

Chapter III

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

A. Immunity of State officials from foreign criminal jurisdiction

36. What approach would States wish the Commission to take on this topic? Should the Commission seek to set out existing rules of international law (*lex lata*), or should the Commission embark on an exercise of progressive development (*lex ferenda*)?

37. Which holders of high office in the States (such as Heads of State, Heads of Government, ministers for foreign affairs) enjoy *de lege lata*, or should enjoy *de lege ferenda*, immunity *ratione personae*?

38. What crimes are, or should be, excluded from immunity *ratione personae* or immunity *ratione materiae*?

39. It would greatly assist the Commission if States could provide information on their law and practice in the field covered by the Special Rapporteur's preliminary,⁹ second¹⁰ and third (A/CN.4/646) reports. Such information could include recent developments in the case law and legislation. Information on the procedural issues covered by the Special Rapporteur's third report would be particularly helpful.

B. Expulsion of aliens

40. With regard to the topic "Expulsion of aliens", the Commission would like to know from States whether, in their national practice, suspensive effect is given to appeals against an expulsion decision:

- relating to an alien lawfully in the territory;
- relating to an alien unlawfully in the territory;
- relating to either, irrespective of category.

41. Does a State that has such a practice consider it to be required by international law?

42. The Commission would also welcome the views of States on whether, as a matter of international law or otherwise, an appeal against an expulsion decision *should* have suspensive effect on the implementation of the decision.

C. Protection of persons in the event of disasters

43. The Commission reiterates that it would welcome any information concerning the practice of States under

this topic, including examples of domestic legislation. It would welcome, in particular, information and comments on specific legal and institutional problems encountered in dealing with or responding to disasters.

44. The Commission has taken the view that States have a duty to cooperate with the affected State in disaster relief matters. Does this duty to cooperate include a duty on States to provide assistance when requested by the affected State?

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

45. Are there, in the legislation of States or in the case law of domestic tribunals, certain crimes or categories of crimes in respect of which the obligation to extradite or prosecute has been implemented?

46. If so, has a court or tribunal ever relied, in this respect, on customary international law?

E. Treaties over time

47. The Commission, in its consideration of the topic "Treaties over time", attempts to clarify the practical and legal significance of "subsequent agreements" and the "subsequent practice" of the parties as a means of interpretation and application of treaties (art. 31 (3) (a) and (b) of the Vienna Convention on the law of treaties (1969 Vienna Convention)). In this context, the Commission reminds States of its request, contained in its report to the General Assembly on the work of its sixty-second session (2010),¹¹ to provide it with one or more examples of "subsequent agreements" or "subsequent practice" which are or have been relevant to the interpretation and application of one or more of their treaties. The Commission would be interested, in particular, in instances of interpretation by way of subsequent agreements or subsequent practice which have not been subject to judicial or quasi-judicial proceedings.

F. The most-favoured-nation clause

48. In order to complete its work on the most-favoured-nation clause in relation to the field of investment law, the Study Group on the most-favoured-nation clause plans to consider whether any use of most-favoured-nation clauses in areas outside those of trade and investment law could provide it with guidance for its work. Accordingly,

⁹ *Yearbook ... 2008*, vol. II (Part One), document A/CN.4/601.

¹⁰ See footnote 5 above.

¹¹ *Yearbook ... 2010*, vol. II (Part Two), p. 16, paras. 26–28.

the Commission would appreciate being provided with examples of any recent practice or case law in relation to most-favoured-nation clauses in fields other than trade and investment law.

G. New topics

49. The Commission decided to include in its long-term programme of work five new topics referred to in paragraphs 365 to 367 of the current report. In the selection of these topics, the Commission was guided by the following criteria that it had agreed upon in 1998,¹² namely that the topic (*a*) should reflect the needs of States in respect of the progressive development and codification of international

law; (*b*) should be sufficiently advanced in stage in terms of State practice to permit progressive development and codification; (*c*) is concrete and feasible for progressive development and codification; and (*d*) should reflect new developments in international law and pressing concerns of the international community as a whole. The Commission would welcome the views of States on these new topics.

50. In addition, the Commission would welcome any proposals that States may wish to make concerning possible topics for inclusion in its long-term programme of work. It would be helpful if such proposals were accompanied by a statement of reasons in their support, taking into account the criteria, referred to above, for the selection of topics.

¹² *Yearbook ... 1998*, vol. II (Part Two), p. 110, para. 553.