

## Chapter II

### SUMMARY OF THE WORK OF THE COMMISSION AT ITS FIFTY-SIXTH SESSION

12. As regards the topic “Diplomatic protection”, the Commission considered the Special Rapporteur’s fifth report (A/CN.4/538) dealing with the relationship between diplomatic protection and functional protection by international organizations, diplomatic protection and human rights, and diplomatic protection and protection of ships’ crews by the flag State. The Commission referred draft article 26 and a reformulation of draft article 21 to the Drafting Committee. The Commission also requested that the Drafting Committee consider elaborating a provision on the connection between the protection of ships’ crews and diplomatic protection. The Commission adopted on first reading a set of 19 draft articles on diplomatic protection and decided, in accordance with articles 16 and 21 of its statute, to transmit the draft articles to Governments for comments. The Commission also requested the Special Rapporteur to consider the possible relationship between the “clean hands” doctrine and diplomatic protection. The Special Rapporteur prepared and submitted a memorandum on this subject, but the Commission decided, due to the lack of time, to consider it at its next session (see chap. IV).

13. With regard to the topic of “Responsibility of international organizations”, the Commission considered the Special Rapporteur’s second report (A/CN.4/541) dealing with attribution of conduct to international organizations. The report proposed four draft articles which were considered by the Commission and referred to the Drafting Committee. The Commission adopted the four draft articles (draft articles 4 to 7) as recommended by the Drafting Committee, together with commentaries (see chap. V).

14. As regards the topic “Shared natural resources”, the Commission considered the second report of the Special Rapporteur (A/CN.4/539 and Add.1), which contained seven draft articles. The Commission also established an open-ended Working Group on transboundary groundwaters chaired by the Special Rapporteur, and held two informal briefings by experts on groundwater from ECE, UNESCO, FAO and IAH (see chap. VI).

15. Concerning 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)”, the Commission considered the Special Rapporteur’s second report on the legal regime for the allocation of loss in case of transboundary harm arising out of hazardous activities (A/CN.4/540), established a Working Group to examine the proposals submitted by the Special Rapporteur, referred eight draft principles submitted by the Working Group to the Drafting Committee and adopted on first reading a set of draft principles on allocation of loss in the case of transboundary harm arising out

of hazardous activities, together with commentaries (see chap. VII).

16. As regards the topic “Unilateral acts of States”, the Commission considered the seventh report of the Special Rapporteur (A/CN.4/542 and Corr.2 and Corr.3), which contained a survey of State practice in respect of unilateral acts. A Working Group on unilateral acts was reconstituted and its work focused on the detailed consideration of specific examples of unilateral acts (see chap. VIII).

17. Concerning the topic “Reservations to treaties”, the Commission adopted five draft guidelines dealing with widening of the scope of a reservation and with the modification and withdrawal of interpretative declarations. The Commission also considered the Special Rapporteur’s ninth report (A/CN.4/544) and referred two draft guidelines dealing with the definition of objections to reservations, as well as the objection to late formulation or widening of the scope of a reservation, to the Drafting Committee (see chap. IX).

18. In relation to the topic “Fragmentation of international law: difficulties arising from the diversification and expansion of international law”, the Study Group of the Commission considered the preliminary report on the study on the function and scope of the *lex specialis* rule and the question of self-contained regimes, as well as outlines on the study on the application of successive treaties relating to the same subject matter (article 30 of the Vienna Convention on the Law of Treaties (hereinafter 1969 Vienna Convention)); on the study concerning the modification of multilateral treaties between certain of the parties only (article 41 of the Convention); on the study on the interpretation of treaties in the light of “any relevant rules of international law applicable in the relations between the parties” (article 31 (3) (c) of the Convention); and on the study on hierarchy in international law: *jus cogens*, obligations *erga omnes*, and Article 103 of the Charter of the United Nations as conflict rules (see chap. X).

19. The Commission set up the Planning Group to consider its programme, procedures and working methods (see chap. XI, sect. A). On the recommendation of the Planning Group, the Commission decided to include in its current programme of work 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”. The Commission also agreed with the recommendation of the Planning Group to include the topic “Obligation to extradite or prosecute (*aut dedere aut judicare*)” in its long-term programme of work. The

Commission envisages the inclusion of this topic in its current programme of work as of its next session.

20. The Commission continued traditional exchanges of information with the International Court of Justice, the Inter-American Juridical Committee, the Asian–African Legal Consultative Organization, the European Committee on Legal Cooperation and the Committee of Legal Advisers on Public International Law. Members of the Commission also held informal meetings with other

bodies and associations on matters of mutual interest (see chap. XI, sect. C).

21. A training seminar was held with 24 participants of different nationalities (see chap. XI, sect. E).

22. The Commission decided that its next session should be held at the United Nations Office in Geneva in two parts, from 2 May to 3 June and from 4 July to 5 August 2005 (see chap. XI, sect. B).