

## Chapter XIII

### OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION

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

363. At its 3089th meeting, on 17 May 2011, the Commission established a Planning Group for the current session.<sup>703</sup>

364. The Planning Group held two meetings. It had before it section J of the topical summary of the discussion held in the Sixth Committee of the General Assembly during its sixty-fifth session, prepared by the Secretariat and entitled “Other decisions and conclusions of the Commission” (A/CN.4/638); the proposed strategic framework for the period 2012–2013,<sup>704</sup> covering “Programme 6: Legal Affairs”; General Assembly resolution 65/26 of 6 December 2010 on the report of the International Law Commission on the work of its sixty-second session, in particular paragraphs 7, 8 and 13 to 21; General Assembly resolution 65/32 of 6 December 2010 on the rule of law at the national and international levels; and chapter XIII, section A.2, of the report of the Commission on the work of its sixty-second session concerning the consideration of General Assembly resolution 64/116 of 16 December 2009 on the rule of law at the national and international levels.

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

365. At its first meeting, on 4 May 2011, the Planning Group decided to reconstitute the Working Group on the long-term programme of work, under the chairpersonship of Mr. Enrique Candioti. The Chairperson of the Working Group submitted an oral report to the Planning Group on 3 August 2011, of which the Planning Group took note. The Planning Group recommended and the Commission endorsed the inclusion of the following topics in the long-term programme of work of the Commission:

(a) formation and evidence of customary international law;

(b) protection of the atmosphere;

(c) provisional application of treaties;

(d) the fair and equitable treatment standard in international investment law;

(e) protection of the environment in relation to armed conflicts.

366. During the quinquennium, the Working Group on the long-term programme of work considered a number of topics and requested members of the Working Group to prepare drafts on these topics. The Group was guided by the recommendation of the Commission at its fiftieth session (1998) regarding the criteria for the selection of topics:

(a) the topic should reflect the needs of States in respect of the progressive development and codification of international law;

(b) the topic should be sufficiently advanced in stage in terms of State practice to permit progressive development and codification;

(c) the topic is concrete and feasible for progressive development and codification.

The Commission “should not restrict itself to traditional topics, but could also consider those that reflect new developments in international law and pressing concerns of the international community as a whole”.<sup>705</sup>

367. The syllabuses of the topics included by the Commission in its long-term programme of work at the present session are annexed to the present report. It was felt that all those topics constitute useful contributions to the codification and progressive development of international law. Moreover, some of them venture into fields which the Commission had not sufficiently considered so far (the environment, humanitarian law).

368. It should also be recalled that the Commission, in the course of the present quinquennium, decided to inscribe in its programme of work the following topics recommended by the Working Group:

(a) treaties over time;

(b) the most-favoured-nation clause.

369. Finally, there are four more topics that remain inscribed in the long-term programme of work from previous quinquennia:

<sup>703</sup> The Planning Group was composed of Ms. Marie Jacobsson (Chairperson) and the following members: Mr. Lucius Caflisch, Mr. Enrique Candioti, Mr. Pedro Comissário Afonso, Mr. Christopher John Robert Dugard, Ms. Concepción Escobar Hernández, Mr. Giorgio Gaja, Mr. Zdzisław Galicki, Mr. Hussein Hassouna, Mr. Mahmoud Hmoud, Mr. Maurice Kamto, Mr. Fathi Kemicha, Mr. Roman Kolodkin, Mr. Donald McRae, Mr. Teodor Melescanu, Mr. Shinya Murase, Mr. Bernd Niehaus, Mr. Georg Nolte, Mr. Alain Pellet, Mr. Ernest Petrič, Mr. Gilberto Vergne Saboia, Mr. Narinder Singh, Mr. Eduardo Valencia-Ospina, Mr. Edmundo Vargas Carreño, Mr. Stephen Vasciannie, Mr. Marcelo Vázquez-Bermúdez, Mr. Nugroho Wisnumurti, Sir Michael Wood and Mr. A. Rohan Perera (*ex officio*).

<sup>704</sup> A/65/6.

<sup>705</sup> *Yearbook ... 1998*, vol. II (Part Two), p. 110, para. 553.

(a) jurisdictional immunity of international organizations;

(b) protection of personal data in transborder flow of information;

(c) extraterritorial jurisdiction;

(d) ownership and protection of wrecks beyond the limits of national maritime jurisdiction.

## 2. METHODS OF WORK OF THE COMMISSION

370. At its first meeting, on 27 May 2011, the Planning Group decided to establish a Working Group on methods of work.<sup>706</sup> The Working Group, chaired by Mr. Hussein Hassouna, held four meetings on 30 and 31 May, and on 20 and 25 July 2011. Its report was adopted by the Planning Group.

371. The Working Group took into consideration paragraphs 8 and 9 of General Assembly resolution 65/26 of 6 December 2010. It also had as a point of reference the 1996 report of a group on working methods of the Commission<sup>707</sup> and the Commission's decisions in that effect. The Working Group recommended the following conclusions to improve the working methods of the Commission that the Commission adopted at its 3127th meeting on 12 August 2011.

### (a) *Role of the special rapporteurs*

372. In view of the key role that special rapporteurs have in the work of the Commission, they are expected:

(a) to prepare each year a substantive report on their respective topic;

(b) to make every effort to limit the length of each report to no more than 50 pages;

(c) to submit their full report to the Secretariat at least six weeks before the start of each session;

(d) to be available to attend a substantial part of each session so that special adjustments do not have to be made to the programme of work of the Commission;

(e) to be ready to summarize the debate the day following the completion of the debate or as soon as possible thereafter; and

(f) to prepare concise draft commentaries that will be designed to explain the texts adopted at each session on their topic.

<sup>706</sup> The Working Group on methods of work was composed of Mr. Hussein Hassouna (Chairperson) and the following members: Mr. Lucius Caflisch, Mr. Enrique Candioti, Mr. Salifou Fomba, Mr. Zdzisław Galicki, Ms. Marie Jacobsson, Mr. Teodor Melescanu, Mr. Shinya Murase, Mr. Ernest Petrič, Mr. Gilberto Vergne Saboia, Mr. Narinder Singh, Mr. Eduardo Valencia-Ospina, Mr. Stephen Vasciannie, Mr. Marcelo Vázquez-Bermúdez, Mr. Nugroho Wisnumurti, Sir Michael Wood and Mr. A. Rohan Perera (*ex officio*).

<sup>707</sup> *Yearbook ... 1996*, vol. II (Part Two), pp. 84–97.

### (b) *Study groups*

373. A study group should aim at achieving a concrete outcome in accordance with the mandate of the Commission and within a reasonable time. The possibility of replacing a study group by appointing a special rapporteur as the topic progresses should be considered, as appropriate.

### (c) *Drafting Committee*

374. Given the hard work that the Chairperson of the Drafting Committee has to face during the whole session, in practice, chairpersons have sometimes had recourse to an experienced colleague in order to delegate the work when they need to be absent. This informal arrangement seems to work well and there is no need to formalize it further.

375. The Drafting Committee has progressively become a body entrusted also with substantive issues of negotiation. It is difficult to separate drafting from substance, but, as soon as a hardcore issue proves difficult to overcome in the Drafting Committee, it may be transferred to a more informal setting such as a working group, a practice which has been resorted to in the past.

376. Regarding the form of presentation of the report of the Drafting Committee to the plenary, it would be possible to recommend to the drafters of the statement to try to make it shorter without making the substance suffer. However, the length of the statement is also determined by the quantity and complexity of the draft articles presented. The Commission welcomes the placement on the website of the statement of the Chairperson and suggests that it could be complemented by the placement of an annex of the draft articles adopted by the plenary.

377. Paragraphs 212 to 216 of the Commission's 1996 report<sup>708</sup> are still relevant and could be considered.

### (d) *Planning Group*

378. The work of the Planning Group could be adjusted as follows:

(a) The Planning Group should closely monitor and advise the Commission on the optimum organization of forthcoming sessions, taking into account the topics included in the agenda. This requires that the Planning Group be allocated appropriate time at an early stage of the session.

(b) Priorities for completion of topics could be proposed by the Planning Group to the plenary, bearing in mind recommendations, if any, from the General Assembly.

(c) The Planning Group should cooperate with special rapporteurs and coordinators of study groups to define, at the beginning of any new topic, a tentative schedule for the development of the topic over a number of years as may be required, and periodically review the attainment of annual targets in such schedule, updating it when appropriate.

<sup>708</sup> *Ibid.*, pp. 93–94.

(d) The Planning Group should, in particular, at the end of each annual session, discuss a preliminary plan for the next annual session and its duration, and advise the Commission accordingly.

(e) *Preparation of commentaries to draft articles*<sup>709</sup>

379. The Commission should reconsider the present practice of leaving the formulation of commentaries to draft articles to the respective special rapporteurs alone and discussing those commentaries only at the time of adoption of the Commission's annual report, under pressure to finish the latter and without sufficient time for members to study the commentaries carefully.

380. Special rapporteurs should be asked to submit draft commentaries as soon as possible after the adoption of the draft articles they proposed. Time permitting, the draft commentaries should then be dealt with and provisionally approved in the Drafting Committee.

381. The Drafting Committee does not currently examine the content of the commentaries, which are directly presented to the plenary. Elements of commentaries could, where appropriate and possible, be considered by the Drafting Committee before being incorporated into the final commentaries. This has been done in the past (see paragraphs 196 to 199 of the Commission's 1996 report<sup>710</sup>).

382. Commentaries should, in general, be as concise as possible, while still providing adequate explanations of the draft articles.

(f) *Final form*

383. A preliminary indication as to the final form of the work undertaken on a specific topic (draft articles which might be embodied in a convention, declaration of principles, guidelines, expository study with conclusions and recommendations, etc.) should, as far as possible, be made at an early stage by special rapporteurs or study groups, subject to review and later adjustment as the work develops.

(g) *The Commission's report*

384. The Commission should make chapter II of the report (Summary) more informative, covering succinctly the main issues on which there had been important debates and describing the achievements of the session.

385. The Commission should take particular care to make chapter III of the report ("Specific issues on which comments would be of particular interest to the Commission") as clear and specific as possible.

(h) *Relationship with the Sixth Committee*

i. Chairperson's introduction of the Commission's report in the Sixth Committee

386. The introduction of the Commission's report in the Sixth Committee by the Chairperson of the Commission should continue to be divided into parts. Each part should be as concise as possible (in general, not longer than 30 minutes).

(a) The introduction should concentrate on the main points, and not go into details of drafting, etc.

(b) These main points should include:

(i) proposals for new topics (if any);

(ii) issues on which the Commission particularly wishes to hear from Member States;

(iii) main achievements of the Commission during the last year (for example, the completion of first or second readings).

(c) If a special rapporteur is present when "his" or "her" chapter of the report is introduced, the special rapporteur should be invited to add his or her comments after the introduction by the Chairperson of the Commission.

ii. Dialogue with the Sixth Committee

387. The special rapporteurs (and indeed any member of the Commission present in the Sixth Committee) should be ready to take part in the interactive segment of the Sixth Committee's International Law Week. Members of the Commission are also encouraged to be in touch with the organizers of the interactive segment and of the legal advisers' meeting to discuss the arrangements for those meetings.

388. Consideration should 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.

3. LENGTH AND NATURE OF FUTURE SESSIONS

389. The Commission stressed the importance of retaining split sessions for the efficiency and effectiveness of its work and recalled its decision of 1999 on this matter.<sup>711</sup> It also reaffirmed its decision of 2000 concerning the length, nature and place of future sessions of the Commission, reiterating its views expressed in paragraph 226 of its 1996 report<sup>712</sup> that "[i]n the longer term, the length of sessions is related to the question of [its work] organization" and that "if a split session is adopted ... its work can usually be effectively done in a period of less than 12 weeks a year. It sees good reason for reverting to the older practice of a total annual provision of 10 weeks, with the possibility of extension to 12 weeks in particular years, as required". Consequently, and unless significant reasons related to the organization of its work otherwise require, the length of the sessions during the initial years of the Commission's future mandate should be of 10 weeks and, during its final years, of 12 weeks.

<sup>709</sup> See the recommendations contained in paragraphs 196 to 199 of chapter VII of the Commission's 1996 report; *ibid.*, p. 92.

<sup>710</sup> *Ibid.*

<sup>711</sup> See *Yearbook ... 1999*, vol. II (Part Two), pp. 144–145, paras. 633–639.

<sup>712</sup> See *Yearbook ... 1996*, vol. II (Part Two), p. 95, para. 226; and *Yearbook ... 2000*, vol. II (Part Two), p. 132, paras. 734–735.

390. In this regard, the Commission emphasized its view that only a split session allows sufficient time for the preparation of the commentaries on the texts adopted during the first part of the session. This is necessary for the Commission to fulfil its mandate effectively.

391. In addition, given that several members of the Commission might not be able to attend the entire 10- or 12-week duration of an undivided session, the efficacy of the Commission would be hampered if the undivided session were to be reintroduced.

#### 4. CONSIDERATION OF GENERAL ASSEMBLY RESOLUTION 65/32 OF 6 DECEMBER 2010 ON THE RULE OF LAW AT THE NATIONAL AND INTERNATIONAL LEVELS

392. The General Assembly, in resolution 65/32 of 6 December 2010 on the rule of law at the national and international levels, *inter alia*, reiterated its invitation to the Commission to comment, in its report to the General Assembly, on its current role in promoting the rule of law. The Commission has commented annually on its role in promoting the rule of law since 2008. The Commission notes that the substance of the comprehensive comments contained in paragraphs 341 to 346 of its 2008 report<sup>713</sup> remains relevant and reiterates the comments in paragraph 231 of its 2009 report,<sup>714</sup> as well as the comments in paragraphs 390 to 393 of its 2010 report.<sup>715</sup>

393. The Commission recalls 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 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 65/32 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.<sup>716</sup>

394. The United Nations Legal Counsel recognized the existence of two interdependent dimensions to the concept of the rule of law. While one dimension is national and the other dimension is international, their interdependence was explicitly acknowledged in the United Nations Millennium Declaration, whereby the Heads of State and of Government affirmed their resolve to “strengthen respect for the rule of law in international as in national affairs”.<sup>717</sup>

395. Judge Hisashi Owada, President of the International Court of Justice, has convincingly emphasized both

substantive legal content and the more traditional procedural focus of the rule of law. According to President Owada, “the rule of law, when applied at the international level, requires a reconceptualization of the principle that incorporates both its process and its substance, taking account of the systemic differences between the domestic and international legal order”.<sup>718</sup> He concludes that “the rule of law at the international level increasingly permeates the rule of law at the national level”.<sup>719</sup>

396. Bearing in mind the close interrelation of the rule of law at the international level and that at the national level, the Commission, in fulfilling its mandate of codification and progressive development, considers that its work should be informed, where appropriate, by the principles of human rights that are fundamental to the international rule of law as reflected in the Preamble and in Article 13 of the Charter of the United Nations. Accordingly, the Commission has brought awareness of the rule of law at the international level through its work on topics like protection of persons in the event of disasters; expulsion of aliens; the obligation to extradite or prosecute (*aut dedere aut judicare*); immunity of State officials from foreign criminal jurisdiction; and effects of armed conflicts on treaties.

397. The General Assembly could recall in this context the Commission’s contribution to the rule of law.

398. The Commission reiterates its commitment to the rule of law in all of its activities.<sup>720</sup>

#### 5. HONORARIA

399. 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>721</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

400. 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

<sup>713</sup> *Yearbook ... 2008*, vol. II (Part Two).

<sup>714</sup> *Yearbook ... 2009*, vol. II (Part Two).

<sup>715</sup> *Yearbook ... 2010*, vol. II (Part Two); see also para. 389.

<sup>716</sup> *Ibid.*, para. 390.

<sup>717</sup> United Nations Millennium Declaration, adopted by the General Assembly in its resolution 55/2 of 8 September 2000, para. 9. See also Brandeis Institute for International Judges, “Toward an international rule of law”, The International Center for Ethics, Justice and Public Life, Brandeis University, 2010. Available from [www.brandeis.edu/ethics/pdfs/internationaljustice/biij/BIIJ2010.pdf](http://www.brandeis.edu/ethics/pdfs/internationaljustice/biij/BIIJ2010.pdf) (the United Nations Legal Counsel’s address begins at p. 51).

<sup>718</sup> H. Owada, “The rule of law in a globalizing world—an Asian perspective”, *Washington University Global Studies Law Review*, vol. 8, No. 2 (2009), p. 187, at p. 193. Available from [http://law.wustl.edu/WUGSLR/Issues/Volume8\\_2/owada.pdf](http://law.wustl.edu/WUGSLR/Issues/Volume8_2/owada.pdf).

<sup>719</sup> *Ibid.*, p. 203.

<sup>720</sup> *Yearbook ... 2010*, vol. II (Part Two), para. 393.

<sup>721</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), 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; *Yearbook ... 2007*, vol. II (Part Two), p. 100, para. 379; *Yearbook ... 2008*, vol. II (Part Two), p. 148, para. 358; *Yearbook ... 2009*, vol. II (Part Two), p. 151, para. 240; and *Yearbook ... 2010*, vol. II (Part Two), p. 203, para. 396.

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 the light of the real impact that it has on the proper functioning of the Commission as a whole.

#### 7. ATTENDANCE OF THE GENERAL ASSEMBLY BY SPECIAL RAPPOREURS DURING THE CONSIDERATION OF THE COMMISSION'S REPORT

401. 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.<sup>722</sup> The Commission 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.

#### 8. DOCUMENTATION AND PUBLICATIONS

##### (a) *Processing and issuance of reports of special rapporteurs*

402. 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>723</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.

<sup>722</sup> *Yearbook ... 1988*, vol. II (Part Two), pp. 112–113, para. 582; *Yearbook ... 1989*, vol. II (Part Two), p. 138, para. 742; and *Yearbook ... 2010*, vol. II (Part Two), p. 203, para. 398.

<sup>723</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 resolutions 32/151 of 19 December 1977, para. 10, and 37/111 of 16 December 1982, para. 5, as well as subsequent resolutions on the annual reports of the Commission to the General Assembly.

##### (b) *Summary records of the work of the Commission and posting them on the website*

403. The Commission has on several occasions confirmed that the summary records are “an inescapable requirement for the procedures and methods of its work. They constitute the equivalent of *travaux préparatoires* and are an indispensable part of the process of progressive development of international law and its codification. They are vital for the Commission's work”.<sup>724</sup> Moreover, the Commission continues to stress the importance of summary records as an essential part of its *Yearbook*. The production of the summary records in all the United Nations official languages makes the work of the Commission known to the general public and to States, thus assuring also transparency about the Commission's activity. They also satisfy the needs of members of the Commission and, in particular, special rapporteurs to take into account what was done in the past at various stages of the Commission's work, as useful background for further study and preparation of new documents. Finally, they constitute important reference material for Governments, practitioners and international and domestic courts and tribunals, as well as academics and research students.

404. The Commission welcomes the efforts of the Secretariat to include the Commission's provisional summary records on the website. It took note of the Secretariat's decision to do so on a trial basis and on the understanding that they would be posted on the website as soon as the electronic versions are received by the secretariat of the Commission where possible, or shortly thereafter, and subject to the availability of resources to do so.

405. The Commission indicated that the inclusion of the provisional summary records on the website concerning the Commission is not intended as a replacement for the established procedures for the production of the *Yearbook of the International Law Commission*, as mandated by the General Assembly, but rather as a way of mitigating the impact of the delay in the preparation and publication of the final corrected version of the summary records.

##### (c) *Yearbook of the International Law Commission*

406. In its resolution 176 (II) of 21 November 1947, the General Assembly stated that “one of the most effective means of furthering the development of international law consists in promoting public interest in this subject and using the media of education and publicity to familiarize the peoples with the principles and rules that govern international relations”. In resolution 987 (X) of 3 December 1955, the Assembly requested the Secretary-General to arrange for the printing each year of the documents and records of the Commission. At its eighth session, in 1956, the Commission recommended that such records and documents be published in the form of a yearbook.<sup>725</sup>

407. Since its inception, the *Yearbook of the International Law Commission* has become an authoritative

<sup>724</sup> *Yearbook ... 2004*, vol. II (Part Two), p. 120, para. 367.

<sup>725</sup> *Yearbook ... 1956*, vol. II, document A/3159, p. 301, para. 42. The *Yearbook of the International Law Commission* has been published annually, and currently covers the product of the Commission from 1949 until approximately 2011.

international legal publication 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 *Yearbook* has been extensively cited in legal proceedings before international courts and tribunals, and by Governments in their official communications. It has further proved an invaluable resource for practitioners and academics alike seeking evidence of customary international law. The *Yearbook* constitutes an indispensable tool for the preservation of the legislative history of the documents emanating from the Commission, as well as for the teaching, study, dissemination and wider appreciation of the efforts undertaken by the Commission in the progressive development of international law and its codification.

408. Volume I of the *Yearbook* consists of the final edited version of the summary records of the Commission's meetings. In its volume II, the *Yearbook* presents, in a systematic way, the final edited version of the various documents pertaining to the work of the Commission. Such documents include, in particular, the annual reports of the Commission and the reports presented by the special rapporteurs on the various topics on the Commission's programme of work, as well as studies or memorandums prepared by the secretariat of the Commission on given topics.

409. It should be noted that these various documents undergo an elaborate process of referencing and editing before their inclusion in the *Yearbook*. This is particularly true with respect to the citations which, for various reasons, are far from being complete and finalized in the parliamentary form of such documents. Thus, the Commission emphasizes the scientific value of the *Yearbook* and its long-term interest for Governments, practitioners, academics, courts and tribunals, as the publication that crystallizes the work of the Commission in the most accurate and final form. While noting the considerable progress made in the reduction of the backlog, the Commission expresses the wish to further reduce and finally eliminate the backlog in the publication of the *Yearbook*.

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

410. The Commission reiterated that the *Yearbook* 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 noted with appreciation that the General Assembly, in its resolution 65/26, 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.

(e) *Assistance of the Codification Division*

411. 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. The Commission reiterated the particular relevance and significant value of the legal publications prepared by the Codification Division to its work and

reiterated its request that the Codification Division continue to provide the Commission with those publications.

(f) *Websites*

412. 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>726</sup> The Commission reiterated that this website and other websites maintained by the Codification Division<sup>727</sup> constitute an invaluable resource for the Commission in undertaking its work 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 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.

**B. Date and place of the sixty-fourth session of the Commission**

413. The Commission decided that the sixty-fourth session of the Commission would be held in Geneva from 7 May to 1 June and from 2 July to 3 August 2012.

414. The Commission emphasizes the exceptional character of the proposed duration of the sixty-fourth session of the Commission (nine weeks), which is due to the fact that three important topics on the Commission's agenda have just been completed. The Commission takes also into consideration the current financial constraints of the United Nations while bearing in mind paragraph 9 of General Assembly resolution 65/26 and its invitation to the International Law Commission to continue to take cost-saving measures without prejudice to the efficiency and effectiveness of its work.

415. The Commission stresses the fact that the split session for 2012 is an essential condition for the good planning and efficiency of a nine-week session.

**C. Peaceful settlement of disputes**

416. Pursuant to a decision taken at its sixty-second session (2010),<sup>728</sup> the Commission, at its 3095th and 3096th meetings, on 31 May and 1 June 2011, held a discussion on "Peaceful settlement of disputes", under agenda item "Other matters", on the basis of a working paper (A/CN.4/641) by Sir Michael Wood. For that purpose, the Commission also had before it a note by the Secretariat on "Settlement of disputes clauses",<sup>729</sup> presented to the Commission at its sixty-second session.

417. The working paper presented by Sir Michael included a summary of the debate within the Commission in 2010 and a list of specific suggestions made on that occasion. It also recalled work already done on peaceful settlement of disputes by the United Nations and other bodies, including regional organizations, and contained

<sup>726</sup> <http://legal.un.org/ilc/>.

<sup>727</sup> Generally accessible from <http://legal.un.org/cod/>.

<sup>728</sup> See *Yearbook ... 2010*, vol. II (Part Two), p. 202, para. 388.

<sup>729</sup> *Ibid.*, vol. II (Part One), document A/CN.4/623.

tentative suggestions for possible topics relating to the peaceful settlement of disputes,<sup>730</sup> which could be further developed or complemented within the Working Group on the long-term programme of work, in particular a possible study on ways and means of improving procedures for dispute settlement involving international organizations. In discussing these suggestions, the Commission expressed its support for addressing the issue of procedures for dispute settlement involving international organizations within the Working Group on the long-term programme of work.

#### D. Cooperation with other bodies

418. At its 3100th meeting, on 7 July 2011, 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>731</sup> drawing special attention to aspects that have a particular relevance to the work of the Commission. An exchange of views followed.

419. The Council of Europe European Committee on Legal Co-operation and CAHDI were represented at the present session of the Commission by the Chairperson of CAHDI, Ms. Edwige Belliard, and the Director of Legal Advice and Public International Law (Jurisconsult) of the Council of Europe, Mr. Manuel Lezertua, who addressed the Commission at its 3101st meeting, on 8 July 2011.<sup>732</sup> They focused on the current activities of CAHDI on a variety of legal matters, as well as the activities of the Council of Europe. An exchange of views followed.

420. The Inter-American Juridical Committee was represented at the present session of the Commission by Ms. Hyacinth Lindsay, who addressed the Commission at its 3108th meeting, on 20 July 2011.<sup>733</sup> She gave an overview of the activities of the Committee as contained in its annual report. An exchange of views followed.

421. The Secretary-General of the Asian–African Legal Consultative Organization, Mr. Rahmat Bin Mohamad, addressed the Commission at its 3112th meeting, on 26 July 2011.<sup>734</sup> He briefed the Commission on the recent and forthcoming activities of the organization. In particular, he reviewed its consideration of the work of the Commission. An exchange of views followed.

422. On 20 July 2011, an informal exchange of views was held between members of the Commission and the ICRC on topics of mutual interest, including an overview of the main priorities of the ICRC Legal Division and a presentation on the ICRC project on strengthening legal protection for victims of armed conflicts, as well as on issues concerning the topic “Treaties over time”.<sup>735</sup> An exchange of views followed.

<sup>730</sup> For a list of possible topics, see paragraph 20 of the working paper (A/CN.4/641).

<sup>731</sup> This statement is recorded in the summary record of that meeting.

<sup>732</sup> *Idem.*

<sup>733</sup> *Idem.*

<sup>734</sup> *Idem.*

<sup>735</sup> Mr. Knut Dörmann, Legal Adviser of the ICRC, gave an overview of the main priorities of the ICRC Legal Division and Mr. Sylvain Vité gave a presentation on the ICRC project on strengthening legal protection for victims of armed conflicts. Mr. Georg Nolte, the Chairperson of the Study Group on treaties over time, gave an overview of the topic.

#### E. Representation at the sixty-sixth session of the General Assembly

423. The Commission decided that it should be represented at the sixty-sixth session of the General Assembly by its Chairperson, Mr. Maurice Kamto.

424. The Commission regrets that, due to financial constraints, it could not request one or more special rapporteurs to attend the sixty-sixth session of the General Assembly under the terms of paragraph 5 of General Assembly resolution 44/35 of 4 December 1989.

#### F. Gilberto Amado Memorial Lecture

425. On 19 July 2011, members of the Commission, participants of the International Law Seminar and other experts of international law attended the Gilberto Amado Memorial Lecture, entitled *La portée du consentement comme fondement de l'autorité de la sentence de la Cour internationale de Justice* (“The scope of consent as the basis for the authority of the awards of the International Court of Justice”), which was delivered by Professor Leonardo Nemer Caldeira Brant. Also in attendance was the Permanent Representative of Brazil to the United Nations in Geneva.

#### G. Memorial seminar in honour of Professor Paula Escameia

426. A memorial seminar was organized in honour of Professor Paula Escameia by Ms. Marie Jacobsson and the Graduate Institute of International and Development Studies of Geneva. The seminar, entitled “International law as a tool for humanity”, was held at the Institute on 12 July 2011. It was followed by a reception hosted by the Institute.

#### H. International Law Seminar

427. Pursuant to General Assembly resolution 65/26, the forty-seventh session of the International Law Seminar was held at the Palais des Nations from 4 to 22 July 2011, during the present session of the Commission. The Seminar is intended for young academics and diplomats specializing in international law.

428. Twenty-six participants of different nationalities took part in the session.<sup>736</sup> The participants attended plenary meetings of the Commission and specially

<sup>736</sup> The following persons participated in the forty-seventh session of the International Law Seminar: Mr. Kavus Abushov (Azerbaijan), Mr. Muhammad Zeeshan Adhi (Pakistan), Mr. Yawo Akagla Edem Akpemado (Togo), Mr. Ryuji Baba (Japan), Ms. Leticia M. L. Baquerizo Guzman (Ecuador), Mr. Gonzalo Bonifaz (Peru), Mr. Shehzad Charania (United Kingdom), Mr. Aminudin Zaki Dato Abdul Rahman (Brunei), Ms. Tanieris Dieguez La O (Cuba), Mr. Martin Faix (Slovakia), Ms. Martyna M. Falkowska (Poland), Mr. Ruddy J. Flores Monterrey (Bolivia), Ms. Fabiola Jiménez Morán Sotomayor (Mexico), Mr. Sidney G. Kemble (the Netherlands), Ms. Belinda M. Kiilu (Kenya), Mr. Duwayne C. Lawrence (Jamaica), Mr. Charles R. Majinge (the United Republic of Tanzania), Mr. Mohamed H. Mohamed Abubacker (Sri Lanka), Ms. Tshenolo B. Moyo (Botswana), Mr. Ragnar Nordeide (Norway), Mr. Gregor Novak (Austria/Croatia), Mr. Clauvis O. Ogoubiyi (Benin), Ms. Rashmi Raman (India), Mr. Javier I. Santander (Argentina), Mr. Romain B. Tchamako (Central African Republic) and Ms. Annelle Urriola (Panama). The Selection Committee, chaired by Ms. Laurence Boisson de Chazournes, Professor of International Law at the University of Geneva, met on 29 April 2011 at the Palais des Nations and selected 28 candidates out of 134 applications for participation in the Seminar. Of the 28, two selected candidates failed to attend.

arranged lectures and participated in working groups on specific topics.

429. The Seminar was opened by Mr. Maurice Kamto, 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. The scientific coordination of the Seminar was ensured by the University of Geneva. Mr. Vittorio Mainetti, from the University of Geneva, acted as coordinator, assisted by Mr. Martin Denis, Legal Assistant.

430. The following lectures were given by members of the Commission: Mr. Stephen C. Vasciannie, "The work of the International Law Commission"; Mr. Georg Nolte, "Treaties over time"; Mr. Alain Pellet, "Twenty years at the International Law Commission"; Sir Michael Wood, "Responsibility of international organizations"; Mr. A. Rohan Perera, "A comprehensive convention against terrorism: current status of negotiations"; and Mr. Lucius Caflisch, "The effects of armed conflicts on treaties".

431. Lectures were also given by Mr. Daniel Müller (Assistant to the Special Rapporteur Mr. Alain Pellet), "Reservations to treaties"; Mr. Eric Tistounet (Chief of the Human Rights Council Branch of the Office of the High Commissioner for Human Rights), "The Human Rights Council after five years: a preliminary stocktaking"; and Mr. Markus Schmidt, "Interdependence of international, regional and national human rights jurisprudence: some reflections".

432. Three 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, participants of the Seminar attended the international conference entitled "Freshwater and international law: the multiple challenges", organized by Professor Laurence Boisson de Chazournes, Director of the Platform for International Water Law of the University of Geneva, and Mr. Stephen McCaffrey, former Special Rapporteur on the law of the non-navigational uses of international watercourses. The University of Geneva also organized a special session with lectures given by Mr. Salman M. A. Salman (former Legal Adviser of the World Bank), "The new State of South Sudan and challenges of secession"; Mr. Makane Moïse Mbengue (Lecturer at the Faculty of Law of the University of Geneva), "ICJ, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*"; and Ms. Mara Tignino (Senior Researcher at the University of Geneva), "Public participation in management of transboundary water resources". The session was followed by a reception offered by the International Relations Office of the University of Geneva. At the Graduate Institute of International and Development Studies of Geneva, participants of the Seminar attended lectures given by Professor Marcelo Kohen, "Is the creation of States a pure matter of fact?"; Professor Vera Gowlland-Debbas, "The status of Palestine in international law"; Mr. Eric Wyler, "Recognition of States and States creation in light of recent practice"; and Professor Lucius Caflisch, "The law of international watercourses: problems and perspectives".

433. Seminar participants also took part in the memorial seminar organized in honour of Professor Paula Escarameia and were invited to attend the Gilberto Amado Memorial Lecture (see sections F and G above).

434. Two seminar working groups, on "The future role of the International Law Commission" and "The protection of persons in the event of disasters", were organized. Each seminar participant was assigned to one of them. Two members of the Commission, Mr. Stephen Vasciannie and Mr. Eduardo Valencia-Ospina, 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.

435. 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.

436. Mr. Bernd Niehaus, Second Vice-Chairperson of the International Law Commission, Mr. Markus Schmidt, Director of the Seminar, and Ms. Martyna M. Falkowska (Poland), on behalf of the participants of the Seminar, addressed the Commission and the participants at the closing ceremony of the Seminar. Each participant was presented with a certificate of participation.

437. The Commission noted with particular appreciation that during the last three years the Governments of Austria, China, Croatia, the Czech Republic, Finland, Hungary, India, Ireland, Lebanon, Mexico, Sweden and Switzerland had made voluntary contributions to the United Nations Trust Fund for the International Law Seminar. The financial situation of the Fund allowed for the awarding of several fellowships to deserving candidates, especially from developing countries, in order to achieve adequate geographical distribution of participants. This year, fellowships (travel and/or subsistence allowance) were awarded to 16 candidates. The Commission notes that the finances of the Seminar were strained in 2010 and 2011, and encourages Governments to make voluntary contributions to allow the Seminar to continue in its present form.

438. Since 1965, the year of the Seminar's inception, 1,086 participants, representing 163 nationalities, have taken part in the Seminar. Of them, 650 have received fellowships.

439. The Commission stresses the importance it attaches to the Seminar, which enables young lawyers, especially from developing countries and from all geographic regions and legal traditions, 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 2012 with as broad participation as possible.

440. The Commission noted with satisfaction that, in 2011, interpretation services were made available to the Seminar. It expresses the hope that the same services will be provided at the next session, within existing resources.