

Chapter II

SUMMARY OF THE WORK OF THE COMMISSION AT ITS SIXTY-FIRST SESSION

13. Concerning the topic “Responsibility of international organizations”, the Commission had before it the seventh report of the Special Rapporteur (A/CN.4/610), which contained a review of comments made by States and international organizations on the draft articles provisionally adopted by the Commission⁴ and, as necessary, proposed certain amendments thereto. The seventh report also addressed certain outstanding issues, such as the general provisions of the draft articles and the place of the chapter concerning the responsibility of a State in connection with the act of an international organization. Following its debate on the report, the Commission referred these amendments and six draft articles to the Drafting Committee.

14. As a result of its consideration of the topic at the present session, the Commission adopted on first reading a set of 66 draft articles, together with commentaries thereto, on responsibility of international organizations. The Commission also decided, in accordance with articles 16 to 21 of its Statute, to transmit the draft articles, through the Secretary-General, to Governments and international organizations for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 1 January 2011 (chap. IV).

15. In connection with the topic “Reservations to treaties”, the Commission considered the fourteenth report of the Special Rapporteur (A/CN.4/614 and Add.1–2) dealing, in particular, with outstanding issues relating to the procedure for the formulation of interpretative declarations, and with the permissibility of reactions to reservations, interpretative declarations and reactions to interpretative declarations. The Commission referred to the Drafting Committee two draft guidelines on the form and communication of interpretative declarations, and seven draft guidelines on the permissibility of reactions to reservations and on the permissibility of interpretative declarations and reactions thereto. One of the main issues in the debate was the existence of conditions for permissibility of objections to reservations, in particular with respect to objections with “intermediate effect”.

16. The Commission also adopted 32 draft guidelines, together with commentaries thereto. In the consideration of these draft guidelines, the Commission proceeded on the basis of the draft guidelines contained in the tenth,⁵ twelfth,⁶ thirteenth⁷ and fourteenth reports of the Special

Rapporteur which were referred to the Drafting Committee in 2006, 2007, 2008 and 2009 (chap. V).

17. In relation to the topic “Expulsion of aliens”, the Commission considered the fifth report of the Special Rapporteur (A/CN.4/611), dealing with questions relating to the protection of the human rights of persons who have been or are being expelled. In the light of the debate on the report, the Special Rapporteur submitted to the Commission a revised version of the draft articles contained therein (A/CN.4/617), as well as a new draft workplan with a view to structuring the draft articles (A/CN.4/618). The Commission decided to postpone to its next session the consideration of the revised draft articles presented by the Special Rapporteur (chap. VI).

18. Concerning the topic “Protection of persons in the event of disasters”, the Commission had before it the second report of the Special Rapporteur (A/CN.4/615), which focused on issues relating to the scope of the topic *ratione materiae*, *ratione personae* and *ratione temporis*, the definition of disaster, as well as the principles of solidarity and cooperation. Following a debate in the plenary on each of the three draft articles proposed by the Special Rapporteur, the Commission decided to refer all three draft articles to the Drafting Committee.

19. Following suggestions made in plenary, the Special Rapporteur proposed in the Drafting Committee to split some draft articles into a total of five draft articles. The Commission took note of five draft articles provisionally adopted by the Drafting Committee, relating to scope, purpose, the definition of disaster, the relationship with international humanitarian law and the duty to cooperate (A/CN.4/L.758). These draft articles, together with commentaries thereto, will be considered by the Commission at its next session (chap. VII).

20. As regards the topic “Shared natural resources”, the Commission established, under the chairpersonship of Mr. Enrique Candioti, a Working Group on shared natural resources, which, *inter alia*, had before it a working paper on oil and gas (A/CN.4/608), prepared by Mr. Chusei Yamada, Special Rapporteur on the topic, before he resigned from the Commission. The focus of work of the Working Group was on the feasibility of any future work by the Commission on aspects of the topic relating to transboundary oil and gas resources.

21. The Working Group decided to entrust Mr. Shinya Murase with the responsibility of preparing a study, with the assistance of the Secretariat, to be submitted to the Working Group on shared natural resources that may be established at the next session of the Commission.

⁴ *Yearbook ... 2008*, vol. II (Part Two), chap. VII, sect. C, para. 164.

⁵ *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/558 and Add.1–2.

⁶ *Yearbook ... 2007*, vol. II (Part One), document A/CN.4/584.

⁷ *Yearbook ... 2008*, vol. II (Part One), document A/CN.4/600.

Moreover, the Working Group recommended, and the Commission endorsed, that a decision on any future work on oil and gas be deferred until 2010; and that, in the meantime, the 2007 questionnaire on oil and gas⁸ be recirculated to Governments, while also encouraging them to provide comments and information on any other matter concerning the issue of oil and gas, including, in particular, whether the Commission should address the subject (chap. VIII).

22. Concerning the topic “The obligation to extradite or prosecute (*aut dedere aut judicare*)”, the Commission established an open-ended Working Group under the chairpersonship of Mr. Alain Pellet. The Working Group elaborated a general framework of issues that may need to be addressed in future work by the Special Rapporteur (chap. IX).

23. With regard to the topic “Immunity of State officials”, the Commission did not consider the topic during its session (chap. X).

24. In relation to the topic “The most-favoured-nation clause”, the Commission established, under the co-chairpersonship of Mr. Donald M. McRae and Mr. A. Rohan Perera, a Study Group on the most-favoured-nation clause, which considered and agreed on a framework to serve as a road map of future work, in the light of issues highlighted

in the syllabus on the topic. In particular, the Study Group made a preliminary assessment of the 1978 draft articles⁹ and decided on eight papers to be dealt with under the topics identified and assigned primary responsibility to its members for the preparation of the papers (chap. XI).

25. As regards the topic “Treaties over time”, the Commission established, under the chairpersonship of Mr. Georg Nolte, a Study Group on treaties over time, which considered the question of the scope of the work of the Study Group and agreed on a course of action to begin the consideration of the topic (chap. XII).

26. The Commission appointed Mr. Lucius Caflisch as Special Rapporteur of the topic “Effects of armed conflicts on treaties” (chap. XII, sect. A.1). In accordance with article 26, paragraph 1 of its Statute, the Commission, on 12 May 2009, held a joint meeting dedicated to the work of the Commission under the topic “Responsibility of international organizations”, with Legal Advisers of international organizations within the United Nations system (chap. XIII, sect. A.11). The Commission set up the Planning Group to consider its programme, procedures and working methods (chap. XIII, sect. A). The Working Group on the long-term programme of work was reconstituted, under the chairpersonship of Mr. Enrique Candioti (chap. XIII, sect. A.2). The Commission decided that its sixty-second session would be held in Geneva from 3 May to 4 June and 5 July to 6 August 2010 (chap. XIII, sect. B).

⁸ See *Yearbook ... 2007*, vol. II (Part Two), p. 56, para. 159 and p. 59, para. 182.

⁹ *Yearbook ... 1978*, vol. II (Part Two), para. 74.