

Chapter II

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

13. With respect to the topic “Crimes against humanity”, the Commission had before it the third report of the Special Rapporteur (A/CN.4/704), which addressed, in particular, the following issues: extradition; *non-refoulement*; mutual legal assistance; victims, witnesses and other affected persons; relationship to competent international criminal tribunals; federal State obligations; monitoring mechanisms and dispute settlement; remaining issues; the preamble to the draft articles; and final clauses of a convention.

14. As a result of its consideration of the topic at the present session, the Commission adopted, on first reading, a draft preamble, 15 draft articles and a draft annex, together with commentaries thereto, on crimes against humanity. In accordance with articles 16 to 21 of its statute, the Commission decided to transmit the draft articles, through the Secretary-General, to Governments, international organizations and others for comments and observations, with a request that such comments and observations be submitted to the Secretary-General by 1 December 2018 (chap. IV).

15. With regard to the topic “Provisional application of treaties”, the Commission referred draft guidelines 1 to 4 and 6 to 9, provisionally adopted by the Drafting Committee in 2016, back to the Drafting Committee, with a view to having it prepare a consolidated set of draft guidelines, as provisionally worked out thus far. Subsequently, the Commission provisionally adopted draft guidelines 1 to 11, as presented by the Drafting Committee at the current session, with commentaries thereto (chap. V).

16. Concerning the topic “Protection of the atmosphere”, the Commission had before it the fourth report of the Special Rapporteur (A/CN.4/705), which, building upon the previous three reports, proposed four guidelines on the interrelationship between the rules of international law relating to the protection of the atmosphere and other relevant rules of international law, including the rules of international trade and investment law, the law of the sea, and international human rights law.

17. Following the debate in the Commission, which was preceded by an informal dialogue with atmospheric scientists organized by the Special Rapporteur, the Commission decided to refer the four draft guidelines, as contained in the Special Rapporteur’s fourth report, to the Drafting Committee. Upon consideration of the report of the Drafting Committee, the Commission provisionally adopted draft guideline 9 and three preambular paragraphs, together with commentaries thereto (chap. VI).

18. Concerning the topic “Immunity of State officials from foreign criminal jurisdiction”, the Commission continued its consideration of the fifth report of the Special

Rapporteur (A/CN.4/701), which had commenced during the sixty-eighth session. The report analysed the question of limitations and exceptions to the immunity of State officials from foreign criminal jurisdiction and proposed a single draft article on the issue.

19. Following the plenary debate, the Commission referred draft article 7, as proposed by the Special Rapporteur in her fifth report, to the Drafting Committee. Upon consideration of the report of the Drafting Committee, the Commission voted to adopt draft article 7, an annex to the draft articles and a footnote to two of the headings in the draft articles, together with commentaries thereto (chap. VII).

20. With regard to the topic “Peremptory norms of general international law (*jus cogens*)”, the Commission had before it the second report of the Special Rapporteur (A/CN.4/706), which sought to set out the criteria for the identification of peremptory norms (*jus cogens*), taking the 1969 Vienna Convention on the Law of Treaties as a point of departure. The Commission subsequently decided to refer draft conclusions 4 to 9, as contained in the report of the Special Rapporteur, to the Drafting Committee, and decided to change the title of the topic from “*Jus cogens*” to “Peremptory norms of general international law (*jus cogens*)”, as proposed by the Special Rapporteur. The Commission subsequently took note of the interim report of the Chairperson of the Drafting Committee on draft conclusions 2 and 4 to 7 provisionally adopted by the Committee, which was submitted to the Commission for information (chap. VIII).

21. With regard to the topic “Succession of States in respect of State responsibility”, the Commission decided to include the topic in its programme of work and to appoint Mr. Pavel Šturma as Special Rapporteur. The Commission had before it the first report of the Special Rapporteur (A/CN.4/708), which sought to set out the Special Rapporteur’s approach to the scope and outcome of the topic and to provide an overview of general provisions relating to the topic. Following the plenary debate, the Commission decided to refer draft articles 1 to 4, as contained in the report of the Special Rapporteur, to the Drafting Committee. The Commission subsequently took note of the interim report of the Chairperson of the Drafting Committee on draft articles 1 and 2 provisionally adopted by the Committee, which was submitted to the Commission for information (chap. IX).

22. With respect to the topic “Protection of the environment in relation to armed conflicts”, the Commission established a Working Group on the topic, chaired by Mr. Marcelo Vázquez-Bermúdez. The Working Group had before it the draft commentaries prepared by the former Special Rapporteur, even though she was no longer a

member of the Commission, on draft principles 4, 6 to 8, and 14 to 18, provisionally adopted by the Drafting Committee at the sixty-eighth session of the Commission, and taken note of by the Commission at the same session. The Working Group focused its discussion on the way forward. Upon consideration of the oral report of the Chairperson of the Working Group, the Commission decided to appoint Ms. Marja Lehto as Special Rapporteur (chap. X).

23. As regards “Other decisions and conclusions of the Commission”, the Commission decided to include the topic “Succession of States in respect of State responsibility” in its programme of work and to appoint Mr. Pavel Šturma as Special Rapporteur for the topic (chap. XI, sect. A).

24. The Commission also established a Planning Group to consider its programme, procedures and working methods, which in turn decided to establish the Working Group on the long-term programme of work, chaired by Mr. Mahmoud D. Hmoud, and the Working Group on methods of work, chaired by Mr. Hussein A. Hassouna (chap. XI, sect. B). The Commission decided to include in its long-term programme of work the topics “General principles of law” and “Evidence before international courts and tribunals” (chap. XI, sect. B.1, and annexes I and II).

25. The Commission will hold a seventieth anniversary commemorative event during its seventieth session, in 2018. The commemorative event, under the theme “70 years of the International Law Commission—Drawing a balance for the future”, will be held in two parts. The first will be held in New York on 21 May 2018, during the first part of its seventieth session, and the second will be held in Geneva on 5 and 6 July 2018, during the second part of its seventieth session (chap. XI, sect. B).

26. The Commission continued its traditional exchanges of information with the President of the International Court of Justice, the Committee of Legal Advisers on Public International Law of the Council of Europe, the African Union Commission on International Law, the Asian-African Legal Consultative Organization (AALCO) and the Inter-American Juridical Committee. Members of the Commission also held an informal exchange of views with the International Committee of the Red Cross (ICRC) (chap. XI, sect. D).

27. The Commission decided that its seventieth session would be held in New York from 30 April to 1 June 2018 and in Geneva from 2 July to 10 August 2018 (chap. XI, sect. C).