

Chapter XI

OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION

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

359. At its 2818th meeting, held on 16 July 2004, the Commission established a Planning Group for the current session.⁶²³

360. The Planning Group held three meetings. It had before it Section H of the Topical Summary, prepared by the Secretariat, of the discussion held in the Sixth Committee of the General Assembly during its fifty-eighth session entitled “Other decisions and conclusions of the Commission” (A/CN.4/537, sect. H) and General Assembly resolution 58/77 on the Report of the International Law Commission on the work of its fifty-fifth session.

361. At its 2823rd meeting, held on 27 July 2004, the Commission took note of the report of the Planning Group.

1. WORKING GROUP ON THE LONG-TERM PROGRAMME OF WORK

362. The Working Group on the long-term programme of work was reconstituted with Mr. Alain Pellet as Chairperson of this Working Group.⁶²⁴ The Working Group held five meetings and its Chairperson reported orally to the Planning Group on 20 July 2004. The Working Group intends to submit a full report, together with the topics that it proposes for inclusion in the long-term programme of work at the end of the quinquennium. However, the Working Group recommended that the topic “Obligation to extradite or prosecute (*aut dedere aut judicare*)” be included in the Commission’s long-term programme of work. It considered that the topic met the relevant criteria which were mentioned in the Commission’s 2000 report to the General Assembly on the work of its fifty-second session, namely that this topic is precise and presents a theoretical and practical utility in terms of codification and progressive development of international law.⁶²⁵

363. The Commission agreed with the recommendation of the Planning Group that this topic be included in the long-term programme of work. The preliminary outline presenting the topic is annexed to the present report. The Commission envisages the inclusion of this topic in its current programme of work at its next session.

2. NEW TOPICS FOR INCLUSION IN THE CURRENT PROGRAMME OF THE WORK OF THE COMMISSION

364. The Commission considered the selection of new topics for inclusion in the Commission’s current

⁶²³ The composition of the Planning Group is given in paragraph 5 above.

⁶²⁴ See the composition of the Working Group in paragraph 9 above.

⁶²⁵ See *Yearbook... 2000*, vol. II (Part Two), p. 131, para. 728.

programme of work and decided to include two new topics, namely “Expulsion of aliens” and “Effects of armed conflicts on treaties”. In this regard, the Commission decided to appoint Mr. Maurice Kamto Special Rapporteur for the topic “Expulsion of aliens” and Mr. Ian Brownlie Special Rapporteur for the topic “Effects of armed conflicts on treaties”.

3. STRATEGIC FRAMEWORK

365. The Commission, having considered part of the Strategic Framework (2006–2007) for Programme 6: sub-programme 3 (Progressive development and codification of international law),⁶²⁶ prepared pursuant to General Assembly resolution 58/269, of 23 December 2003, takes note with approval of this part of the Strategic Framework.

4. DOCUMENTATION OF THE COMMISSION

366. The Commission noted with satisfaction that the General Assembly in paragraph 16 of its resolution 58/77 approved the Commission’s conclusion on its documentation.

367. With regard to section II.B, paragraph 9 of General Assembly resolution 58/250, of 23 December 2003, entitled “Pattern of Conferences” concerning summary records of bodies entitled to them, the Commission, having considered several possibilities proposed by the Secretariat, concluded that none of them would meet the needs of the Commission. The Commission recalled that on several occasions it considered the summary records as an inescapable requirement for the procedures and methods of its work. They constitute the equivalent of *travaux préparatoires* and are an indispensable part of the process of progressive development of international law and its codification. They are vital for the Commission’s work. Moreover, the Commission stressed the importance of summary records as an essential part of the ILC *Yearbook*.

368. The Commission noted with appreciation the updated Survey of Liability Regimes prepared by the Codification Division and the Comments and observations received from Governments and international organizations on the topic of responsibility of international organizations and recommends that they be issued as official documents of the Commission.

5. HONORARIA

369. The Commission reiterated once more the views it had expressed in paragraphs 525 to 531 of its Report to the General Assembly on the work of its fifty-fourth

⁶²⁶ See A/59/6 (Prog. 6).

session⁶²⁷ and in paragraph 447 of its Report on the work of its fifty-fifth session.⁶²⁸ The Commission reiterates that General Assembly resolution 56/272 of 27 March 2002 concerning the question of honoraria especially affects Special Rapporteurs, in particular those from developing countries, as it compromises the support for their necessary research work.

B. Date and place of the fifty-seventh session of the Commission

370. The Commission decided to hold a 10-week split session which will be held at the United Nations Office at Geneva from 2 May to 3 June and 4 July to 5 August 2005.

C. Cooperation with other bodies

371. At its 2813th meeting, held on 7 July 2004, Judge Jiuyong Shi, President of the International Court of Justice, addressed the Commission and informed it of the Court's recent activities and of the cases currently before it. His statement is recorded in the summary record of that meeting. An exchange of views followed.

372. 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 present session of the Commission by Mr. Guy de Vel, who addressed the Commission at its 2799th meeting, held on 14 May 2004.⁶²⁹ An exchange of views followed.

373. The Asian–African Legal Consultative Organization (AALCO) was represented at the present session of the Commission by its Secretary-General, Mr. Wafik Z. Kamil, who addressed the Commission at its 2816th meeting, held on 13 July 2004.⁶³⁰ An exchange of views followed.

374. The Inter-American Juridical Committee was represented at the present session of the Commission by Mr. Felipe Paolillo, who addressed the Commission at its 2819th meeting, held on 20 July 2004.⁶³¹ An exchange of views followed.

375. Members of the Commission held an informal exchange of views on issues of mutual interest, and in particular on the topic “Reservations to treaties” with members of the Committee on the Rights of the Child on 19 May 2004 and with members of the Committee on the Elimination of Racial Discrimination on 4 August 2004. At the invitation of the Sub-Commission on the Promotion and Protection of Human Rights, members of the Commission attended a meeting of the Sub-Commission, on 5 August 2004, at which the question of reservations to human rights treaties was discussed and an exchange of views followed.

⁶²⁷ *Yearbook ... 2002*, vol. II (Part Two), pp. 102–103.

⁶²⁸ *Yearbook ... 2003*, vol. II (Part Two), p. 101.

⁶²⁹ This statement is recorded in the summary record of that meeting, *Yearbook ... 2004*, vol. I.

⁶³⁰ *Ibid.*

⁶³¹ *Ibid.*

376. On 1 June 2004, an informal exchange of views was held between members of the Commission and members of the legal services of the ICRC on topics of mutual interest. On 28 July 2004, 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, in particular programmes of work, responsibility of international organizations and water resources.

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

377. The Commission decided that it should be represented at the fifty-ninth session of the General Assembly by its Chairperson, Mr. Teodor Viorel Melescanu.

378. Moreover, at its 2830th meeting held on 6 August 2004, the Commission requested Mr. C. John Dugard, Special Rapporteur on the topic “Diplomatic protection”, and Mr. Pemmaraju Sreenivasa Rao, Special Rapporteur on 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)”, to attend the fifty-ninth 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

379. Pursuant to General Assembly resolution 58/77, the fortieth session of the International Law Seminar was held at the Palais des Nations from 5 to 23 July 2004, during the present 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.

380. Twenty-four participants of different nationalities, mostly from developing countries, were able to take part in the session.⁶³² The participants in the Seminar observed plenary meetings of the Commission, attended specially arranged lectures and participated in working groups on specific topics.

⁶³² The following persons participated in the fortieth session of the International Law Seminar: Mr. Ghulam Shabbir Akbar (Pakistan); Mr. Abdul Rahman Al Baloushi (United Arab Emirates); Mr. Steven James Barela (United States of America); Mr. Martin Bartoň (Slovak Republic); Mr. Philip Bittner (Austria); Mr. Srinivas Burra (India); Mr. Jean d'Aspremont Lynden (Belgium); Ms. Sandra Deheza Rodriguez (Bolivia); Ms. Rosa Delia Gómez-Durán (Argentina); Ms. Mateja Grašek (Slovenia); Ms. Hisaan Hussain (Maldives); Mr. Mbelwa Kairuki (United Republic of Tanzania); Mr. Sifana Ibsén Kone (Burkina Faso); Ms. Annemarieke Künzli (Netherlands); Ms. Eneida Lima (Cape Verde); Mr. Maxim Musikhin (Russian Federation); Ms. Jeanette Mwangi (Kenya); Ms. Katya Pineda (El Salvador); Mr. Resfel Pino Álvarez (Cuba); Mr. Pablo Sandonato de León (Uruguay); Mr. Abdoulaye Tounkara (Mali); Mr. Ian Wadley (Australia); Mr. Yehenew Wali-legne (Ethiopia); and Mr. Chen Wang (China). A Selection Committee, under the Chairmanship of Mr. Jean-Marie Dufour (President of the Geneva International Academic Network, GIAN), met on 21 April 2004 and selected 24 candidates out of 77 applications for participation in the Seminar.

381. The Seminar was opened by the Chairperson of the Commission, Mr. Teodor Viorel Melescanu. Mr. Ulrich von Blumenthal, Senior Legal Adviser of the United Nations Office at Geneva, was responsible for the administration, organization and conduct of the Seminar.

382. The following lectures were given by members of the Commission: Mr. João Clemente Baena Soares: "The Work of the High Level Commission on UN Reform"; Mr. John Dugard: "Diplomatic Protection"; Mr. Martti Koskenniemi: "Fragmentation of International Law"; Mr. Giorgio Gaja: "Responsibility of International Organizations"; Mr. Chusei Yamada: "Shared Natural Resources"; Mr. Michael Matheson/Mr. Djamchid Momtaz: "The ICJ decision on oil platforms (6 November 2003)"; and Mr. Pemmaraju Sreenivasa Rao: "International Liability".

383. Lectures were also given by Mr. Ralph Zacklin, Assistant Secretary-General, Acting Legal Counsel: "International Tribunals established by the United Nations: Lessons Learned"; Ms. Maria Isabel Torres Cazorla, Professor, University of Malaga: "Unilateral Acts"; Ms. Pereyra-Frederichsen, Legal Affairs Officer, WTO: "WTO Dispute Settlement System"; Ms. Jelena Pejic, Legal Adviser, ICRC: "Current Challenges to International Humanitarian Law"; Mr. George Korontzis, Senior Legal Officer, United Nations Office of Legal Affairs: "The ILC History: Working Methods, Programme of Work"; and Mr. Markus Schmidt, Senior Legal Officer, OHCHR: "The Human Rights Committee and the Individual Complaints Procedures".

384. Each Seminar participant was assigned to one of two working groups on "Unilateral acts" and "Aquifers". The Special Rapporteurs of the Commission for these subjects, Mr. Víctor Rodríguez Cedeño and Mr. Chusei Yamada ("Shared natural resources"), 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.

385. Participants were also given the opportunity to make use of the facilities of the United Nations Library, which extended its opening hours during the Seminar.

386. 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.

387. Mr. Teodor Viorel Melescanu, Chairperson of the Commission, Mr. Sergei Ordzhonikidze, Director-General of the United Nations Office at Geneva, Mr. Ulrich von Blumenthal, Director of the Seminar and Mr. Srinivas Burra, 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 fortieth session of the Seminar.

388. The Commission noted with particular appreciation that the Governments of Austria, Finland, Germany, Ireland, Norway and Sweden 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. This year, full fellowships (travel and subsistence allowance) were awarded to 17 candidates and partial fellowships (subsistence only) to 2 candidates.

389. Of the 903 participants, representing 156 nationalities, who have taken part in the Seminar since 1965, the year of its inception, 541 have received a fellowship.

390. The Commission stresses the importance it attaches to the sessions of the Seminar, which enables young lawyers, especially those from developing countries, to familiarize themselves with the work of the Commission and the activities of 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 2005 with as broad participation as possible.

391. The Commission noted with satisfaction that in 2004 comprehensive interpretation services were made available to the Seminar. It expresses the hope that the same services will be provided for the Seminar at the next session, within existing resources.