Chapter XII
Other decisions and conclusions of the Commission

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

284. At its 3248th meeting, on 8 May 2015, the Commission established a Planning Group for the current session.396

285. The Planning Group held three meetings. It had before it Section I, entitled “Other decisions and conclusions of the Commission”, of the Topical Summary of the discussion held in the Sixth Committee of the General Assembly during its sixty-ninth session; General Assembly resolution 69/118 of 10 December 2014 on the Report of the International Law Commission on the work of its sixty-sixth session; and General Assembly resolution 69/123 of 10 December 2014 on the rule of law at the national and international levels.

1. Inclusion of a new topic in the programme of work of the Commission

286. At its 3257th meeting, on 27 May 2015, the Commission decided to include the topic “Jus cogens” in its programme of work and to appoint Mr. Dire Tladi as the Special Rapporteur for the topic.

2. Working Group on the Long-term Programme of Work

287. At its 1st meeting, on 11 May 2015, the Planning Group decided to reconstitute for the current session the Working Group on the Long-term Programme of Work, under the chairmanship of Mr. Donald M. McRae. The Chairman of the Working Group submitted an oral progress report on the work of the Working Group at the current session to the Planning Group, at its 3rd meeting, on 30 July 2015.

3. Consideration of General Assembly resolution 69/123 of 10 December 2014 on the rule of law at the national and international levels

288. The General Assembly, in resolution 69/123 of 10 December 2014 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. Since its sixtieth session (2008), the Commission has commented annually on its role in promoting the rule of law. The Commission notes that the comments contained in paragraphs 341 to 346 of its 2008 report (A/63/10) remain relevant and reiterates the comments made at its previous sessions.397

396 The Planning Group was composed of: Mr. A. S. Wako (Chairman), Mr. L. Caflisch, Mr. P. Comissário Afonso, Mr. A. El-Murtadi Suleiman Gouider, Ms. C. Escobar Hernández, Mr. M. Forteau, Mr. H.A. Hassouna, Mr. M.D. Hmoud, Mr. H. Huang, Ms. M.G. Jacobsson, Mr. K. Kittichaisaree, Mr. A. Laraba, Mr. D.M. McRae, Mr. S. Murase, Mr. S.D. Murphy, Mr. B.H. Niehaus, Mr. G. Nolte, Mr. K.G. Park, Mr. E. Petrić, Mr. P. Šturmá, Mr. D.D. Tladi, Mr. N. Wisnumurti, Mr. M. Wood, and Mr. M. Vázquez-Bermúdez (ex officio).

289. The Commission recalls that the rule of law is of the essence of its work. The Commission’s object, as set out in Article 1 of its Statute, is the promotion of the progressive development of international law and its codification.

290. Having in mind the principle of the rule of law in all its work, the Commission is fully conscious of the importance of the implementation of international law at the national level, and aims at promoting respect for the rule of law at the international level.

291. In fulfilling its mandate concerning the progressive development of international law and its codification, the Commission will continue to take into account, where appropriate, the rule of law as a principle of governance and the human rights that are fundamental to the rule of law as reflected in the preamble and in Article 13 of the Charter of the United Nations and in the Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels.\(^{398}\)

292. In its current work, the Commission, is aware of “the interrelationship between the rule of law and the three pillars of the United Nations (peace and security, development, and human rights)”,\(^{399}\) without emphasizing one at the expense of the other. In fulfilling its mandate concerning the progressive development and codification of international law, the Commission is conscious of current challenges for the rule of law.

293. In the course of the present session the Commission has continued to make its contribution to the rule of law, including by working on the topics “The protection of the atmosphere”, “Crimes against humanity”, “Identification of customary international law”, “Subsequent agreements and subsequent practice in relation to the interpretation of treaties”, “The protection of the environment in relation to armed conflicts”, “The immunity of state officials from foreign criminal jurisdiction”, “Provisional application of treaties” and “The Most-Favoured-Nation clause”. In addition, the Commission has appointed a Special Rapporteur for the topic “Jus cogens”.

294. The Commission notes that the General Assembly has invited Member States to comment in particular on “The role of multilateral treaty processes in promoting and advancing the rule of law”.\(^{400}\) The Commission wishes to recall the work of the Commission on different topics which, on the basis of proposals under articles 16 and 23 of its Statute, have become subject to multilateral treaty processes, such as the Draft Articles on Jurisdictional Immunities of States and Their Property, 2001, the Draft Code of Crimes against the Peace and Security of Mankind, 1996, the Draft Statute for an International Criminal Court, 1994, and the Draft Articles on the Law of Non-Navigational Watercourses, 1994. The Commission also draws attention to its recent work on different topics, including the:

- Draft articles on responsibility of States for internationally wrongful acts, 2001
- Draft articles on prevention of transboundary harm from hazardous activities, 2001
- Draft articles on diplomatic protection, 2006
- Draft articles on the law of transboundary aquifers, 2008

\(^{398}\) General Assembly resolution 67/1 of 30 November 2012 (“Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels”), document A/RES/67/1, para. 41.

\(^{399}\) Report of the Secretary-General on Measuring the effectiveness of the support provided by the United Nations system for the promotion of the rule of law in conflict and post-conflict situations, S/2013/341, 11 June 2013, para. 70.

\(^{400}\) General Assembly resolution 69/123 of 10 December 2014, para. 20.
• Draft articles on the effects of armed conflicts on treaties, 2011
• Draft articles on the responsibility of international organizations, 2011
• Draft articles on the expulsion of aliens, 2014

Furthermore, the Commission recalls the Guide to practice on reservations to treaties (2011).

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


296. The Commission took note of paragraphs 10 to 13 of General Assembly resolution 69/118, by the terms of which the Assembly welcomed the efforts of the Commission to improve its methods of work, and encouraged it to continue this practice; recalled that the seat of the Commission is at the United Nations Office at Geneva; noted that the Commission was considering the possibility of holding part of its future sessions in New York, underlined, to that purpose, the importance of the Commission taking into account estimated costs and relevant administrative, organizational and other factors, and called upon the Commission to deliberate thoroughly the feasibility of holding part of its sixty-eighth session in New York; and decided, without prejudice to the output of those deliberations, to revert to the consideration of the recommendation contained in paragraph 388 of the report of the Commission on the work of its sixty-third session during the seventieth session of the General Assembly.

297. The Commission recalled that, during its sixty-third session, in the context of the discussion of its relationship with the Sixth Committee, it had expressed the wish that consideration 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. The Commission further recalled that it had on previous occasions held sessions other than at its Headquarters. In particular, the Commission noted that, as part of the overall arrangements concerning the convening of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, it held the first part of its fiftieth session at its seat at the United Nations Office at Geneva, from 20 April to 12 June 1998, and the second part at United Nations Headquarters in New York, from 27 July to 14 August 1998.

298. The Commission considered the feasibility of holding part of its sixty-eighth session in New York based on information provided by the Secretariat regarding estimated costs and relevant administrative, organizational and other factors, including its anticipated workload in the final year of the present quinquennium. Having regard to all the factors at its disposal, the Commission came to the conclusion that it would not be feasible for it to hold part of its sixty-eighth session in New York without causing undue disruptions. The Commission nevertheless affirmed its wish that consideration be given to the possibility of having one half session in the next quinquennium in New York. Such a possibility ought to be anticipated in the planning of future sessions of the Commission for the next quinquennium. In that regard, the Commission noted that such convening, taking into account the estimated costs and relevant administrative, organizational and other factors, could be anticipated during the first segment of a session either during the first (2017) or second (2018) year of the next quinquennium. Based on the information made available to it, the Commission recommends that preparatory work and estimates proceed on the basis that the first segment of its seventieth session (2018) would be convened at the United
Nations Headquarters in New York. Accordingly, the Commission requested the Secretariat to proceed to make the necessary arrangements for that purpose so as to facilitate the taking of the appropriate decision by the Commission at its sixty-eighth session in 2016.

5. Honoraria

299. The Commission reiterates its views concerning the question of honoraria, resulting from the adoption by the General Assembly of its resolution 56/272 of 27 March 2002, which has been expressed in the previous reports of the Commission.401 The Commission emphasizes that resolution 56/272 especially affects Special Rapporteurs, as it compromises support for their research work.

6. Documentation and publications

300. The Commission reiterated its recognition of the particular relevance and significant value to the work of the Commission of the legal publications prepared by the Secretariat.402 It recalled that the Codification Division had been able significantly to expedite the issuance of its publications through its highly successful desktop publishing initiative which greatly enhanced the timeliness and relevance of these publications to the Commission’s work for more than a decade. The Commission reiterated its regret as regards the curtailment and possible discontinuation of this initiative due to lack of resources and that consequently no new legal publications were distributed at its current session. The Commission reiterated its view that the continuation of this initiative was essential to ensure the timely issuance of these legal publications, in particular The Work of the International Law Commission in the various official languages. The Commission again 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 it with those publications.

301. The Commission reiterated its satisfaction that the summary records of the Commission, constituting crucial travaux préparatoires in the progressive development and codification of international law, would not be subject to arbitrary length restrictions. The Commission noted with satisfaction that the experimental measures to streamline the processing of the Commission’s Summary records introduced at the 2013 session had resulted in the more expeditious transmission of the provisional records to members of the Commission for timely correction, and prompt release. The Commission also welcomed the fact that the new working methods had led to the more rational use of resources and called on the Secretariat to continue its efforts to facilitate the preparation of the definitive records in all languages, without compromising their integrity.

302. The Commission expressed its gratitude to all Services involved in the processing of documents, both in Geneva and in New York, for their timely and


efficient processing of the Commission’s documents, often under narrow time constraints. It noted that such timely and efficient processing contributed to the smooth conduct of the Commission’s work.

303. The Commission expressed its appreciation to the United Nations Office at Geneva Library, which assisted members of the Commission very efficiently and competently.

7. **Yearbook of the International Law Commission**

304. The Commission reiterated that the *Yearbook of the International Law Commission* 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 took note that the General Assembly, in its resolution 69/118, expressed its appreciation to governments that had made voluntary contributions to the Trust Fund on the backlog relating to the *Yearbook*, and encouraged further contributions to the Trust Fund.

305. The Commission recommends that the General Assembly, as in its resolution 69/118, *express its satisfaction* with the remarkable progress achieved in the last few years in catching up with the backlog of the *Yearbook* in all six languages, and welcome the efforts made by the Division of Conference Management, especially its Editing Section of the United Nations Office at Geneva in effectively implementing relevant resolutions of the General Assembly calling for the reduction of the backlog; and *encourage* the Division of Conference Management to continue providing all necessary support to the Editing Section in advancing work on the *Yearbook*.

8. **Assistance of the Codification Division**

306. The Commission expressed its appreciation for the valuable assistance of the Codification Division of the Secretariat in its substantive servicing of the Commission and, in particular, the ongoing assistance provided to Special Rapporteurs and the preparation of in-depth research studies pertaining to aspects of topics presently under consideration, as requested by the Commission.

9. **Websites**

307. The Commission expressed its deep appreciation to the Secretariat for the establishment of a new website for the Commission, and called on it to continue updating and managing the website. The Commission reiterated that the website and other websites maintained by the Codification Division constitute an invaluable resource for the Commission 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 welcomed the fact that the website on the work of the Commission included information on the current status of the topics on the agenda of the Commission, as well as advance edited versions of the summary records of the Commission. The Commission also expressed its gratitude to the Secretariat for the successful completion of the digitization and posting on the website of the *Yearbooks* of the Commission in Russian.

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10. United Nations Audiovisual Library of International Law

308. The Commission noted with appreciation the extraordinary value of the United Nations Audiovisual Library of International Law in promoting a better knowledge of international law and the work of the United Nations in this field, including the International Law Commission.

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

309. The Commission recommends that the sixty-eighth session of the Commission be held in Geneva from 2 May to 10 June and 4 July to 12 August 2016.

C. Tribute to the Secretary of the Commission

310. At its 3263rd meeting, on 5 June 2015, the Commission paid tribute to Mr. George Korontzis, who had acted with high distinction as Secretary of the Commission since 2013, and who retired during the present session. It expressed its gratitude for the outstanding contribution made by Mr. Korontzis to the work of the Commission and to the codification and progressive development of international law; acknowledged with appreciation his professionalism, dedication to public service and commitment to international law; and extended its very best wishes to him in his future endeavours.

D. Cooperation with other bodies

311. At the 3274th meeting, on 22 July 2016, Judge Ronny Abraham, President of the International Court of Justice, addressed the Commission and briefed it on the recent judicial activities of the Court.\(^\text{405}\) An exchange of views followed.

312. The Asian-African Legal Consultative Organization (AALCO) was represented at the present session of the Commission by its Secretary-General, Mr. Rahmat Mohamad, who addressed the Commission at the 3250th meeting, on 13 May 2015.\(^\text{406}\) He briefed the Commission on the current activities of AALCO and provided an overview of the deliberations of AALCO at its fifty-fourth annual session held in Beijing from 13 to 17 April 2015, which focused, \textit{inter alia}, on four topics on the programme of work of the Commission, namely “Identification of customary international law”; “Expulsion of aliens”; “Protection of the Atmosphere”; and “Immunity of State officials from foreign criminal jurisdiction”. An exchange of views followed.

313. The Inter-American Juridical Committee was represented at the present session of the Commission by Vice-President of the Inter-American Juridical Committee, Mr. Carlos Mata Prates, who addressed the Commission at the 3265th meeting, on 7 July 2015.\(^\text{407}\) He gave an overview of the activities of the Committee in 2014/2015 on various legal issues in which the Committee was engaged. An exchange of views followed.

314. The Committee of Legal Advisers on Public International Law (CAHDI) of the Council of Europe was represented at the present session of the Commission by the Chair of the Committee of Legal Advisers on Public International Law, Mr Paul

\(^{405}\) This statement is recorded in the summary record of that meeting.

\(^{406}\) \textit{Ibid.}

\(^{407}\) \textit{Ibid.}
Rietjens, and the Head of Public International Law Division and Treaty Office of the Directorate of Legal Advice and Public International Law, Ms. Marta Requena, both of whom addressed the Commission at the 3268th meeting, on 10 July 2015. They focused on the current activities of CAHDI in the field of public international law, as well of the Council of Europe. An exchange of views followed.

315. The African Union Commission on International Law (AUCIL) was represented at the present session of the Commission by Justice Solo Kholisani and Mr. Ebenezer Appreku, Members of the African Union Commission on International Law, as well as Mr. Mourad Ben-Dhiab, Secretary of the AUCIL. Justice Solo Kholisani and Mr. Ebenezer Appreku addressed the Commission at the 3276th meeting, on 23 July 2015. They gave an overview of the activities of the African Union Commission on International Law. An exchange of views followed.

316. The United Nations High Commissioner for Human Rights, Mr. Zeid Ra’ad Al Hussein addressed the Commission at the 3272nd meeting, on 21 July 2015. He gave an overview of the activities of his Office and some of its concerns in the area of human rights and commented on some of the topics on the programme of work of the Commission, namely “Crimes against humanity”; and “Immunity of State officials from foreign criminal jurisdiction”. An exchange of views followed.

317. On 9 July 2015, an informal exchange of views was held between members of the Commission and the International Committee of the Red Cross (ICRC) on topics of mutual interest. Presentations were given on the preparations for the 32nd International Conference of the Red Cross and Red Crescent Movement, and updating of the ICRC Commentaries on the Geneva Conventions and Additional Protocols. Presentations were also made on topics on the programme of work of the Commission, including the “Subsequent agreements and subsequent practice in relation to the interpretation of treaties” and “Crimes against humanity”.

E. Representation at the seventieth session of the General Assembly

318. The Commission decided that it should be represented at the seventieth session of the General Assembly by its Chairman, Mr. Narinder Singh.

F. International Law Seminar

319. Pursuant to General Assembly resolution 69/118, the fifty-first session of the International Law Seminar was held at the Palais des Nations from 6 to 24 July 2015, during the present session of the Commission. The Seminar is intended for young jurists specializing in international law, young professors or government officials pursuing an academic or diplomatic career in posts in the civil service of their country.

\[408\] Ibid.

\[409\] Ibid.

\[410\] Ibid.

\[411\] Statements were made by Ms. Christine Beerli, Vice President of the ICRC, Mr. Narinder Singh, Chairman of the Commission. Presentations were made on “Subsequent Agreements and Subsequent Practice in relation to the Interpretation of Treaties”, by Mr. Georg Nolte and “Crimes against Humanity” by Mr. Sean D. Murphy, “Preparations for the 32nd International Conference of the Red Cross and Red Crescent Movement”, by Dr. Knut Doerrmann, Chief Legal Officer and Head of the ICRC Legal Division and “Updating the ICRC Commentaries on the Geneva Conventions and Additional Protocols”, by Dr. Jean-Marie Henckaerts, Head of the Commentaries Update Project, ICRC.
320. Twenty-four participants of different nationalities, from all regional groups took part in the session412. The participants attended plenary meetings of the Commission, specially arranged lectures, and participated in working groups on specific topics.

321. Mr. Narinder Singh, Chairman of the Commission, opened the Seminar. Mr. Markus Schmidt, Senior Legal Adviser to the United Nations Office at Geneva (UNOG), was responsible for the administration, organization and conduct of the Seminar. The University of Geneva ensured the scientific coordination of the Seminar.

Mr. Vittorio Mainetti, international law expert from the University of Geneva, acted as coordinator, assisted by Mr. Cédric Apercé, Ms. Yusra Suedi, legal assistants, and Ms. Cami Schwab, intern in the Legal Liaison Office of UNOG.


323. Seminar participants attended six external sessions. They attended a workshop organised by the University of Geneva in collaboration with the Geneva Water Hub, on the topic: “International Water Law: Issues of Implementations”. The following speakers made statements: Ms. Danae Azaria (Lecturer, University College of London), Prof. Laurence Boisson de Chazournes (University of Geneva), Mr. Lucius Caflisch (member of the International Law Commission), Mr. Maurice Kamto (member of the International Law Commission), Prof. Attila Tanzi (University of Bologna, Italy), Ms. Christina Leb (World Bank), Prof. Marco Sassóli (University of Geneva) and Ms. Mara Tignino (University of Geneva). The workshop was followed by a reception offered by the Geneva Water Hub. A special session on “International Administrative Tribunals” was held at the International Labour Organization (ILO), led by Mr. Drazen Petrovic, Registrar of the ILO Administrative Tribunal. Seminar participants also took part in a presentation on “International Refugee Law” given by Mr. Cornelis Wouters, Senior Legal Adviser of the United Nations High Commissioner for Refugees. They also attended the annual Lalive Lecture at the invitation of the Graduate Institute of International and Development Studies. The lecture was given by Mr. Sean D. Murphy, on “A Rising Tide: Dispute Settlement under the Law of the Sea”. A briefing at the International Telecommunications Union (ITU) was also given by Mr. Nikos Volanis, Legal Officer of the ITU, followed by a visit of the ITU Museum. Finally, a special session was organised at the World Health Organization, where presentations on “International Law and Health” were given by

412 The following persons participated in the Seminar: Ms. Kakanang Amaranand (Thailand), Mr. Hamed Camara (Mauritania), Eileen A. Cañas Vargas (Costa Rica), Francis W. Changara (Zimbabwe), Namgay Dorji (Bhutan), Fatoumata P. Doumbouya (Guinea), Pilar Eugenio (Argentina), Soaad Hossam (Egypt), Gedeon Jean (Haiti), Akino Kowashi (Japan), Gift Kweka (Tanzania), Lucia Leontiev (Moldova), Matilda Mendy (Gambia), Momchil Milanov (Bulgaria), Quyen T.H. Nguyen (Viet Nam), Elinathan Ohiomoba (United States of America), Francisco J. Pascual Vives (Spain), Ye Joon Rim (Republic of Korea), Matteo Sarzo (Italy), Cornelius V.N. Scholtz (South Africa), Darcel G. Smith-Williamson (Bahamas), Luka M. Tomazic (Slovenia), Shuxi Yin (China), Franz J. Zubieten (Bolivia (Plurinational State of)). The Selection Committee, chaired by Mr. Makane Moïse Mbengué, Professor of International Law at the University of Geneva, met on 7 April 2015 and selected 25 candidates out of 102 applications. One selected candidate could not attend the Seminar.
Steven A. Solomon, Principal Legal Officer, and Mr. Jakob Quirin, Associate Legal Officer.

324. Two Seminar working groups on “Jus cogens” and “State succession in relation to State responsibility” were organised. Each Seminar participant was assigned to one of them. Two members of the Commission, Mr. Dire Tladi and Mr. Pavel Šturma, supervised and provided guidance to the working groups. Each group prepared a report and presented its findings during the last working session of the Seminar. The reports were compiled and distributed to all participants as well as to the members of the Commission.

325. The Republic and Canton of Geneva offered its traditional hospitality at the Geneva Town Hall where the Seminar participants visited the Alabama room and attended a cocktail reception.

326. The Permanent Representative of the United Kingdom to the United Nations and other International Organisations in Geneva invited the Seminar participants for a reception at the residence.

327. Mr. Narinder Singh, Chairman of the International Law Commission, Mr. Markus Schmidt, Director of the International Law Seminar, and Mr. Momchil Milanov, on behalf of the Seminar participants, addressed the Commission during the closing ceremony of the Seminar. Each participant was presented with a certificate of attendance.

328. The Commission noted with particular appreciation that since 2013 the Governments of Argentina, Austria, China, Finland, India, Ireland, Mexico, Sweden, Switzerland, and of the United Kingdom had made voluntary contributions to the United Nations Trust Fund for the International Law Seminar. The Circolo di diritto internazionale (CIDIR), a private association for the promotion of international law based in Rome (Italy), also contributed to the Seminar. Even though the financial crisis of recent years had seriously affected the finances of the Seminar, a sufficient number of fellowships to deserving candidates especially from developing countries in order to achieve adequate geographical distribution of participants were awarded from the trust fund. This year, fourteen fellowships (nine for travel and living expenses, three for living expenses only and two for travel expenses only) were granted.

329. Since 1965, year of the Seminar inception, 1163 participants, representing 171 nationalities, have taken part in the Seminar. 713 have received a fellowship.

330. 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 based in Geneva. The Commission recommends that the General Assembly should again appeal to States to make voluntary contributions in order to secure the organization of the Seminar in 2016 with as broad participation as possible.