

Chapter II

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

13. As regards the topic “Reservations to treaties”, the Commission had before it the seventeenth report (A/CN.4/647) of the Special Rapporteur, addressing the question of the reservations dialogue, as well as addendum 1 to the seventeenth report (A/CN.4/647/Add.1), which considered the issue of assistance in the resolution of disputes concerning reservations and also contained a draft introduction to the Guide to Practice. Furthermore, the Commission had before it the comments and observations received from Governments on the provisional version of the Guide to Practice on Reservations to Treaties, adopted by the Commission at its sixty-second session (2010)³ (A/CN.4/639 and Add.1).

14. The Commission established a Working Group in order to proceed with the finalization of the text of the guidelines constituting the Guide to Practice, as had been envisaged at the sixty-second session (2010). The Commission also referred to the Working Group a draft recommendation or conclusions on the reservations dialogue, contained in the seventeenth report of the Special Rapporteur, and a draft recommendation on technical assistance and assistance in the settlement of disputes concerning reservations, contained in addendum 1 to the seventeenth report.

15. On the basis of the recommendations of the Working Group, the Commission adopted the Guide to Practice on Reservations to Treaties which comprises an introduction, the text of the guidelines with commentaries thereto, as well as an annex on the reservations dialogue. In accordance with article 23 of its statute, the Commission recommended to the General Assembly to take note of the Guide to Practice on Reservations to Treaties and to ensure its widest possible dissemination.

16. The Commission also adopted a recommendation to the General Assembly on mechanisms of assistance in relation to reservations (chap. IV).

17. Concerning the topic “Responsibility of international organizations”, the Commission adopted, on second reading, a set of 67 draft articles, together with commentaries thereto, on the responsibility of international organizations, and in accordance with article 23 of its statute recommended to the General Assembly to take note of the draft articles in a resolution and to annex them to the resolution, and to consider, at a later stage, the elaboration of a convention on the basis of the draft articles.

18. In the consideration of the topic at the present session, the Commission had before it the eighth report of the

Special Rapporteur (A/CN.4/640) surveying the comments made by States and international organizations on the draft articles on the responsibility of international organizations adopted on first reading at the sixty-first session (2009)⁴ and making recommendations for consideration by the Commission during the second reading. The Commission also had before it the comments and observations received from Governments (A/CN.4/636 and Add.1–2) and international organizations (A/CN.4/637 and Add.1) on the draft articles adopted on first reading (chap. V).

19. As regards the topic “Effects of armed conflicts on treaties”, the Commission adopted, on second reading, a set of 18 draft articles and an annex (containing an indicative list of treaties the subject matter of which involves an implication that they continue in operation, in whole or in part, during armed conflict), together with commentaries thereto, on the effects of armed conflicts on treaties, and in accordance with article 23 of its statute recommended to the General Assembly to take note of the draft articles in a resolution and to annex them to the resolution, and to consider, at a later stage, the elaboration of a convention on the basis of the draft articles.

20. At the present session, the Drafting Committee continued and concluded its consideration (commenced at its sixty-second session (2010)) of the second reading of the draft articles on the effects of armed conflicts on treaties (chap. VI).

21. In relation to the topic “Immunity of State officials from foreign criminal jurisdiction”, the Commission considered the second⁵ and third (A/CN.4/646) reports of the Special Rapporteur. The second report reviewed and presented the substantive issues concerning and implicated by the scope of immunity of a State official from foreign criminal jurisdiction, while the third report addressed the procedural aspects, focusing, in particular, on questions concerning the timing of consideration of immunity, its invocation and waiver. The debate revolved around, *inter alia*, issues relating to methodology, possible exceptions to immunity and questions of procedure (chap. VII).

22. Concerning the topic “Expulsion of aliens”, the Commission had before it the second addendum to the sixth report⁶ as well as the seventh report (A/CN.4/642) of the Special Rapporteur. The Commission also had before it comments and information received thus far from Governments.⁷

³ *Yearbook ... 2010*, vol. II (Part Two), paras. 45 and 105.

⁴ *Yearbook ... 2009*, vol. II (Part Two), paras. 50–51.

⁵ *Yearbook ... 2010*, vol. II (Part One), document A/CN.4/631.

⁶ *Ibid.*, document A/CN.625 and Add.1–2.

⁷ *Yearbook ... 2009*, vol. II (Part One), document A/CN.4/604; and *Yearbook ... 2010*, vol. II (Part One), document A/CN.4/628 and Add.1.

23. The second addendum to the sixth report completed the consideration of the expulsion proceedings (including the implementation of the expulsion decision, appeals against the expulsion decision, the determination of the State of destination and the protection of human rights in the transit State) and also considered the legal consequences of expulsion (notably the protection of the property rights and similar interests of aliens subject to expulsion, the question of the existence of a right of return in the case of unlawful expulsion, and the responsibility of the expelling State as a result of an unlawful expulsion, including the question of diplomatic protection). Following a debate in plenary, the Commission referred seven draft articles on these issues to the Drafting Committee, as well as a draft article on expulsion in connection with extradition, as revised by the Special Rapporteur during the sixty-second session (2010).⁸

24. The seventh report provided an account of recent developments in relation to the topic and also proposed a restructured summary of the draft articles. The Commission referred the restructured summary of the draft articles to the Drafting Committee (chap. VIII).

25. In relation to the topic “Protection of persons in the event of disasters”, the Commission had before it the fourth report of the Special Rapporteur (A/CN.4/643), dealing with the responsibility of the affected State to seek assistance where its national response capacity is exceeded, the duty of the affected State not to arbitrarily withhold its consent to external assistance, and the right to offer assistance in the international community. Following a debate in plenary, the Commission decided to refer draft articles 10 to 12, as proposed by the Special Rapporteur, to the Drafting Committee.

26. The Commission provisionally adopted six draft articles, together with commentaries, including draft articles 6 to 9, which it had taken note of at its sixty-second session (2010), dealing with humanitarian principles in disaster response, human dignity, human rights and the role of the affected State, respectively, as well as draft articles 10 and 11, dealing with the duty of the affected State to seek assistance and with the question of the consent of the affected State to external assistance (chap. IX).

27. Concerning the topic “The obligation to extradite or prosecute (*aut dedere aut judicare*)”, the Commission considered the fourth (A/CN.4/648) report of the Special Rapporteur addressing the question of sources of the obligation to extradite or prosecute, focusing on treaties and custom, and concerning which three draft articles were proposed (chap. X).

28. In relation to the topic “Treaties over time”, the Commission reconstituted the Study Group on treaties over time, which continued its work on the aspects of the topic relating to subsequent agreements and practice. The Study Group first completed its consideration of the introductory report by its Chairperson on the relevant jurisprudence of the International Court of Justice and of arbitral tribunals of *ad hoc* jurisdiction, by examining the section of the report that addressed the question of possible modifications of a treaty by subsequent agreements and practice as well as the relation of subsequent agreements and practice to formal amendment procedures.

29. The Study Group then began its consideration of the second report by its Chairperson on the jurisprudence under special regimes relating to subsequent agreements and practice, by focusing on certain conclusions contained therein. In the light of the discussions, the Chairperson of the Study Group reformulated the text of nine preliminary conclusions relating to a number of issues such as reliance by adjudicatory bodies on the general rule of treaty interpretation, different approaches to treaty interpretation, and various aspects concerning subsequent agreements and practice as a means of treaty interpretation (chap. XI).

30. Regarding the topic “The most-favoured-nation clause”, the Commission reconstituted the Study Group on the most-favoured-nation clause. The Study Group held a wide-ranging discussion, on the basis of the working paper on the interpretation and application of most-favoured-nation clauses in investment agreements and a framework of questions prepared to provide an overview of issues that may need to be considered in the context of the overall work of the Study Group, while also taking into account other developments, including recent arbitral decisions. The Study Group also set out a programme of work for the future (chap. XII).

31. The specific issues on which comments by Governments would be of particular interest to the Commission in relation to topics that remain under its consideration are found in chapter III.

32. The Commission established a Planning Group to consider its programme, procedures and working methods (chap. XIII, sect. A). As a result of the work undertaken throughout the quinquennium by the Working Group on the long-term programme of work, the Commission decided to include in its long-term programme of work the following topics: “Formation and evidence of customary international law”, “Protection of the atmosphere”, “Provisional application of treaties”, “The fair and equitable treatment standard in international investment law”, and “Protection of the environment in relation to armed conflicts” (chap. XIII, sect. A.1). The Commission reconsidered its methods of work and adopted recommendations on, *inter alia*, special rapporteurs, study groups, the Drafting Committee, preparation of commentaries to draft articles, how to make the Commission’s report more informative and the relations between the Commission and the Sixth Committee (chap. XIII, sect. A.2).

33. The Commission continued traditional exchanges of information with the International Court of Justice, the Asian–African Legal Consultative Organization (AALCO), the European Committee on Legal Cooperation, the Committee of Legal Advisers on Public International Law (CAHDI) of the Council of Europe and the Inter-American Juridical Committee (IAJC). Members of the Commission also held informal meetings with other bodies and associations on matters of mutual interest (chap. XIII, sect. D).

34. A training seminar was held with 26 participants of different nationalities (chap. XIII, sect. H).

35. The Commission decided that its next session would be held at the United Nations Office at Geneva in two parts, from 7 May to 1 June and from 2 July to 3 August 2012 (chap. XIII, sect. B).

⁸ *Yearbook ... 2010*, vol. II (Part Two), footnote 1299.