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**DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION  
ON THE WORK OF ITS FIFTY-SEVENTH SESSION**

**Rapporteur: Mr. Bernd NIEHAUS**

**CHAPTER III**

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

**Shared natural resources**

1. Under this topic, the Commission is now focusing for the time being on codification of the law on transboundary groundwaters (aquifers and aquifer systems). The work is progressing in the form of elaboration of draft articles on the basis of the proposals by the Special Rapporteur contained in his third report.<sup>1</sup> In its 2004 report, the Commission requested States and relevant intergovernmental organizations to provide information in reply to the questionnaire prepared by the Special Rapporteur.<sup>2</sup> The responses received from 23 States and 3 intergovernmental organizations<sup>3</sup> were very useful for the Commission in its current work. Accordingly, the

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<sup>1</sup> A/CN.4/551 and A/CN.4/551/Corr.1.

<sup>2</sup> A/59/10, para. 81.

<sup>3</sup> A/CN.4/555 and A/CN.4/555/Add.1.

Commission requests those States and intergovernmental organizations that have not yet responded to submit detailed and precise information on the basis of the questionnaire prepared by the Special Rapporteur.

### **Effects of armed conflicts on treaties**

2. The Commission would welcome any comments Governments may wish to make with regard to the following questions:

(a) Is it desirable to include in the topic, in addition to agreements between States, agreements between organizations and States and agreements between organizations?

(b) Should the Commission seek to define the concept of armed conflict comprehensively or simply to indicate the main issues?

(c) Should the general principle of the continuity of treaties be the essential policy basis of the topic?

(d) In this same context, when treaties do not continue, should the preferred outcome be temporary suspension rather than termination?

### **Responsibility of international organizations**

3. The next report of the Special Rapporteur will address questions relating to (1) circumstances precluding wrongfulness, and (2) responsibility of States for the internationally wrongful acts of international organizations. The Commission would welcome comments and observations relating to these questions, especially on the following points:

(a) Article 16 of the articles on Responsibility of States for Internationally Wrongful Acts only considers the case that a State aids or assists another State in the commission of an internationally wrongful act.<sup>4</sup> Should the Commission include in the draft articles on

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<sup>4</sup> Article 16 reads:

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

responsibility of international organizations also a provision concerning aid or assistance given by a State to an international organization in the commission of an internally wrongful act?<sup>5</sup> Should the answer given to the question above also apply to the case of direction and control exercised by a State over the commission of an act of an international organization that would be wrongful but for the coercion?<sup>6</sup>

(b) Apart from the cases considered under (a), are there cases in which a State could be held responsible for the internationally wrongful act of an international organization of which it is a member?

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(a) That State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) The act would be internationally wrongful if committed by that State.

Report of the Commission on the work of its fifty-third session, *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 (A/56/10)*, p. 47.

<sup>5</sup> See article 17 of the articles on Responsibility for Internationally Wrongful Acts which reads:

A State which directs and controls another State in the commission of an internationally wrongful act by the latter is internationally responsible for that act if:

(a) That State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) The act would be internationally wrongful if committed by that State.

Ibid.

<sup>6</sup> See article 18 of the articles on Responsibility for Internationally Wrongful Acts which reads:

A State which coerces another State to commit an act is internationally responsible for that act if:

(a) The act would, but for the coercion, be an internationally wrongful act of the coerced State; and

(b) The coercing State does so with knowledge of the circumstances of the act.

Ibid.

### **Expulsion of aliens**

4. The Commission would appreciate receiving comments to the following questions:
- (a) Should the topic include the case of refoulement and non-admission of aliens?
  - (b) Should the topic include the case of aliens present on a boat which has entered the territorial waters of a State?
  - (c) Should the Commission elaborate a comprehensive juridical regime on the expulsion of aliens, including refugees, stateless persons and migrant workers?
  - (d) Should the Commission deal with collective expulsion of aliens, including in the context of armed conflict?
5. In addition, the International Law Commission would appreciate receiving, through its Secretariat, any information concerning the practice of States on the subject, including national legislation.

### **Unilateral acts of States**

6. The Commission would welcome comments and observations from Governments on the revocability and modification of unilateral acts. In particular, it would be interested to hear about practice in the revocation or modification of unilateral acts, and about any special circumstances and conditions, effects and third-party reactions relating to the revocation or modification of a unilateral act (unilateral declaration).

### **Reservations to treaties**

7. States often object to a reservation that they consider incompatible with the object and purpose of the treaty, but without opposing the entry into force of the treaty between themselves and the author of the reservation. The Commission would be particularly interested in Governments' comments on this practice. It would like to know, in particular, what effects the authors expect such objections to have, and how, in Governments' view, this practice accords with article 19 (c) of the 1969 Vienna Convention on the Law of Treaties.