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 de-
velopment (lex ferenda)?

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

38. What crimes are, or should be, excluded from im-
munity 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 informa-
tion could include recent developments in the case law
and legislation. Information on the procedural issues cov-
ered 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 other-
wise, an appeal against an expulsion decision should have
suspesive 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

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10 See footnote 5 above.

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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 af-
fected 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 Commiss-
ion 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 Com-
mission would be interested, in particular, in instances of
interpretation by way of subsequent agreements or sub-
sequent 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,
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, 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.