

## Chapter XIII

### OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION

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

227. At its 3013th meeting, on 2 June 2009, the Commission established a Planning Group for the current session.

228. The Planning Group held three meetings. It had before it section I of the topical summary of the discussion held in the Sixth Committee of the General Assembly during its sixty-third session entitled “Other decisions and conclusions of the Commission” (A/CN.4/606 and Add.1); and General Assembly resolution 63/123 of 11 December 2008 on the report of the International Law Commission on the work of its sixtieth session, in particular paragraphs 7, 8 and 14–24; General Assembly resolution 63/128 of 11 December 2008 on the rule of law at the national and international levels, as well as chapter XII, section A.2, of the report of the Commission to the General Assembly on the work of its sixtieth session, concerning the consideration of General Assembly resolution 62/70 of 6 December 2007 on the rule of law at the national and international levels.<sup>896</sup> The Planning Group also had a proposal by Mr. Alain Pellet concerning the elections of the Commission.

#### 1. APPOINTMENT OF A SPECIAL RAPPORTEUR FOR THE TOPIC “EFFECTS OF ARMED CONFLICTS ON TREATIES”

229. The Commission, at its 3012th meeting on 29 May 2009, decided to appoint Mr. Lucius Caflisch as Special Rapporteur for the topic “Effects of armed conflicts on treaties”.

#### 2. WORKING GROUP ON LONG-TERM PROGRAMME OF WORK

230. At its 1st meeting, on 4 June 2009, 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 progress report to the Planning Group on 29 July 2009.

#### 3. CONSIDERATION OF GENERAL ASSEMBLY RESOLUTION 63/128 OF 11 DECEMBER 2008 ON THE RULE OF LAW AT THE NATIONAL AND INTERNATIONAL LEVELS

231. The General Assembly, by the terms of its resolution 63/128 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.

<sup>896</sup> *Yearbook ... 2008*, vol. II (Part Two), pp. 146–147, paras. 341–346.

The Commission had occasion to comment comprehensively on this matter at its sixtieth session. The Commission notes that the comments contained in paragraphs 341 to 346 of its 2008 report) remain relevant. The Commission reiterates its commitment 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.

#### 4. DOCUMENTATION AND PUBLICATIONS

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

232. 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. 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>897</sup>

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

233. 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 will, on a pilot basis, be 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*

234. The Commission reiterated that the *Yearbooks* were critical to the understanding of its work in the progressive development and codification of international law, as well as in the strengthening of the rule of law in international

<sup>897</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 19 December 1977, paragraph 10, and General Assembly 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.

relations. The Commission notes with appreciation that the General Assembly in its resolution 63/123, 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) *Other publications and the assistance of the Codification Division*

235. 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 memorandum on “Reservations to treaties in the context of succession of States” (A/CN.4/616).

236. 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>898</sup> The Commission reiterated that the websites maintained by the Codification Division 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.

5. PROPOSALS ON THE ELECTIONS OF THE COMMISSION

237. The Commission noted that the Planning Group had considered proposals on various procedures and criteria concerning the elections of the Commission, that these proposals had been thoroughly discussed and that the Planning Group felt that, at this stage, no conclusive result could be reached. Accordingly, the Planning Group was of the view that the aspects of the proposal concerning the staggering of elections should not be kept on its agenda. However, the Planning Group stressed that the issue of gender balance continued to be an important matter that needs to be discussed further.

6. SETTLEMENT OF DISPUTES CLAUSES

238. The Commission decided that at its sixty-second session it would devote, under “Other matters”, at least one meeting to a discussion on “Settlement of disputes clauses”. In this connection, the Secretariat was requested to prepare a note on the history and past practice of the Commission in relation to such clauses, taking into account recent practice of the General Assembly.

7. METHODS OF WORK OF THE COMMISSION

239. The Commission noted that the Planning Group had a debate on the methods of work of the Commission

and had recommended that an open-ended working group of the Planning Group on the methods of work of the Commission be convened early during the sixty-second session of the Commission, subject to availability of time and space.

8. HONORARIA

240. 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 its previous reports.<sup>899</sup> The Commission emphasizes that the above resolution especially affects Special Rapporteurs, as it compromises support for their research work.

9. ASSISTANCE TO SPECIAL RAPPORTEURS

241. The Commission welcomes the impetus provided by General Assembly resolution 63/123 and the opportunity that the report of the Secretary-General envisaged in that resolution presents, and wishes to reaffirm that Special Rapporteurs of the Commission have a special role to play in its working methods. The Commission would like to recall that its independent character 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. It should be noted that in particular, the writing of the report by the Special Rapporteurs requires various forms of research work associated therewith, and it is entirely impracticable for the Secretariat located at Headquarters to provide such research work. That work 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, which constitutes an essential element of the Commission’s deliberations. 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.

10. ATTENDANCE OF SPECIAL RAPPORTEURS IN THE GENERAL ASSEMBLY DURING THE CONSIDERATION OF THE COMMISSION’S REPORT

242. 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

<sup>898</sup> Located at <http://legal.un.org/ilc/>.

<sup>899</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; and *Yearbook ... 2008*, vol. II (Part Two), p. 148, para. 358.

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>900</sup> It has also considered that the presence of Special Rapporteurs facilitates exchanges of views and consultations between them and representatives of Governments.<sup>901</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.

#### 11. JOINT MEETING WITH LEGAL ADVISERS OF INTERNATIONAL ORGANIZATIONS WITHIN THE UNITED NATIONS SYSTEM

243. In accordance with article 26 (1) of its Statute,<sup>902</sup> the Commission held a joint meeting on 12 May 2009 with Legal Advisers of international organizations within the United Nations system. The joint meeting was dedicated to the work of the Commission under the topic: “Responsibility of international organizations”. It comprised a series of panel discussions involving Legal Advisers of international organizations within the United Nations system and members of the Commission, focusing on certain salient aspects and outstanding issues of the draft articles under consideration by the Commission.<sup>903</sup> Panel presentations were followed by a useful exchange of views between the members of the Commission and the Legal Advisers. The discussions proceeded on the basis of the Chatham House rule and no record was kept of the meeting.

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

244. The Commission decided that the sixty-second session of the Commission would be held in Geneva from 3 May to 4 June and 5 July to 6 August 2010.

#### C. Cooperation with other bodies

245. At its 3016th meeting, on 7 July 2009, Judge Hisashi Owada, President of the International Court of Justice, addressed the Commission and informed it of

<sup>900</sup> *Yearbook ... 1988*, vol. II (Part Two), pp. 112–113, para. 582.

<sup>901</sup> *Yearbook ... 1989*, vol. II (Part Two), p. 138, para. 742.

<sup>902</sup> Article 26 (1) of the Statute provides: “The Commission may consult with any international or national organizations, official or non-official, on any subject entrusted to it if it believes that such a procedure might aid it in the performance of its functions.” See also *Yearbook ... 2008*, vol. II (Part Two), p. 148, para. 355, and General Assembly resolution 63/123, para. 18.

<sup>903</sup> The welcoming remarks by the Chairperson of the International Law Commission were followed by a general introduction entitled “The draft articles on responsibility of international organizations—overview and outstanding issues”, given by Mr. G. Gaja. The first panel on “The attribution of conduct to an international organization” was led by Mr. A. Pellet and Mr. E. Kwakwa (WIPO). The second panel on “The responsibility of an international organization in connection with the act of a State or another organization and the responsibility of a State in connection with the act of an organization” was led by Mr. M. Vázquez-Bermúdez and Ms. R. Balkin (International Maritime Organization). The third panel on “Countermeasures by and against international organizations” was led by Ms. P. Escameia and Mr. G. L. Burci (WHO). Ms. P. O’Brien, Under-Secretary-General for Legal Affairs, United Nations Legal Counsel, offered general conclusions for the joint meeting.

the Court’s recent activities and of the cases currently before it<sup>904</sup>, drawing special attention to aspects that have a particular relevance to the work of the Commission. An exchange of views followed.

246. 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 Director of Legal Advice and Public International Law, Mr. Manuel Lezertua and the Head of the Public International Law and Anti-Terrorism Division, Mr. Alexandre Guessele, who addressed the Commission at its 3024th meeting, on 21 July 2009.<sup>905</sup> They focused on the current activities of CAHDI concerning a variety of legal matters, as well as on those of the Council of Europe. An exchange of views followed.

247. The Inter-American Juridical Committee was represented at the present session of the Commission by Mr. Jaime Aparicio, who addressed the Commission at its 3025th meeting, on 22 July 2009.<sup>906</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.

248. The Asian–African Legal Consultative Organization (AALCO) was represented by Mr. Narinder Singh, President of AALCO at its forty-seventh session (2008), who addressed the Commission at its 3026th meeting, on 23 July 2009.<sup>907</sup> He briefed the Commission on the recent and forthcoming activities of AALCO. An exchange of views followed.

249. On 16 July 2009, 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 overview of important issues on the agenda of the ICRC and recent developments relating to private military and security companies,<sup>908</sup> as well as issues concerning the topic “The obligation to extradite or prosecute (*aut dedere aut judicare*)”. An exchange of views followed.

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

250. The Commission decided that it should be represented at the sixty-fourth session of the General Assembly by its Chairperson, Mr. Ernest Petrič.

251. At its 3035th meeting, on 7 August 2009, the Commission requested Mr. Eduardo Valencia-Ospina, Special

<sup>904</sup> This statement is recorded in the summary record of that meeting and is also placed on the website on the work of the Commission: <http://legal.un.org/ilc/>.

<sup>905</sup> This statement is recorded in the summary record of that meeting.

<sup>906</sup> *Idem*.

<sup>907</sup> *Idem*.

<sup>908</sup> The Legal Adviser of the ICRC, Mr. Knut Doerman, gave an overview of important issues on the ICRC agenda (both new and old) and Ms. Cordula Droege gave a presentation of the project of private military and security companies. Mr. Z. Galicki, the Special Rapporteur on the topic “The obligation to extradite or prosecute (*aut dedere aut judicare*)”, gave an overview of the topic.

Rapporteur on the topic “Protection of persons in the event of disasters”, to attend the sixty-fourth session of the General Assembly, under the terms of paragraph 5 of General Assembly resolution 44/35 of 4 December 1989.

### E. Gilberto Amado Memorial Lecture

252. On 15 July 2009, members of the Commission, participants of the International Law Seminar and other experts of international law attended the Gilberto Amado Memorial Lecture on the advisory opinions and urgent proceedings at the International Tribunal for the Law of the Sea, which was delivered by the President of the International Tribunal for the Law of the Sea, Judge José Luis Jesus. Also in attendance was the Permanent Representative of Brazil to the United Nations in Geneva.

### F. International Law Seminar

253. Pursuant to General Assembly resolution 63/123 of 11 December 2008, the forty-fifth session of the International Law Seminar was held at the Palais des Nations from 6 to 24 July 2009, 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.

254. Twenty-seven participants of different nationalities, from all the regions of the world, were able to take part in the session.<sup>909</sup> The participants in the Seminar observed plenary meetings of the Commission, attended specially arranged lectures, and participated in working groups on specific topics.

255. The Seminar was opened by Mr. Ernest Petrič, Chairperson of the Commission. Mr. Ulrich von Blumenthal, Senior Legal Adviser of the United Nations Office at Geneva (UNOG), was responsible for the administration, organization and conduct of the Seminar, assisted by Mr. Vittorio Mainetti, Legal Consultant at UNOG.

256. The following lectures were given by members of the Commission: Mr. Edmundo Vargas Carreño: “The contribution of the International Law Commission to the codification and progressive development of international law”; Mr. Giorgio Gaja: “Responsibility of international organizations”; Mr. Enrique Candioti: “Codification

of the law of shared natural resources”; Mr. Zdzisław Galicki: “The obligation to extradite and prosecute (*aut dedere aut judicare*)”; Mr. Lucius Cafilisch: “The effects of armed conflicts on treaties”; Ms. Marie Jacobsson: “Piracy: past, present and future”; Mr. A. Rohan Perera: “Towards a comprehensive convention on terrorism”; Mr. Donald McRae: “The most-favoured-nation clause”; Ms. Paula Escarameia: “The role of the International Law Commission in the United Nations legislative process”.

257. Lectures were also given by Mr. Trevor Chimimba, Senior Legal Officer at the Codification Division: “The Sixth Committee”; Mr. Gionata Buzzini, Legal Officer at the Codification Division: “The work of the Office of Legal Affairs of the United Nations and in particular its Codification Division”; 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”; Ms. Jelena Pejić, Legal Adviser of the International Committee of the Red Cross: “Current challenges to international humanitarian law”.

258. Seminar participants were invited to visit the WTO and attended briefing sessions by Ms. Marisa Beth Goldstein, Legal Officer at the WTO Legal Affairs Division, and Mr. Kaarlo Castren, Legal Officer at WTO Appellate Body Secretariat. The discussion focused on the current legal issues at the WTO and on the WTO Disputes Settlement System.

259. Seminar participants were also invited by the Permanent Representative of Brazil to the United Nations Office at Geneva to attend the Gilberto Amado Memorial Lecture delivered by Judge José Luis Jesus, President of the International Tribunal for the Law of the Sea, on advisory opinions and urgent proceedings at the International Tribunal for the Law of the Sea.

260. Two special external sessions were organized at the University of Geneva and the Graduate Institute of International and Development Studies of Geneva. At the University of Geneva, seminar participants attended lectures given by Professor Marco Sassòli: “The UN as addressee of international humanitarian law and human rights law”; Professor Robert Kolb: “Contemporary problems in the law of belligerent Occupation”; and Professor Laurence Boisson de Chazournes: “The United Nations and the responsibility to protect”. At the Graduate Institute seminar, participants 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”; and Professor Eric Wyler: “The recognition of new States in contemporary international law”.

261. Two Seminar working groups, on “Piracy” and “The future role of the International Law Commission”, were organized. Seminar participants were assigned to one of two groups. Three members of the Commission, Mr. Enrique Candioti, Ms. Paula Escarameia and Ms. Marie Jacobsson, provided guidance to the working groups. Each group wrote a report and presented their findings to the Seminar in a special session organized for that purpose. A collection of the reports was compiled and distributed to all participants.

<sup>909</sup> The following persons participated in the forty-fifth session of the International Law Seminar: Mr. Antonios Abou Kasm (Lebanon), Ms. Riana Aji (Brunei Darussalam), Ms. Aua Baldé (Guinea Bissau), Ms. Veronika Bilková (Czech Republic), Mr. Marcelo Böhle (Brazil), Mr. Krassimir Bojanov (Bulgaria), Mr. Amadou Camara (Guinea), Mr. Yifeng Chen (China), Mr. Jarrod Clyne (New Zealand), Ms. Kristin Hausler (Switzerland), Ms. Meklit Hessebon (Ethiopia), Mr. Mabvuto Katemula (Malawi), Mr. Bindu Kihangi (Democratic Republic of the Congo), Mr. Tamás Molnár (Hungary), Ms. Valentina Monasterio (Chile), Ms. Jasmine Moussa (Egypt), Mr. Marco Pertile (Italy), Ms. Ana Petric (Slovenia), Ms. Karla Ramirez Sanchez (Nicaragua), Mr. Yusnier Romero (Cuba), Mr. Victor Saco (Peru), Ms. Azucena Sahagún Segoviano (Mexico), Ms. Dinesha W. V. A. Samararatne (Sri Lanka), Ms. Cecilia Silberberg (Argentina), Ms. Betty Yakopya (Papua New Guinea), Ms. Deki Yangzom (Bhutan) and Mr. Amirbek Zhemeny (Kazakhstan). The Selection Committee, chaired by Mr. Nicolas Michel, Professor at the University of Geneva, met on 30 April 2009 and selected 28 candidates out of 113 applications for participation in the Seminar. At the last minute, the twenty-eighth candidate selected failed to attend.

262. 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.

263. The Chairperson of the Commission, the Director of the Seminar, Mr. Ulrich von Blumenthal and Ms. Dinesha W. V. A. Samararatne (Sri Lanka), 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-fifth session of the Seminar. During the closing ceremony, the Chairperson of the Commission expressed appreciation for the services of Mr. Ulrich von Blumenthal, who is retiring in October 2009 from the United Nations and who directed the Seminar for 14 years.

264. The Commission noted with particular appreciation that during the last three years the Governments of Austria, China, Croatia, Cyprus, the Czech Republic, Finland, Germany, Hungary, Ireland, Lebanon, Mexico, New Zealand, 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 from developing countries in order to achieve adequate geographical distribution of participants. This year, full fellowships (travel and subsistence allowance) were awarded to 20 candidates.

265. Since 1965, year of the Seminar's inception, 1,033 participants, representing 163 nationalities, have taken part in the Seminar. Of them, 618 have received fellowships.

266. 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 should again appeal to States to make voluntary contributions in order to secure the holding of the Seminar in 2010 with as broad participation as possible.

267. The Commission noted with satisfaction that in 2009 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.