exchange of views followed.

410. On 15 July 2010, 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, including an outline on current ICRC projects and a presentation on the notion of direct participation in hostilities under international humanitarian law,<sup>1412</sup> as well as issues concerning the topic “Expulsion of aliens”. An exchange of views followed.

#### **D. Representation at the sixty-fifth session of the General Assembly**

411. The Commission decided that it should be represented at the sixty-fifth session of the General Assembly by its Chairperson, Mr. Nugroho Wisnumurti.

412. At its 3075th meeting on 4 August 2010, the Commission requested Mr. Alain Pellet, Special Rapporteur on the topic “Reservations to treaties”, to attend the sixty-fifth session of the General Assembly, under the terms of paragraph 5 of General Assembly resolution 44/35 of 4 December 1989.

#### **E. International Law Seminar**

413. Pursuant to General Assembly resolution 64/114, the forty-sixth session of the International Law Seminar was held at the Palais des Nations from 5 to 23 July 2010, during the present session of the Commission. The Seminar is intended for advanced students specializing in international law and for young academics or government officials pursuing an academic or diplomatic career or in posts in the civil service in their country.

<sup>1410</sup> *Idem.*

<sup>1411</sup> *Idem.*

<sup>1412</sup> Mr. Knut Doerman, Legal Adviser of the ICRC, gave an outline on current ICRC projects, and Mr. Nils Melzer gave a presentation on the notion of direct participation in hostilities under international humanitarian law. Mr. Maurice Kamto, the Special Rapporteur on the topic “Expulsion of aliens”, gave an overview of the topic.

414. Twenty-six participants of different nationalities, from all the regions of the world, took part in the session.<sup>1413</sup> The participants observed plenary meetings of the Commission, attended specially arranged lectures and participated in working groups on specific topics.

415. The Seminar was opened by Mr. John Dugard, First Vice-Chairperson of the Commission. Mr. Markus Schmidt, 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, and Mr. Sébastien Rosselet of the Legal Liaison Office.

416. The following lectures were given by members of the Commission: Mr. Stephen C. Vasciannie (“The International Law Commission: patterns of influence”); Mr. Zdzisław Galicki (“*Aut dedere aut judicare* against international terrorism”); Mr. Georg Nolte (“Treaties over time”); Mr. Edmundo Vargas Carreño (“Responsibility of States for internationally wrongful acts”); Mr. Giorgio Gaja (“Responsibility of international organizations”); Mr. A. Rohan Perera (“A comprehensive convention against terrorism: current status of negotiations”); and Ms. Marie Jacobsson (“Piracy: past, present and future”).

417. 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 the Special Rapporteur Mr. Alain Pellet (“Reservations to treaties”); Ms. Jelena Pejić, Legal Adviser of the International Committee of the Red Cross (“Current challenges to international humanitarian law”); Mr. Václav Mikulka, Director of the Codification Division (“Legal issues arising from State succession”); and Mr. Markus Schmidt (“Interdependence of international, regional and national human rights jurisprudence: some reflections”).

418. Two special external sessions were organized in the premises of the University of Geneva and of the Graduate Institute of International and Development Studies of Geneva. At the University of Geneva, seminar participants attended lectures given by Professor Marco Sassòli (“Advantages and disadvantages of international criminal justice for the implementation of international humanitarian law”); Professor Robert Kolb (“Reflections

<sup>1413</sup> The following persons participated in the forty-sixth session of the International Law Seminar: Mr. Ilya Adamov (Belarus), Ms. Mónica Addario Dávalos (Paraguay), Ms. Silvina Aguirre (Argentina), Mr. Ricardo Alarcón (Colombia), Ms. Petra Benesová (Czech Republic), Ms. Kalliopi Chainoglou (Greece), Ms. Marlene Da Vargem (the Bolivarian Republic of Venezuela), Mr. Sridhar Patnaik Dabiru (India), Mr. Michal Drozniewski (Poland), Mr. Ibrahim El-Diway (Egypt), Mr. George Galindo (Brazil), Mr. Djong-Ra Hankone (Chad), Ms. Mahyad Hassanzadeh-Tavakoli (Sweden), Mr. Heng Liu (China), Ms. Natalie Morris (Singapore), Ms. Inonge Mweene (Zambia), Ms. Regine Ngongue (Cameroon), Mr. Jude Osei (Ghana), Ms. Sana Ouechtati (Tunisia), Mr. Sotaro Ozaki (Japan), Mr. Rodrigo Polanco Lazo (Chile), Mr. Tahirimiakadaza Ratsimandao (Madagascar), Ms. Rampyari Sunuwar (Nepal), Mr. Le Phuong Tran (Viet Nam), Mr. Ingo Venzke (Germany) and Mr. Felix Zaharia (Romania). The Selection Committee, chaired by Ms. Laurence Boisson de Chazournes (Professor of International Law at the University of Geneva), met on 26 April 2010 at the Palais des Nations and selected 28 candidates out of 100 applications for participation in the Seminar. Two selected candidates could not attend the seminar.

on the contemporary role of International Court of Justice (ICJ)"); and Professor Laurence Boisson de Chazournes ("The International Court of Justice (ICJ) and experts: the *Pulp Mills* case"). At the Graduate Institute of International and Development Studies of Geneva, seminar participants attended lectures given by Professor Marcelo Kohen ("Is the creation of States a pure matter of fact?") and Professor Vera Gowlland-Debbas ("The status of Palestine in international law").

419. Seminar participants also attended a session of the Human Rights Committee that was preceded by a briefing on the work of the Committee given by Mr. Markus Schmidt.

420. Two Seminar Working Groups, on "*Aut dedere aut judicare* against international terrorism" and on "The future role of the International Law Commission", were organized. Each Seminar participant was assigned to one of the two groups. Four members of the Commission, Mr. Enrique Candioti, Mr. Zdzislaw Galicki, Mr. A. Rohan Perera and Mr. Stephen C. Vasciannie, provided expert guidance to the Working Groups. Each Group prepared a report and presented its findings to the Seminar in a special session. The reports were compiled and distributed to all participants as well as to the members of the Commission.

421. 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.

422. Mr. Nugroho Wisnumurti, Chairperson of the Commission, Mr. Markus Schmidt, Director of the Seminar, and Mr. Rodrigo Polanco Lazo (Chile) on behalf of the Seminar participants, addressed the Commission and the participants at the closing ceremony of the Seminar. Each participant was presented with a certificate attesting

to his or her participation in the forty-sixth session of the Seminar.

423. The Commission noted with particular appreciation that, during the last three years, the Governments of Austria, China, Croatia, the Czech Republic, Finland, Hungary, Ireland, Lebanon, 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 allowed the award of a sufficient number of fellowships to deserving candidates, especially from developing countries, in order to achieve adequate geographical distribution of participants. This year, full fellowships (travel and subsistence allowance) were awarded to 14 candidates and partial fellowships (travel or subsistence only) were awarded to 4 candidates.

424. Since 1965, year of the Seminar inception, 1,059 participants, representing 163 nationalities, have taken part in the Seminar. Of them, 636 have received a fellowship.

425. 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 that have their headquarters in Geneva. The Commission recommends that the General Assembly again appeal to States to make voluntary contributions in order to secure the holding of the Seminar in 2011 with as broad participation as possible.

426. The Commission noted with satisfaction that in 2010 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.