

Chapter III

SPECIFIC ISSUES ON WHICH COMMENTS WOULD BE OF PARTICULAR INTEREST TO THE COMMISSION

A. Shared natural resources

26. In view of its completion on first reading of the draft articles on the law of transboundary aquifers, the Commission would welcome from Governments:

- (a) their comments and observations on all aspects of the draft articles;
- (b) their comments and observations on the commentaries to the draft articles;
- (c) their views on the final form of the draft articles.

B. Responsibility of international organizations

27. The Commission would welcome comments and observations from Governments and international organizations on draft articles 17 to 30, in particular on those relating to responsibility in case of provision of competence to an international organization (draft article 28) and to responsibility of a State member of an international organization for the internationally wrongful act of that organization (draft article 29).

28. The Commission would also welcome views from Governments and international organizations on the two following questions, due to be addressed in the next report:

- (a) Do members of an international organization that are not responsible for an internationally wrongful act of that organization have an obligation to provide compensation to the injured party, should the organization not be in a position to do so?
- (b) According to draft article 41, paragraph 1, on responsibility of States for internationally wrongful acts approved by the Commission at its fifty-third session,⁵ when a State commits a serious breach of an obligation under a peremptory norm of general international law, the other States are under an obligation to cooperate to bring the breach to an end through lawful means. Should an international organization commit a similar breach, are States and also other international organizations under an obligation to cooperate to bring the breach to an end?

C. Reservations to treaties

29. The Commission recommended that the Secretariat, in consultation with the Special Rapporteur on reservations

to treaties, organize a meeting during the fifty-ninth session of the Commission with United Nations experts in the field of human rights, including representatives of monitoring bodies, in order to discuss issues relating to reservations to human rights treaties. In that perspective, the Commission would appreciate receiving the views of Governments on adjustments that they would consider it necessary or useful to introduce in the “Preliminary conclusions of the International Law Commission on reservations to normative multilateral treaties including human rights treaties”, adopted by the Commission at its forty-ninth session.⁶

D. The obligation to extradite or prosecute (*aut dedere aut judicare*)

30. The Commission would welcome any information that Governments may wish to provide concerning their legislation and practice with regard to this topic, particularly more contemporary ones. If possible, such information should concern:

- (a) international treaties by which a State is bound, containing the obligation to extradite or prosecute, and reservations made by that State to limit the application of this obligation;
- (b) domestic legal regulations adopted and applied by a State, including constitutional provisions and penal codes or codes of criminal procedures, concerning the obligation to extradite or prosecute (*aut dedere aut judicare*);
- (c) judicial practice of a State reflecting the application of the obligation *aut dedere aut judicare*;
- (d) crimes or offences to which the principle of the obligation *aut dedere aut judicare* is applied in the legislation or practice of a State.

31. The Commission would also welcome any further information that Governments may consider relevant to the topic.

E. Other decisions and conclusions of the Commission

32. With regard to the long-term programme of work, the Commission would welcome the views of Governments on the following (para. 33).

⁵ *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, p. 113.

⁶ *Yearbook ... 1997*, vol. II (Part Two), pp. 56–57, para. 157.

33. In 1978, the Commission adopted draft articles on most-favoured-nation clauses.⁷ In view of the circumstances at the time, the General Assembly took no action with respect to this draft, which clearly is out of date in many aspects today. Some members of the Commission believe that the topic should not be reopened in the Commission at this time, in that the basic policy differences that caused the General Assembly to take no action on the

⁷ *Yearbook ... 1978*, vol. II (Part Two), pp. 16–73, para. 74.

Commission's draft articles have not yet been resolved, and should first be dealt with in international forums that have the necessary technical expertise and policy mandate. Other members consider that, given the changes in the international situation and the continued importance of the most-favoured-nation clause in contemporary treaties, in particular in the fields of trade law and international investments, the time has come to undertake further work on the question and therefore to include the topic in the Commission's long-term programme of work.