

Chapter XII

TREATIES OVER TIME

A. Introduction

217. The Commission, at its sixtieth session (2008), decided to include the topic “Treaties over time” in its programme of work and to establish a Study Group therefor at its sixty-first session.⁸⁹¹

B. Consideration of the topic at the present session

218. At its 3012th meeting, on 29 May 2009, the Commission established a Study Group on treaties over time, chaired by Mr. Georg Nolte.

219. At its 3029th meeting, on 31 July 2009, the Commission took note of the oral report of the Chairperson of the Study Group on Treaties over time.

1. DISCUSSIONS OF THE STUDY GROUP

220. The Study Group held two meetings, on 7 and 28 July 2009. The discussions in the Study Group focused on the identification of the issues to be covered, the working methods of the Study Group and the possible outcome of the Commission’s work on this topic.

221. As a basis for the discussion, the Study Group had before it the following documents: two informal papers presented by the Chairperson, which were intended to serve as a starting point for considering the scope of future work on the topic; the proposal concerning this topic contained in Annex I of the Commission’s report to the General Assembly on the work of its sixtieth session, in 2008;⁸⁹² and some background material, including relevant excerpts of the Commission’s articles on the law of treaties, with commentaries;⁸⁹³ of the *Official Records of the United Nations Conference on the Law of Treaties*;⁸⁹⁴ and of the conclusions and the report of the Commission’s Study Group on the fragmentation of international law.⁸⁹⁵

⁸⁹¹ At its 2997th meeting, on 8 August 2008 (see *Yearbook ... 2008*, vol. II (Part Two), p. 148, para. 353). For the syllabus of the topic, see *ibid.*, Annex I. The General Assembly, in paragraph 6 of its resolution 63/123 of 11 December 2008, took note of the decision.

⁸⁹² See the footnote above.

⁸⁹³ *Yearbook ... 1966*, vol. II, document A/6309/Rev.1, pp. 187 *et seq.*

⁸⁹⁴ *Official Records of the United Nations Conference on the Law of Treaties, first session...* (see footnote 568 above); *Official Records of the United Nations Conference on the Law of Treaties, first and second sessions...* (footnote 558 above); and *Official Records of the United Nations Conference on the Law of Treaties, second session, Vienna, 9 April–22 May 1969, Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (A/CONF.39/11/Add.1, United Nations publication, Sales No. E.70.V.6).

⁸⁹⁵ *Yearbook ... 2006*, vol. II (Part Two), para. 251, and A/CN.4/L.685 and Corr.1 (mimeographed; available on the Commission’s website, documents of the fifty-eighth session; the final text will be reproduced as an addendum to *Yearbook ... 2006*, vol. II (Part One)).

222. With regard to the scope of the topic, the main question was whether the work of the Study Group should focus on the issue of subsequent agreement and practice, or whether it should follow a broader approach by also dealing with other issues such as: (a) the effects of certain acts or circumstances on treaties (termination and suspension, other unilateral acts, as well as factual circumstances such as material breaches and changed circumstances); (b) the effects of supervening other sources of international law on treaties (effects of successive treaties, supervening custom, *desuetudo* and obsolescence); (c) amendments and *inter se* modifications of treaties.

223. Several members of the Study Group expressed a preference for a narrow approach, whereby the work of the Study Group would be limited, at least for the time being, to the issue of subsequent agreement and practice. It was also observed that the scope of subsequent agreement and practice was in itself broad, as it did not only cover treaty interpretation, but also related aspects. According to another view, the approach to be followed by the Study Group should be considerably broader than the question of subsequent agreement and practice, so as to cover a variety of issues concerning the relations between treaties and time. Some members were of the view that, in any event, it was not advisable to circumscribe from the outset the scope of the topic to the issue of subsequent agreement and practice. Certain members also suggested that work could be conducted in parallel on subsequent agreement and practice, and on one or some other aspects falling under the broader scope of the topic.

224. Concerning the working methods of the Study Group, several members were of the view that the work to be undertaken should be of a collective nature, and pointed to the need for a proper distribution of the tasks among interested members of the Study Group.

225. As regards the possible outcome of the Commission’s work on this topic, several members underlined that the final product should present practical guidance for States. In this regard, the idea of elaborating a repertory of practice, which could be accompanied by a number of conclusions, found broad support in the Study Group. However, some members were of the opinion that the Commission should remain flexible, at this stage, as to the possible outcome of its work under this topic.

2. CONCLUSIONS OF THE STUDY GROUP

226. The Study Group agreed on the following:

(a) work should start on subsequent agreement and practice on the basis of successive reports to be prepared by the Chairperson for the consideration of the Study Group, while the possibility of approaching the topic from a broader perspective should be further explored;

(b) the Chairperson would prepare for next year a report on subsequent agreement and practice as addressed in the jurisprudence of the ICJ, and other international courts and tribunals of general or *ad hoc* jurisdiction;

(c) contributions on the issue of subsequent agreement and practice by other interested members of the Study Group were encouraged, in particular on the question of subsequent agreement and practice at the regional level or in relation to special treaty regimes or specific areas of international law;

(d) moreover, interested members were invited to provide contributions on other issues falling within the broader scope of the topic as previously outlined.