

## Chapter XIII

### OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION

#### A. Expulsion of aliens

252. The Commission had before it the second report of the Special Rapporteur for the topic, Mr. Maurice Kamto (A/CN.4/573) and a memorandum prepared by the Secretariat (A/CN.4/565 and Corr.1). The Commission decided to consider the report at its next session in 2007.

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

253. At its 2899th meeting, held on 25 July 2006, the Commission established a Planning Group for the current session.<sup>1003</sup>

254. The Planning Group held three meetings. It had before it Section I of the topical summary of the discussion held in the Sixth Committee of the General Assembly during its sixtieth session, prepared by the Secretariat and entitled “Other decisions and conclusions of the Commission” (A/CN.4/560), and General Assembly resolution 60/22, in particular paragraphs 6, 7, 8, 13 and 16 on the report of the International Law Commission on the work of its fifty-seventh session. It also had before it the proposed strategic framework for the period 2008–2009, concerning Programme 6: Legal Affairs, sub-programme 3 (Progressive development and codification of international law), of which it took note.

255. At its 2907th meeting, held on 7 August 2006, the Commission took note of the report of the Planning Group.

##### 1. LONG-TERM PROGRAMME OF WORK

256. The Working Group on the Long-term Programme of Work, established by the Planning Group during the fifty-fourth session of the Commission (2002), with Mr. Alain Pellet as Chairperson, was reconstituted during the current session.<sup>1004</sup> The Working Group submitted its report to the Planning Group on 27 July 2006. The Working Group, in accordance with the established practice, was requested to report at the end of the quinquennium, at the fifty-eighth session (2006) of the Commission. During the quinquennium, the Working Group considered a number of topics, and requested members of the Working Group, other members of the Commission and the Secretariat to prepare drafts on those topics. The Working Group was guided by the recommendation of the Commission, at its forty-ninth session (1997), regarding the criteria for the selection of the topics:

(a) the topic should reflect the needs of the States in respect of the progressive development and codification of international law;

(b) the topic should be sufficiently advanced in stage in terms of State practice to permit progressive development and codification;

(c) the topic is concrete and feasible for progressive development; [and]

... the Commission should not restrict itself to traditional topics, but could also consider those that reflect new developments in international law and pressing concerns of international community.<sup>1005</sup>

257. Bearing in mind the criteria above, during the present quinquennium the Planning Group recommended and the Commission endorsed the inclusion of the following topics in the long-term programme of work of the Commission:

(a) the obligation to extradite or prosecute (*aut dedere aut judicare*);

(b) immunity of State officials from foreign criminal jurisdiction;

(c) jurisdictional immunity of international organizations;

(d) protection of persons in the event of disasters;

(e) protection of personal data in transborder flow of information; and

(f) extraterritorial jurisdiction.

258. The syllabuses on the topics that have been recommended for inclusion in the long-term programme of work, except for the topic “The obligation to extradite or prosecute (*aut dedere aut judicare*)”, are annexed to the present report. It will be recalled, with respect to the topic “The obligation to extradite or prosecute (*aut dedere aut judicare*)”, that an interim report, together with a syllabus, was submitted during the Commission’s fifty-sixth session (2004) and its inclusion was recommended in the long-term programme of work.<sup>1006</sup> At the same session, the Commission agreed with the inclusion of this topic in its long-term programme of work.<sup>1007</sup>

<sup>1003</sup> For the membership of the Planning Group, see paragraph 6 above.

<sup>1004</sup> *Yearbook ... 2002*, vol. II (Part Two), p. 102, para. 521. For the membership of the Working Group, see paragraph 10 above.

<sup>1005</sup> *Yearbook ... 1997*, vol. II (Part Two), pp. 71–72, para. 238.

<sup>1006</sup> *Yearbook ... 2004*, vol. II (Part Two), p. 120, para. 362, and Annex.

<sup>1007</sup> *Ibid.*, para. 363.

259. Regarding the topic “The most-favoured-nation clause”, on which the Planning Group did not make a final recommendation, the Commission decided to seek the views of Governments as to the utility of further work by the Commission on this topic (see chapter III, paragraph 33 above).<sup>1008</sup>

260. The consolidated list included in the long-term programme of work since the forty-fourth session of the Commission (1992) is as follows:<sup>1009</sup>

(a) law and practice relating to reservations to treaties;<sup>1010</sup>

(b) State succession and its impact on the nationality of natural and legal persons;<sup>1011</sup>

(c) diplomatic protection;<sup>1012</sup>

(d) ownership and protection of wrecks beyond the limits of national maritime jurisdiction;<sup>1013</sup>

(e) unilateral acts of States;<sup>1014</sup>

(f) responsibility of international organizations;<sup>1015</sup>

(g) shared natural resources of States;<sup>1016</sup>

(h) risks ensuing from fragmentation of international law;<sup>1017</sup>

(i) effects of armed conflict on treaties;<sup>1018</sup>

(j) expulsion of aliens;<sup>1019</sup>

(k) the obligation to extradite or prosecute (*aut dedere aut judicare*);<sup>1020</sup>

(l) immunity of State officials from foreign criminal jurisdiction;<sup>1021</sup>

(m) jurisdictional immunity of international organizations;<sup>1022</sup>

(n) protection of persons in the event of disasters;<sup>1023</sup>

(o) protection of personal data in transborder flow of information;<sup>1024</sup> and

(p) extraterritorial jurisdiction.<sup>1025</sup>

261. The Commission expressed its appreciation for the valuable assistance rendered by the Codification Division in the preparation of proposals on “Protection of persons in the event of disasters”, “Protection of personal data in transborder flow of information”, “Extraterritorial jurisdiction”, and “Acquiescence and its effects on the legal rights and obligations of States”, at the request, and for the consideration, of the Working Group of the long-term programme of work.

## 2. DOCUMENTATION AND PUBLICATIONS

262. The Commission considered the issue of timely submission of reports by Special Rapporteurs. Bearing in

<sup>1008</sup> The Commission included the topic “The most-favoured-nation clause” in its programme of work at its twentieth session, in 1967 (*Yearbook ... 1967*, vol. II, p. 369, para. 48) and appointed Mr. Endre Ustor (*ibid.*) and Mr. Nikolai Ushakov (*Yearbook ... 1977*, vol. II (Part Two), p. 124, para. 77) as the successive Special Rapporteurs. The Commission completed the second reading of the topic at its thirtieth session, in 1978 (*Yearbook ... 1978*, vol. II (Part Two), pp. 16–73, para. 74). The General Assembly at its thirty-fifth, thirty-sixth, thirty-eighth, fortieth and forty-third sessions (1980, 1981, 1983, 1985 and 1988) invited comments from Governments and intergovernmental organizations, on the draft articles proposed by the Commission. At its forty-sixth session (1991), the General Assembly, in its decision 46/416 of 9 December 1991, took note with appreciation of the work of the Commission as well as views and comments by Governments and intergovernmental organizations and decided to bring the draft articles to the attention of Member States and intergovernmental organizations for their consideration in such cases and to the extent they deemed appropriate.

<sup>1009</sup> In order to establish a global view of the main fields of public international law, the Commission, at its forty-eighth session (1996) established a general scheme of topics classified under 13 main fields. The list was not intended to be exhaustive and was to serve as a general reference. For the list, see *Yearbook ... 1996*, vol. II (Part Two), Annex II.

<sup>1010</sup> *Yearbook ... 1993*, vol. II (Part Two), para. 427. The Commission included this topic on its agenda at its forty-fifth session (1993), *ibid.*, para. 440. See also General Assembly resolution 48/31 of 9 December 1993. The title was subsequently changed to “Reservations to treaties”, *Yearbook ... 1995*, vol. II (Part Two), para. 487 (a).

<sup>1011</sup> *Yearbook ... 1993*, vol. II (Part Two), para. 427. The Commission included this topic on its agenda at its forty-fifth session (1993), *ibid.*, para. 440. See also General Assembly resolution 48/31. The title was subsequently changed to “Nationality in relation to the succession of States”, *Yearbook ... 1996*, vol. II (Part Two), para. 83. See also General Assembly resolution 51/160 of 11 December 1996.

<sup>1012</sup> *Yearbook ... 1995*, vol. II (Part Two), para. 501. Pursuant to General Assembly resolution 51/160, the Commission included this topic on its agenda at its forty-ninth session (1997), *Yearbook ... 1997*, vol. II (Part Two), paras. 169–171.

<sup>1013</sup> *Yearbook ... 1996*, vol. II (Part Two), para. 248.

<sup>1014</sup> *Ibid.* Pursuant to General Assembly resolution 51/160, the Commission included this topic on its agenda at its forty-ninth session (1997), *Yearbook ... 1997*, vol. II (Part Two), paras. 191–194.

<sup>1015</sup> *Yearbook ... 2000*, vol. II (Part Two), para. 729. The Commission included this topic on its agenda at its fifty-fourth session (2002), *Yearbook ... 2002*, vol. II (Part Two), para. 517 (b).

<sup>1016</sup> *Yearbook ... 2000*, vol. II (Part Two), para. 729. The Commission included this topic on its agenda at its fifty-fourth session (2002), *Yearbook ... 2002*, vol. II (Part Two), para. 518 (a).

<sup>1017</sup> *Yearbook ... 2000*, vol. II (Part Two), para. 729. The Commission included this topic on its agenda at its fifty-fourth session (2002), *Yearbook ... 2002*, vol. II (Part Two), para. 518 (b). The title was subsequently changed to “The fragmentation of international law: difficulties arising from the diversification and expansion of international law”, see *ibid.*, para. 494.

<sup>1018</sup> *Yearbook ... 2000*, vol. II (Part Two), para. 729. The Commission included this topic on its agenda at its fifty-sixth session (2004), *Yearbook ... 2004*, vol. II (Part Two), para. 364.

<sup>1019</sup> *Yearbook ... 2000*, vol. II (Part Two), para. 729. The Commission included this topic on its agenda at its fifty-sixth session (2004), *Yearbook ... 2004*, vol. II (Part Two), para. 364.

<sup>1020</sup> *Ibid.*, paras. 362–363, and Annex.

<sup>1021</sup> See para. 257 above, and Annex I below.

<sup>1022</sup> *Ibid.*, and Annex II below.

<sup>1023</sup> *Ibid.*, and Annex III below. It would be recalled that a proposal entitled “International protection of persons in critical situations” (2004) was prepared by Mr. M. Kamto for the consideration of the Working Group on the long-term programme of work. Copies are on file with the Codification Division.

<sup>1024</sup> See para. 257 above, and Annex IV below.

<sup>1025</sup> *Ibid.*, and Annex V below. It would be recalled that a proposal entitled “Extra-territorial application of national legislation” (1993) was prepared by Mr. Pemmaraju Sreenivasa Rao for the consideration of the Working Group on the long-term programme of work. Copies are on file with the Codification Division.

mind the rules and regulations relating to the submission of documents in the United Nations as well as the heavy workload of the relevant services of the Organization, the Commission emphasized once more the importance that it attaches to the timely submission of reports by Special Rapporteurs in view of both their processing and their distribution sufficiently in advance to allow members to study the reports.

263. The Commission reiterated the importance of providing and making available all evidence of State practice and other sources of international law relevant to the performance of the Commission's function of progressive development and codification of international law. While the Commission is aware of the advantages of being as concise as possible, it strongly believes that an *a priori* limitation cannot be placed on the length of its documentation and research projects, in particular reports of Special Rapporteurs.

264. The Commission expressed its appreciation for the valuable assistance of the Codification Division in its substantive servicing of the Commission and in the preparation of research projects, by providing legal materials and their analysis. In particular, appreciation should be expressed for the extensive research reflected in the Secretariat memorandum on expulsion of aliens.

265. The Commission requested the Secretariat to provide it with information on publications that relate to the work of the Commission.

266. Taking into account the usefulness of the publication "Work of the International Law Commission" and the fact that the sixth edition was published in 2004, the Commission requested the Codification Division to prepare the seventh edition of the publication.

267. The Commission expressed its appreciation for the results of activity of its Secretariat in establishing the Commission's new website.<sup>1026</sup> The new site constitutes an invaluable resource for the Commission in undertaking its work and represents an information tool for research on the work of the Commission, thereby contributing to the overall strengthening of the teaching, study, dissemination and wider appreciation of international law. The Commission encouraged the Secretariat to continue to develop the electronic database on the work of the Commission (including the Commission's new website) and to explore further options for its electronic dissemination.

### 3. MEETING WITH UNITED NATIONS HUMAN RIGHTS EXPERTS

268. In accordance with article 25, paragraph 1 of its Statute,<sup>1027</sup> 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 from human rights treaty bodies, in order to hold

<sup>1026</sup> Located at [www.un.org/law/ilc/](http://www.un.org/law/ilc/).

<sup>1027</sup> Article 25, paragraph 1 of Statute provides: "The Commission may consult, if it considers it necessary, with any of the organs of the United Nations on any subject which is within the competence of that organ."

a discussion on issues relating to reservations to human rights treaties.

### 4. HONORARIA

269. The Commission reiterated once more its views concerning the question of honoraria, resulting from the adoption by the General Assembly of its resolution 56/272 of 27 March 2002, which were expressed in its previous reports.<sup>1028</sup> The Commission emphasized again that the above resolution especially affects the Special Rapporteurs, in particular those from developing countries, as it compromises support for their research work. The Commission urges the General Assembly to reconsider this matter, with a view to restoring, at this stage, the honoraria for Special Rapporteurs.

### C. Date and place of the fifty-ninth session of the Commission

270. The Commission decided that the fifty-ninth session of the Commission be held in Geneva from 7 May to 8 June and 9 July to 10 August 2007.

### D. Cooperation with other bodies

271. At its 2899th meeting, on 25 July 2006, Judge Rosalyn Higgins, 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.<sup>1029</sup> An exchange of views followed.

272. The Asian-African Legal Consultative Organization was represented at the present session of the Commission by its Secretary-General, Mr. Wafik Z. Kamil, who addressed the Commission at its 2898th meeting, on 21 July 2006.<sup>1030</sup> An exchange of views followed.

273. The Inter-American Juridical Committee was represented at the present session of the Commission by its Vice-President, Mr. Jean-Paul Hubert, who addressed the Commission at its 2904th meeting, on 3 August 2006.<sup>1031</sup> An exchange of views followed. The Commission also decided to express its congratulations to the Committee on the occasion of its centennial celebration and that it should be presented at the commemorative ceremony by M. João Baena Soares.

274. 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 the Director General of Legal Affairs of the Council of Europe, Mr. Guy De Vel, who addressed the Commission at its 2904th meeting, on 3 August 2006.<sup>1032</sup> An exchange of views followed.

<sup>1028</sup> *Yearbook ... 2002*, vol. II (Part Two), pp. 102–103, paras. 525–531; *Yearbook ... 2003*, vol. II (Part Two), p. 101, para. 447; *Yearbook ... 2004*, vol. II (Part Two), pp. 120–121, para. 369; and *Yearbook ... 2005*, vol. II (Part Two), p. 92, para. 501.

<sup>1029</sup> This statement is recorded in the summary record of that meeting, *Yearbook ... 2006*, vol. I.

<sup>1030</sup> *Ibid.*

<sup>1031</sup> *Ibid.*

<sup>1032</sup> *Ibid.*

### E. Representation at the sixty-first session of the General Assembly

275. The Commission decided that it should be represented at the sixty-first session of the General Assembly by its Chairperson, Mr. Guillaume Pambou-Tchivounda.

276. The Commission expressed regrets that due to budgetary constraints, it was not possible for a Special Rapporteur to attend the sixty-first session of the General Assembly.

### F. International Law Seminar

277. Pursuant to General Assembly resolution 60/22, the forty-second session of the International Law Seminar was held at the Palais des Nations from 3 to 21 July 2006, 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 in posts in the civil service in their country.

278. Twenty-five participants of different nationalities, mostly from developing countries, were able to take part in the session.<sup>1033</sup> The participants in the Seminar observed plenary meetings of the Commission, attended specially arranged lectures, and participated in working groups on specific topics.

279. The Seminar was opened by Mr. Guillaume Pambou-Tchivounda, Chairperson of the Commission. 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, assisted by Mr. Vittorio Mainetti, Legal Consultant at the United Nations Office at Geneva.

280. The following lectures were given by members of the Commission: Mr. Giorgio Gaja: "Responsibility of international organizations"; Mr. Pemmaraju Sreenivasa Rao: "International Liability for injurious consequences arising out of acts not prohibited by international law"; Mr. Chusei Yamada: "Shared Natural Resource"; Mr. Zdzislaw Galicki: "*Aut dedere aut judicare*"; Mr. Ian Brownlie: "The Work of the ICJ"; Mr. John Dugard: "Diplomatic Protection"; Mr. Djamchid Momtaz: "The Darfour Case before the ICC"; Mr. Martti Koskenniemi: "Fragmentation of international law".

<sup>1033</sup> The following persons participated in the forty-second session of the International Law Seminar: Mr. Andy Aron (Indonesia), Ms. Shakira Maria Bedoya-Sanchez (Peru), Mr. Kemoko Diakitè (Senegal), Ms. Sasha Franklin (Trinidad and Tobago), Ms. Sandra Garcia-Loredo (Mexico), Ms. Syuzanna Gevorgyan (Armenia), Mr. Henok Teferra (Ethiopia), Mr. Tamás Hoffmann (Hungary), Mr. Dan Oduor Juma (Kenya), Ms. Tomdwsam Kadjika (Togo), Mr. Andrey Kalinin (Russia), Ms. Chie Kojima (Japan), Ms. Sanaa Kourkadi (Morocco), Mr. Emad Masalmeh (Jordan), Ms. Godelive Mbomakonga (Congo), Mr. Malefetsane Seth Moseme (Lesotho), Ms. Iлона Nieminen (Finland), Mr. Vasileios Pergantis (Greece), Mr. Dahai Qi (China), Mr. Yannick Radi (France), Mr. Emanuele Rebasti (Italy), Mr. Gustavo Ribeiro (Brazil), Ms. Myrtelle Rochette (Haiti), Mr. Visal Som (Cambodia) and Ms. Cassandra Steer (Australia). The Selection Committee, chaired by Mr. Jean-Marie Dufour (President of the Geneva International Academic Network), met on 9 May 2006 and selected 26 candidates out of 150 applications for participation in the Seminar. At the last minute, the twenty-sixth candidate selected was unable to attend.

281. Lectures were also given by Mr. Vittorio Mainetti, Assistant to the Director of the International Law Seminar: "*Introduction to the Work of the ILC*"; Ms. Maria Isabel Torres-Cazorla, Professor of International Law at the University of Malaga: "*Unilateral Acts of States*"; Mr. Bertrand Ramcharan, Former Deputy and Acting High Commissioner for Human Rights: "*The OHCHR and the New Human Rights Council*"; Ms. Jelena Pejic, Legal Adviser at the ICRC: "*Current Challenges to International Humanitarian Law*"; Ms. Brigitte Stern, Judge at the United Nations Administrative Tribunal: "*The work of the UNAT*". A meeting was also organized with Mr. Nicolas Michel, United Nations Legal Counsel, who addressed seminar participants and spoke about the activities of the Office of Legal Affairs.

282. Seminar participants were invited to visit the European Organization for Nuclear Research (CERN). The discussion focused on legal matters related to CERN. A morning was also devoted to the visit of the WTO, upon invitation of Mr. Georges Abi-Saab, Chairperson of the WTO Appellate Body, and Mr. Werner Zdouc, Director of the WTO Appellate Body Secretariat. The discussion focused on the WTO dispute settlement system and on the case law of the Appellate Body.

283. In addition, a Conference-Debate was organized in the premises of the UNHCR, in the presence of Mr. Helmut Buss, Chief, Legal Affairs Section, and Mr. Stevenson Wolfson, Senior Legal Officer, Protection Operations and Legal Advice Section. The discussion focused on the structure and mandate of the UNHCR and on refugee law.

284. Seminar participants also visited the OHCHR, at the Palais Wilson. After a briefing by Mr. Markus Schmidt (OHCHR) on the work of the Human Rights Committee, they attended the presentation of the report of the United Nations Interim Administration Mission in Kosovo (UNMIK) before the Human Rights Committee.

285. Each Seminar participant was assigned to one of three working groups on "*Fragmentation of international law*", "*Unilateral acts of States*" and "*Diplomatic protection*". The Chairperson of the Study Group and the Special Rapporteurs of the Commission for these subjects, Mr. Martti Koskenniemi, Mr. Víctor Rodríguez Cedeño and Mr. John Dugard, provided guidance for the working groups. Moreover, two former Seminar participants, Ms. Maria Isabel Torres-Cazorla, University of Malaga, and Ms. Annemarieke Künzli, University of Leiden, assisted in the organization and coordination of 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.

286. The Republic and Canton of Geneva offered its traditional hospitality to the participants with a guided visit of the Alabama Room at the City Hall followed by a reception.

287. Mr. Guillaume Pambou-Tchivounda, Chairperson of the Commission, Mr. Ulrich von Blumenthal, Director

of the Seminar, and Ms. Cassandra Steer, 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 forty-second session of the Seminar.

288. The Commission noted with particular appreciation that the Governments of Austria, China, Cyprus, Czech Republic, Finland, Germany, Ireland, Norway, Sweden and Switzerland had made or pledged voluntary contributions to the United Nations Trust Fund for the International Law Seminar. The financial situation of the Fund allowed awarding 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 18 candidates and a partial fellowship (subsistence only) was awarded to one candidate.

289. Since 1965, year of the Seminar's inception, 952 participants, representing 157 nationalities, have taken part in the Seminar. Of them, 576 have received a fellowship.

290. The Commission stresses the importance it attaches to the Seminar, which enables young lawyers, especially 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 recommends that the General Assembly should again appeal to States to make voluntary contributions in order to secure the holding of the Seminar in 2007 with as broad participation as possible.

291. The Commission noted with satisfaction that in 2006 comprehensive interpretation services were made available to the Seminar. It expresses the hope that the same services would be provided at the next session, within the constraints of existing resources.