

Chapter X

OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION

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

514. At its 2713th meeting, on 1 May 2002, the Commission established a planning group for the entire session.⁴¹⁰

515. The Planning Group held six meetings. It had before it Section E, “Other decisions and conclusions of the Commission”, of the topical summary by the Secretariat of the discussion held in the Sixth Committee of the General Assembly during its fifty-sixth session (A/CN.4/521, paras. 122–123).

516. At its 2744th meeting, on 9 August 2002, the Commission considered and endorsed the report of the Planning Group.

1. NEW TOPICS

517. At its 2717th meeting, on 8 May 2002, the Commission decided:

(a) To include in the programme of work of the Commission the topic “International liability for injurious consequences arising out of acts not prohibited by international law (international liability in case of loss from transboundary harm arising out of hazardous activities)”⁴¹¹ and to establish a working group on this topic;

(b) To include in the programme of work of the Commission the topic “The responsibility of international organizations”, to appoint a Special Rapporteur on this topic and to establish a working group to assist the Special Rapporteur during the current session of the Commission.

518. At the same meeting, the Commission also decided:

(a) To include in the programme of work of the Commission the topic “Shared natural resources”, to appoint a Special Rapporteur on this topic and to establish a working group to assist the Special Rapporteur;

(b) To include in the programme of work of the Commission the topic “The fragmentation of international law: difficulties arising from the diversification and expansion of international law”⁴¹² and to establish a Study Group on this topic.

⁴¹⁰ For the composition of the Planning Group, see para. 7 above.

⁴¹¹ The current version of the title, as adopted by the Commission at its 2744th meeting.

⁴¹² The current version of the title, as adopted by the Commission at its 2742nd meeting, on 7 August 2002.

519. At its 2717th meeting, the Commission decided to appoint Mr. Giorgio Gaja Special Rapporteur for the topic “The responsibility of international organizations”. At its 2727th meeting, on 30 May 2002, it decided to appoint Mr. Chusei Yamada Special Rapporteur for the topic “Shared natural resources”. At its 2743rd meeting, on 8 August 2002, it decided to appoint Mr. Pemmaraju Sreenivasa Rao Special Rapporteur for the topic “International liability for injurious consequences arising out of acts not prohibited by international law (international liability in case of loss from transboundary harm arising out of hazardous activities)”.

2. WORK PROGRAMME OF THE COMMISSION FOR THE REMAINDER OF THE QUINQUENNium

520. Since this is the first year of the quinquennium, and following its usual practice the Commission found it useful to establish a work programme for the ensuing four years setting out in general terms, for each topic, the goals to be achieved for that topic during this period. The Commission considers this work programme tentative, given that the nature and complexities of the work preclude making any certain prediction far in advance.

Work programme (2003–2006)

2003

RESERVATIONS TO TREATIES

Eighth report of the Special Rapporteur on the validity of reservations

DIPLOMATIC PROTECTION

Fourth report of the Special Rapporteur on the nationality of corporations

UNILATERAL ACTS OF STATES

Sixth report of the Special Rapporteur on general rules applicable to unilateral acts (conclusion of the first part)

THE RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS

First report of the Special Rapporteur on the scope of the study and on attribution of conduct

SHARED NATURAL RESOURCES

First report on the outline of the topic

INTERNATIONAL LIABILITY FOR INJURIOUS CONSEQUENCES ARISING OUT OF ACTS NOT PROHIBITED BY INTERNATIONAL LAW (INTERNATIONAL LIABILITY IN CASE OF LOSS FROM TRANSBOUNDARY HARM ARISING OUT OF HAZARDOUS ACTIVITIES)

Further development of the conceptual outline of the topic

THE FRAGMENTATION OF INTERNATIONAL LAW: DIFFICULTIES ARISING FROM THE DIVERSIFICATION AND EXPANSION OF INTERNATIONAL LAW

First report (paper) on international legal ways and means to deal with fragmentation (e.g. on *lex specialis* and “self-contained regimes”)

2004

RESERVATIONS TO TREATIES

Ninth report of the Special Rapporteur on effects of reservations and of objections to reservations

DIPLOMATIC PROTECTION

Fifth report on miscellaneous outstanding matters and completion of the first reading on diplomatic protection; adoption of draft articles and commentaries thereto *on first reading*

UNILATERAL ACTS OF STATES

Seventh report of the Special Rapporteur on specific rules applicable to certain unilateral acts (second part)

THE RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS

Second report of the Special Rapporteur on the question of the responsibility of member States for conduct attributed to international organizations

SHARED NATURAL RESOURCES

Second report on confined groundwater

INTERNATIONAL LIABILITY FOR INJURIOUS CONSEQUENCES ARISING OUT OF ACTS NOT PROHIBITED BY INTERNATIONAL LAW (INTERNATIONAL LIABILITY IN CASE OF LOSS FROM TRANSBOUNDARY HARM ARISING OUT OF HAZARDOUS ACTIVITIES)

To be determined at a later stage

THE FRAGMENTATION OF INTERNATIONAL LAW: DIFFICULTIES ARISING FROM THE DIVERSIFICATION AND EXPANSION OF INTERNATIONAL LAW

Second report (paper) on international legal ways and means to deal with fragmentation (e.g. on the 1969 Vienna Convention rule on interpretation of treaties in light of applicable general international law)

2005

RESERVATIONS TO TREATIES

Tenth report of the Special Rapporteur on succession of States in respect of reservations; fine-tuning of the guidelines and adoption *on first reading*

DIPLOMATIC PROTECTION

Comments by Governments on draft articles and commentaries thereto *on first reading*

UNILATERAL ACTS OF STATES

Eighth report of the Special Rapporteur on rules applicable to unilateral acts not referred to in the seventh report

THE RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS

Third report of the Special Rapporteur on residual matters concerning the origin of responsibility for international organizations

SHARED NATURAL RESOURCES

Third report on oil and gas

INTERNATIONAL LIABILITY FOR INJURIOUS CONSEQUENCES ARISING OUT OF ACTS NOT PROHIBITED BY INTERNATIONAL LAW (INTERNATIONAL LIABILITY IN CASE OF LOSS FROM TRANSBOUNDARY HARM ARISING OUT OF HAZARDOUS ACTIVITIES)

To be determined at a later stage

THE FRAGMENTATION OF INTERNATIONAL LAW: DIFFICULTIES ARISING FROM THE DIVERSIFICATION AND EXPANSION OF INTERNATIONAL LAW

Third report (paper) on international legal ways and means to deal with fragmentation (e.g. on application of successive treaties and modification of multilateral treaties *inter se*)

2006

RESERVATIONS TO TREATIES

Second reading

DIPLOMATIC PROTECTION

Sixth report dealing with comments of the Sixth Committee and Governments and adoption of draft articles and commentaries thereto *on second reading*

UNILATERAL ACTS OF STATES

Adoption of the draft articles and commentaries there-to *on first reading*

THE RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS

Fourth report of the Special Rapporteur; adoption of draft articles and commentaries thereto *on first reading*

SHARED NATURAL RESOURCES

Fourth report on comprehensive review

INTERNATIONAL LIABILITY FOR INJURIOUS CONSEQUENCES ARISING OUT OF ACTS NOT PROHIBITED BY INTERNATIONAL LAW (INTERNATIONAL LIABILITY IN CASE OF LOSS FROM TRANSBOUNDARY HARM ARISING OUT OF HAZARDOUS ACTIVITIES)

To be determined at a later stage

THE FRAGMENTATION OF INTERNATIONAL LAW: DIFFICULTIES ARISING FROM THE DIVERSIFICATION AND EXPANSION OF INTERNATIONAL LAW

Fourth (final) report (paper) on the practical role of the International Law Commission

3. LONG-TERM PROGRAMME OF WORK

521. On 1 May 2002, the Planning Group decided to reconstitute its Working Group on the Long-term Programme of Work and appointed Mr. Alain Pellet as its chair.⁴¹³ The Working Group met on 31 July 2002, and the Chair made an oral progress report to the Planning Group on 1 August 2002. At this stage the Working Group's work is of a preliminary nature.

4. PROCEDURES AND METHODS OF WORK

522. The Commission considered various proposals on issues relating to procedural aspects of its work. In particular, it discussed a proposal which had already been presented at its fifty-third session.⁴¹⁴ The proposal related to a system of partial renewal of the Commission, to improving attendance at the Commission and to measures for achieving more gender balance in the Commission's membership. Another proposal related to the rotation of geographical distribution of seats in the Bureau. These proposals were discussed in depth, but finally it was felt that they would be extremely difficult to implement in practical terms, in addition to various sensitive political issues that they might raise. Consideration was also given to an oral proposal concerning continued improvement of informal discussions between the members of the Commission attending sessions of the General Assembly, as referred to in paragraph 12 of the latter's resolution 56/82.

523. The Commission also considered the mechanism of the "mini-debates"—short thematic debates or exchanges

of views in the Plenary on particular issues or questions raised during the consideration of a topic. The Commission is of the view that the "mini-debates" are useful and constitute an important innovation in the working methods of the Commission. They should, however, be kept brief and focused: speakers should not use them to make long statements falling outside the scope of the mini-debate.

5. COST-SAVING MEASURES

524. With regard to paragraph 10 of General Assembly resolution 56/82 encouraging the Commission, at its future sessions, to continue taking cost-saving measures in organizing its programme of work, the Commission wishes to note that it is making every effort to conduct its work in the most cost-effective and economical way. The Commission considers that the shortening of its current and next (fifty-fifth) sessions to 10 weeks represents a significant cost-saving measure. The Commission also intends, once it returns to its sessions of 12 weeks' duration, to consider organizing its work in a manner similar to the approach used at its fifty-third session.

6. HONORARIA

525. The Commission noted that after the date on which members were appointed to their position the General Assembly adopted resolution 56/272, of 23 April 2002, which reduced the honoraria payable to them and to members of certain other bodies.

526. The Commission draws attention to the point made in the report of the Secretary-General⁴¹⁵ that the level of the honoraria had not been reviewed since 1981 and that the decision of the General Assembly was taken in direct contradiction to the conclusions and recommendations in that report to the effect that the honoraria should be reviewed.

527. The Commission notes that the decision by the General Assembly was taken without consultation with the Commission and considers that the decision is not consistent in procedure or substance with either the principles of fairness according to which the United Nations conducts its affairs or with the spirit of service with which members of the Commission contribute their time and approach their work.

528. Moreover, the Commission feels compelled to stress that the above resolution especially affects Special Rapporteurs, in particular those from developing countries, as it compromises the support for their research work.

529. The Commission decided to bring its concerns to the attention of Member States in the hope that the above-mentioned resolution would be duly reconsidered.

530. The members of the Commission, concerned about the administrative costs involved in the payment of the current symbolic honoraria, also decided that they would not collect them.

⁴¹³ For the membership of the Working Group see para. 11 above.

⁴¹⁴ *Yearbook ... 2001*, vol. II (Part Two), p. 206, para. 258.

⁴¹⁵ A/53/643.

531. The Commission recommended that a letter from the Chair of the Commission containing the above points be sent to the appropriate authorities.

B. Date and place of the fifty-fifth session

532. The Commission decided to hold a 10-week split session, which would take place at the United Nations Office at Geneva from 5 May to 6 June and from 7 July to 8 August 2003.

C. Cooperation with other bodies

533. The Inter-American Juridical Committee was represented at the present session of the Commission by Mr. Orlando Rebagliati. Mr. Rebagliati addressed the Commission at its 2730th meeting, on 5 June 2002, and his statement is recorded in the summary record of that meeting.

534. The Asian-African Legal Consultative Organization was represented at the present session of the Commission by its Secretary-General, Mr. Wafik Kamil. Mr. Kamil addressed the Commission at its 2738th meeting, on 30 July 2002, and his statement is recorded in the summary record of that meeting.

535. At its 2739th meeting, on 31 July 2002, Mr. Gilbert Guillaume, President of ICJ, addressed the Commission and informed it of the Court's recent activities and of the cases currently before it. An exchange of views followed. The Commission finds this ongoing exchange of views with the Court very useful and rewarding.

536. The European Committee on Legal Cooperation and the Ad Hoc Committee of Legal Advisers on Public International Law of the Council of Europe were represented at the present session of the Commission by Mr. Rafael Benítez. Mr. Benítez addressed the Commission at its 2744th meeting, on 9 August 2002, and his statement appears in the summary record of that meeting.

537. On 4 May 2002, an informal exchange of views was held between members of the Commission and members of the legal services of ICRC on topics of interest to the two institutions.

D. Representation at the fifty-seventh session of the General Assembly

538. The Commission decided that it should be represented at the fifty-seventh session of the General Assembly by its Chair, Mr. Robert Rosenstock.

539. Moreover, at its 2750th meeting, on 16 August 2002, the Commission requested Mr. Dugard, Special Rapporteur on the topic of diplomatic protection, to attend the fifty-seventh session of the General Assembly under the terms of paragraph 5 of Assembly resolution 44/35 of 4 December 1989.

E. International Law Seminar

540. Pursuant to General Assembly resolution 55/152, the thirty-eighth session of the International Law Seminar was held at the Palais des Nations from 21 May to 7 June 2002, during the present session of the Commission. The seminar is intended for advanced students specializing in international law and for young academics or government officials pursuing an academic, diplomatic or civil service career in their country.

541. Twenty-four participants of different nationalities, mostly from developing countries, were able to take part in the session.⁴¹⁶ Participants observed plenary meetings of the Commission, attended specially arranged lectures and participated in working groups on specific topics.

542. The seminar was opened by the Chair of the Commission, Mr. Robert Rosenstock. Mr. Ulrich von Blumenthal, Senior Legal Officer of the United Nations Office at Geneva, was responsible for organizing and running the seminar.

543. The following lectures were given by members of the Commission: Mr. Peter Tomka, "State responsibility"; Mr. Giorgio Gaja, "Reservations to treaties"; Mr. Pemmaraju Sreenivasa Rao, "International liability for injurious consequences arising out of acts not prohibited by international law"; Mr. Víctor Rodríguez Cedeño, "Unilateral acts of States"; Mr. Ian Brownlie, "The work of the International Court of Justice"; Mr. Bruno Simma, "Human rights and the International Law Commission"; and Mr. John Dugard, "Diplomatic protection".

544. In addition, the following lectures were given: Mr. Hans Corell, Under-Secretary-General for Legal Affairs, Legal Counsel, "The International Criminal Court and other United Nations *ad hoc* tribunals"; Mr. Gudmundur Eiriksson, Judge, ITLOS, and former member of the Commission, "The International Tribunal for the Law of the Sea"; Mr. Stéphane Jaquemet, Senior Legal Officer, Promotion of Refugee Law Section, UNHCR, "The protection mandate of UNHCR"; and Mr. Arnold Pronto, Associate Legal Officer, Office of Legal Affairs, "The work of the International Law Commission". A morning was devoted to a visit to the European Organization for Nuclear Research (CERN), at the invitation of its Legal Counsel, Ms. Eva Gröniger-Voss. The discussion focused on legal matters related to CERN.

⁴¹⁶ The following participated in the thirty-eighth session of the International Law Seminar: Mr. Babafemi Akinrinade (Nigeria); Ms. Marlene Aldred (Jamaica); Mr. Marc Araba (Benin); Ms. Mama Aissata Bangoura (Guinea); Mr. Hee-Deok Choi (Republic of Korea); Mr. Luis Cieza Palo (Peru); Mr. Nebiyu Dagne (Ethiopia); Ms. Anita Demeter (Hungary); Mr. Aasmund Eriksen (Norway); Mr. Sodnom Ganhuyag (Mongolia); Mr. Abdelmoneim Hassan (Sudan); Ms. Ulrike Hiebler (Austria); Ms. Franziska Isliker (Switzerland); Mr. Alireza Kazemi Abadi (Islamic Republic of Iran); Mr. Atip Latipulhayat (Indonesia); Mr. Ernest Makawa (Malawi); Ms. Fernanda Millicay (Argentina); Mr. Alexander Orakhelashvili (Georgia); Ms. Mateja Platis (Slovenia); Ms. Maria Angela Ponce (Philippines); Mr. Ali Qazilbash (Pakistan); Ms. Maria Sanglade Rodriguez (Venezuela); Mr. Drahoslav Stefanek (Slovakia); Ms. Wenjuan Yin (China). A selection committee chaired by Mr. Georges Abi-Saab (Honorary Professor, Graduate Institute of International Studies, Geneva) met on 4 April 2002 and selected 24 out of 79 applicants for participation in the seminar.

545. Participants were assigned to one of three working groups for the study of the following topic under the guidance of Ms. Paula Escameia, member of the Commission and coordinator: "The case of East Timor: some legal aspects of the road to independence". Each group presented its findings to the seminar. Participants were also assigned to other working groups, whose main task was to prepare the discussions following each lecture and submit written summary reports on those lectures. A collection of the reports was compiled and distributed to the participants.

546. Participants were also given the opportunity to make use of the facilities of the United Nations library.

547. The Republic and Canton of Geneva offered its traditional hospitality to the participants with a guided visit of the Alabama and Grand Council Rooms followed by a reception.

548. Mr. Robert Rosenstock, Chair of the Commission, Mr. Ulrich von Blumenthal, on behalf of the United Nations Office at Geneva, and Mr. Marc Araba, on behalf of the participants, addressed the Commission and the participants at the close of the seminar. Each participant was presented with a certificate of participation.

549. The Commission notes with particular appreciation that the Governments of Austria, Finland, Germany, Norway, Switzerland and the United Kingdom had made voluntary contributions to the United Nations Trust Fund for the International Law Seminar. The financial situation of the Trust Fund made it possible to award enough fellowships to achieve adequate geographical distribution of

participants and the participation of deserving candidates from developing countries who would otherwise have been prevented from taking part. Full fellowships (travel and subsistence allowance) were awarded to 11 candidates and partial fellowships (covering subsistence only) to 7 candidates.

550. Of the 855 participants, representing 152 nationalities, who have taken part in the seminar since 1965, the year of its inception, 505 have received a fellowship.

551. The Commission stresses the importance it attaches to the sessions of the seminar, which enable young lawyers, especially from developing countries, to familiarize themselves with the work of the Commission and the activities of the many international organizations which have their headquarters in Geneva. The Commission recommends that the General Assembly should again appeal to States to make voluntary contributions in order to secure the holding of the seminar in 2003 with as broad participation as possible. It should be emphasized that, as there are fewer and fewer contributions, this year the organizers of the seminar had to draw on the reserve of the Trust Fund. Should this trend continue, it is to be feared that the financial situation of the Trust Fund will no longer allow as many fellowships to be awarded.

552. The Commission notes with satisfaction that in 2002 comprehensive interpretation services were made available to the seminar. It expresses the hope that the same services will be provided for the seminar's next session, despite existing financial constraints.