

Chapter XI

OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION

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

436. At its 2758th meeting on 16 May 2003, the Commission established a Planning Group for the current session.⁵⁰⁹

437. The Planning Group held seven meetings. It had before it the topical summary of the discussion held in the Sixth Committee of the General Assembly during its fifty-seventh session, entitled "Other decisions and conclusions of the Commission" (A/CN.4/529, sect. G) and paragraphs 7, 8, 10, 12 and 15 of General Assembly resolution 57/21 on the report of the International Law Commission on the work of its fifty-fourth session.

438. At its 2783rd meeting on 31 July 2003, the Commission took note of the report of the Planning Group.

1. WORKING GROUP ON LONG-TERM PROGRAMME OF WORK

439. The Planning Group reconstituted on 16 May 2003 its Working Group on the long-term programme of work and appointed Mr. Alain Pellet as Chairman of this Working Group.⁵¹⁰

2. DOCUMENTATION OF THE COMMISSION

440. With regard to the question of the documentation of the Commission in the light of: "Improving the performance of the Department of General Assembly Affairs and Conference Services: report of the Secretary-General"⁵¹¹ as well as paragraph 15 of General Assembly resolution 57/21, the Commission understood the background to the Secretary-General's report, which aimed to establish page limits for reports of subsidiary bodies. The Commission would like to recall, however, the particular characteristics of its work that made it inappropriate for page limits to be applied to the Commission's documentation.

441. The Commission noted that it was established to assist the General Assembly in the discharge of its obligation under Article 13, paragraph 1 (a), of the Charter of the United Nations, to encourage the progressive development and codification of international law. That obligation in turn stemmed from the recognition by those involved

in drafting the Charter that, if international legal rules were to be arrived at by agreement, then in many areas of international law a necessary part of the process of arriving at agreement would involve an analysis and precise statement of State practice. Accordingly, by its statute, the Commission must justify its proposals to the General Assembly and ultimately States, on the evidence of existing law and the requirements of its progressive development in the light of the current needs of the international community. This meant that the draft articles or other recommendations contained in the reports of the special rapporteurs and the report of the Commission itself have to be supported by extensive references to State practice, doctrine and precedents and accompanied by extensive commentaries. The Commission was required by article 20 of its statute to submit its draft articles to the General Assembly together with a commentary containing: (a) adequate presentation of precedents and other relevant data, including treaties, judicial decisions and doctrine; (b) conclusions relevant to: (i) the extent of agreement on each point in the practice of States and doctrine; (ii) divergencies and disagreement which existed, as well as arguments invoked in favour of one or another solution.

442. In addition to the above legal requirements the Commission wished further to note that its report, the reports of its special rapporteurs and the related research projects, studies, working documents and questions directed to States were also indispensable for the following reasons:

(a) They were a critical component of the process of consulting States and obtaining their views;

(b) They assisted individual States in the understanding and interpretation of the rules embodied in codification conventions;

(c) They were part of the *travaux préparatoires* of such conventions, and were frequently referred to, or quoted in the diplomatic correspondence of States, in argument before ICJ and by the Court itself in its judgments;

(d) They contributed to the dissemination of information about international law in accordance with the relevant United Nations programme; and

(e) They formed as important a product of the Commission's work as the draft articles themselves and enabled the Commission to fulfil, in accordance with its statute, the tasks entrusted to it by the General Assembly.

⁵⁰⁹ For the composition of the Planning Group, see paragraph 7 above.

⁵¹⁰ For the composition of the Working Group, see paragraph 11 above.

⁵¹¹ A/57/289.

443. Accordingly, as the Commission has pointed out on previous occasions,⁵¹² it considered that it would be entirely inappropriate to attempt in advance and *in abstracto* to fix the maximum length of reports of special rapporteurs or of its own report or of the various related research projects, studies and other working documents. As explained above, the length of a given Commission document would depend on a number of variable factors, such as the nature of the topic and the extent of relevant State practice, doctrine and precedent. The Commission considered therefore that new regulations on page limits such as those contained in the report of the Secretary-General on improving the performance of the Department of General Assembly Affairs and Conference Services should not apply to its own documentation, which should continue to remain exempted from page limitations as endorsed by previous resolutions of the General Assembly.⁵¹³ The Commission wished to stress, however, that it and its special rapporteurs were fully conscious of the need for achieving economies whenever possible in the overall volume of documentation and would continue to bear such considerations in mind.

3. RELATIONS OF THE COMMISSION WITH THE SIXTH COMMITTEE

444. As one of the means of facilitating a better and more effective dialogue between the Commission and the Sixth Committee, the Commission, in its report to the General Assembly on the work of its forty-eighth session, proposed that:

it should strive to extend its practice of identifying issues on which comment is specifically sought, if possible in advance of the adoption of draft articles on the point. These issues should be of a more general, "strategic" character rather than relating to issues of drafting technique.⁵¹⁴

The suggestion was welcomed by the Committee which requested the Commission, in paragraph 14 of Assembly resolution 51/160 of 16 December 1996, to identify the specific issues for each topic on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest in providing effective guidance for the Commission in its further work.

445. Consequently, the Commission, in its report to the General Assembly on the work of its forty-ninth session,⁵¹⁵ added two additional chapters (chaps. II–III). Chapter II was to provide a very broad view of the work accomplished by the Commission at the current session on a particular topic and chapter III was intended to provide in a single chapter issues relevant to specific topics on which views of Governments were particularly useful to the Commission. In addition, in view of the size of the report of the Commission which led to delay in its official production and circulation, the secretariat of the

⁵¹² See *Yearbook ... 1977*, vol. II (Part Two), p. 132, para. 126, and *Yearbook ... 1982*, vol. II (Part Two), pp. 123–124, para. 271.

⁵¹³ See resolution 32/151 of 19 December 1977, para. 10, resolution 37/111 of 16 December 1982, para. 5, and all subsequent resolutions on the annual reports of the Commission to the General Assembly.

⁵¹⁴ *Yearbook ... 1996*, vol. II (Part Two), p. 90, para. 181.

⁵¹⁵ *Yearbook ... 1997*, vol. II (Part Two).

Commission was requested to circulate chapters II–III informally to Governments.

446. In order to improve further the utility of chapter III, the Commission proposed that in preparing their questions and issues on which Governments' views were particularly sought, the special rapporteurs might wish to provide sufficient background and substantive elaboration to better assist Governments in developing their responses.

4. HONORARIUMS

447. The Commission reiterated the views it had expressed in paragraphs 525–531 of its report to the General Assembly on the work of its fifty-fourth session.⁵¹⁶ It re-emphasized that the decision of the Assembly in its resolution 56/272 of 27 March 2002 was: (a) in direct contradiction with the conclusions and recommendations of the report of the Secretary-General⁵¹⁷; (b) taken without consultation with the Commission; and (c) not consistent in procedure or substance with either the principle of fairness on the basis of which the United Nations conducted its affairs or with the spirit of service with which members of the Commission contributed their time and approached their work. The Commission stressed that the above resolution especially affected special rapporteurs, in particular those from developing countries, as it compromised the support for their necessary research work.

B. Date and place of the fifty-sixth session

448. The Commission decided to hold a 10-week split session which would take place at the United Nations Office at Geneva from 3 May to 4 June and 5 July to 6 August 2004.

C. Cooperation with other bodies

449. The Inter-American Juridical Committee was represented at the present session of the Commission by Mr. Grandino Rodas. Mr. Rodas addressed the Commission at its 2764th meeting, on 28 May 2003, and his statement was recorded in the summary record of that meeting. An exchange of views followed.

450. At its 2775th meeting, on 15 July 2003, Judge Jiuyong Shi, President of ICJ, addressed the Commission and informed it of the Court's recent activities and of the cases currently before it and his statement was recorded in the summary record of that meeting. An exchange of views followed.

451. The European Committee on Legal Co-operation and the Committee of Legal Advisers on Public International Law of the Council of Europe were represented at the current session of the Commission by Mr. Guy de Vel. Mr. de Vel addressed the Commission at its 2777th meeting, on 18 July 2003, and his statement was recorded in the summary record of that meeting. An exchange of views followed.

⁵¹⁶ *Yearbook ... 2002*, vol. II (Part Two), pp. 102–103.

⁵¹⁷ A/53/643.

452. The Asian-African Legal Consultative Organization (AALCO) was represented at the present session of the Commission by its Secretary-General, Mr. Wafik Z. Kamil. Mr. Kamil addressed the Commission at its 2778th meeting, on 22 July 2003, and his statement was recorded in the summary record of that meeting. An exchange of views followed.

453. Members of the Commission held an informal exchange of views on issues of mutual interest, and in particular on the topic of reservations to treaties with members of the Committee against Torture and the Committee on Economic, Social and Cultural Rights on 13 May 2003, with members of the Human Rights Committee on 31 July 2003, and with members of the Sub-Commission on the Promotion and Protection of Human Rights on 7 August 2003. On 30 July 2003, members of the Commission held an informal meeting on the topic of shared natural resources with experts from FAO and the International Association of Hydrogeologists, whose presence was arranged by UNESCO.

454. On 15 May 2003, an informal exchange of views focusing on the fragmentation of international law was held between members of the Commission and members of the Société française de droit international. On 22 May 2003, an informal exchange of views was held between members of the Commission and members of the legal services of ICRC on topics of mutual interest. On 29 July 2003, an informal exchange of views was held between members of the Commission and members of the International Law Association on topics of mutual interest for the two institutions (diplomatic protection, responsibility of international organizations and the long-term programme of work).

455. These meetings expanding the Commission's exchanges of views and cooperation with other bodies were particularly useful.

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

456. The Commission decided that it should be represented at the fifty-eighth session of the General Assembly by its Chairman, Mr. Enrique Candioti.

457. Moreover, at its 2790th meeting, on 8 August 2003, the Commission requested Mr. Giorgio Gaja to attend the fifty-eighth session of the General Assembly under the terms of paragraph 5 of General Assembly resolution 44/35 of 4 December 1989.

E. International Law Seminar

458. Pursuant to General Assembly resolution 57/21, the thirty-ninth session of the International Law Seminar was held at the Palais des Nations from 7 to 25 July 2003, during the current session of the Commission. The Seminar is intended for advanced students specializing in international law and for young professors or government officials pursuing an academic or diplomatic career or posts in the civil service in their country.

459. Twenty-four participants of different nationalities, mostly from developing countries, were able to take part in the session.⁵¹⁸ The participants in the Seminar observed plenary meetings of the Commission, attended specially arranged lectures, and participated in working groups on specific topics.

460. The Seminar was opened by the Chairman of the Commission, Mr. Enrique Candioti. Mr. Ulrich von Blumenthal, Senior Legal Officer of the United Nations Office at Geneva, was responsible for the administration, organization and conduct of the Seminar.

461. The following lectures were given by members of the Commission: Mr. Víctor Rodríguez Cedeño: "Unilateral acts of States"; Mr. Pemmaraju Sreenivasa Rao: "Transboundary harm arising from hazardous activities"; Mr. Djamchid Momtaz: "Putting an end to impunity"; Mr. John Dugard: "Diplomatic protection"; Mr. Ian Brownlie: "The work of the International Court of Justice"; Mr. Giorgio Gaja: "Responsibility of international organizations"; Mr. Chusei Yamada: "Shared natural resources"; Ms. Paula Escarameia: "Use of force in international law"; and Mr. Martti Koskenniemi: "Fragmentation of international law".

462. Lectures were also given by Mr. George Korontzis, Senior Legal Officer, Office of Legal Affairs: "Some aspects of recent developments in the law of treaties"; Mr. Arnold Pronto, Legal Officer, Office of Legal Affairs: "The work of the International Law Commission"; Mr. Steven Wolfson, Senior Legal Officer, UNHCR: "International refugee law"; Ms. Jelena Pejic, Legal Adviser, ICRC: "Current challenges to international humanitarian law"; and Mr. Gian Luca Burci, Senior Legal Officer, WHO: "The WHO Framework Convention on Tobacco Control".

463. Each Seminar participant was assigned to one of two working groups on "Unilateral acts of States" and "Fragmentation of international law". The Special Rapporteurs of the Commission for these subjects, Mr. Víctor Rodríguez Cedeño and Mr. Martti Koskenniemi, provided guidance for the working groups. The groups presented their findings to the Seminar. Each participant was also assigned to submit a written summary report on one of the lectures. A collection of the reports was compiled and distributed to all participants.

⁵¹⁸ The following persons participated in the thirty-ninth session of the International Law Seminar: Ms. Sylvia Ama Adusu (Ghana); Mr. Mutlaq Al-Qahtani (Qatar); Ms. Karine Ardault (France); Mr. Bernard Bekale-Meviane (Gabon); Mr. David Berry (Canada); Ms. Laura Castro Grimaldo (Panama); Ms. Athina Chanaki (Greece); Ms. Namalimba Coelho Ferreira (Angola); Mr. Rolands Ezergailis (Latvia); Ms. Suraya Harun (Malaysia); Ms. Khin Oo Hlaing (Myanmar); Mr. Azad Jafarov (Azerbaijan); Ms. Tamar Kaplan (Israel); Mr. Norman Antonio Lizano Ortiz (Costa Rica); Ms. Yvonne Mendoke (Cameroon); Mr. Ngor Ndiaye (Senegal); Ms. Tabitha Wanyama Ouya (Kenya); Ms. Elena Paris (Romania); Mr. Juha Rainne (Finland); Mr. Luther Rangreji (India); Ms. Daniela Schlegel (Germany); Ms. Karolina Valladares Barahona (Nicaragua); Ms. Cristina Villarino Villa (Spain); Mr. Edgar Ynsfran Ugarriza (Paraguay). A Selection Committee, under the Chairmanship of Mr. Georges Abi-Saab (Honorary Professor, Graduate Institute of International Studies, Geneva), met on 8 April 2003 and selected 24 candidates out of 99 applications for participation in the Seminar.

464. Participants were also given the opportunity to make use of the facilities of the United Nations Library.

465. 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.

466. Mr. Enrique Candiotti, Chairman of the Commission, Mr. Sergei Ordzhonikidze, Director-General of the United Nations Office at Geneva, Mr. Ulrich von Blumenthal, Director of the Seminar, and Ms. Cristina Villarino Villa, on behalf of the participants, addressed the Commission and the participants at the close of the Seminar. Each participant was presented with a certificate attesting to his or her participation in the thirty-ninth session of the Seminar.

467. The Commission noted with particular appreciation that the Governments of Austria, Cyprus, Finland, Germany, Ireland, the Republic of Korea and Switzerland had made voluntary contributions to the United Nations Trust Fund for the International Law Seminar. The financial situation of the Fund allowed the awarding of a sufficient number of fellowships to deserving candidates from developing countries in order to achieve adequate geographical distribution of participants. That year, full fellowships (travel and

subsistence allowance) were awarded to 13 candidates and partial fellowship (subsistence or travel only) to four candidates.

468. Of the 879 participants, representing 154 nationalities, who had taken part in the Seminar since 1965, the year of its inception, 522 had received a fellowship.

469. The Commission stressed the importance it attached to the sessions of the Seminar, which enabled young lawyers, especially those 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 recommended that the General Assembly should again appeal to States to make voluntary contributions in order to secure the holding of the Seminar in 2004 with as broad a participation as possible. While the number and level of fellowships could be maintained in 2003, the funding situation remained precarious. Increased financial support was required in order to allow the same number of fellowships as in the past.

470. The Commission noted with satisfaction that in 2003 comprehensive interpretation services had been made available to the Seminar. It expressed the hope that the same services would be provided for the Seminar at the next session, within existing resources.