

Chapter II

Summary of the work of the Commission at its seventy-third session

12. With regard to the topic “**Peremptory norms of general international law (*jus cogens*)**”, the Commission had before it the fifth report of the Special Rapporteur (A/CN.4/747), as well as comments and observations received from Governments (A/CN.4/748). The report addressed the comments and observations received from Governments on the draft conclusions and commentaries, as adopted on first reading, and proposed modifications to the draft conclusions where necessary.

13. The Commission adopted, on second reading, the entire set of draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), comprising 23 draft conclusions and an annex, together with commentaries thereto. The Commission decided, in accordance with article 23 of its statute, to recommend the draft conclusions to the General Assembly. In particular, the Commission recommended that the Assembly take note of the draft conclusions and commend them, together with the commentaries thereto, to the attention of States and all who may be called upon to identify peremptory norms of general international law (*jus cogens*) and to apply their legal consequences (chap. IV).

14. With respect to the topic “**Protection of the environment in relation to armed conflicts**”, the Commission had before it the third report of the Special Rapporteur (A/CN.4/750 and Corr.1 and Add.1), as well as comments and observations received from Governments, international organizations and others (A/CN.4/749). The report examined the comments and observations received from Governments, international organizations and others on the draft principles and commentaries, as adopted on first reading, and proposed modifications to the draft principles where necessary.

15. The Commission adopted, on second reading, the entire set of draft principles on protection of the environment in relation to armed conflicts, comprising a draft preamble and 27 draft principles, together with commentaries thereto. The Commission decided, in accordance with article 23 of its statute, to recommend that the General Assembly: (a) take note of the draft principles, annex them to its resolution and encourage their widest possible dissemination; and (b) commend the draft principles, together with the commentaries thereto, to the attention of States and international organizations and all who may be called upon to deal with the subject (chap. V).

16. With regard to the topic “**Immunity of State officials from foreign criminal jurisdiction**”, the Commission received and considered the report of the Drafting Committee (A/CN.4/L.969), following the completion by the Drafting Committee of its consideration of the remaining draft articles referred to it previously by the Commission, as contained in the second (A/CN.4/661), seventh (A/CN.4/729) and eighth (A/CN.4/739) reports of the Special Rapporteur. The Commission adopted, on first reading, 18 draft articles and a draft annex on immunity of State officials from foreign criminal jurisdiction, together with commentaries thereto. The Commission decided, in accordance with articles 16 to 21 of its statute, to transmit the draft articles, through the Secretary-General, to Governments for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 1 December 2023 (chap. VI).

17. With regard to the topic “**Succession of States in respect of State responsibility**”, the Commission had before it the fifth report of the Special Rapporteur (A/CN.4/751), which primarily addressed the problems relating to a plurality of injured successor States or of responsible successor States. Following the debate in plenary, the Commission decided that the work of the Commission on the topic would take the form of draft guidelines, rather than draft articles. The Drafting Committee proceeded to prepare draft guidelines on the basis of the texts referred to it by the Commission at previous sessions. The Commission provisionally adopted draft guidelines 6, 10, 10 *bis* and 11, which had been provisionally adopted by the Drafting Committee in 2018 and 2021, as well as draft guidelines 7 *bis*, 12, 13, 13 *bis*, 14, 15 and 15 *bis*, which were provisionally adopted by the Drafting Committee at the present session, together with commentaries thereto. The Commission also took note

of revised draft guidelines 1, 2, 5, 7, 8 and 9, as provisionally adopted by the Drafting Committee and reflected in an annex to the statement of the Chair of the Drafting Committee (chap. VII).

18. With regard to the topic “**General principles of law**”, the Commission had before it the third report of the Special Rapporteur (A/CN.4/753), which discussed the issue of transposition, general principles of law formed within the international legal system, and the functions of general principles of law and their relationship with other sources of international law. Following the debate in plenary, the Commission decided to refer draft conclusions 10, 11, 12, 13 and 14, as presented in the third report, to the Drafting Committee, taking into account the comments made in plenary. The Commission received the report of the Drafting Committee on the consolidated text of draft conclusions 1 to 11, provisionally adopted by the Drafting Committee, and provisionally adopted draft conclusions 3, 5 and 7. The Commission took note of draft conclusions 6, 8, 9, 10 and 11, which were also contained in the report of the Drafting Committee (chap. VIII).

19. With respect to the topic “**Sea-level rise in relation to international law**”, the Commission reconstituted the Study Group on sea-level rise in relation to international law. The Study Group had before it the second issues paper (A/CN.4/752 and Add.1) concerning issues relating to statehood and to the protection of persons affected by sea-level rise, prepared by two of the Co-Chairs of the Study Group, Ms. Patrícia Galvão Teles and Mr. Juan José Ruda Santolaria. The Study Group had an exchange of views on the basis of the second issues paper and on other matters related to the subtopics under consideration. The Study Group also addressed a series of guiding questions prepared by the Co-Chairs and held a discussion on the future programme of work on the topic (chap. IX).

20. Concerning “**Other decisions and conclusions of the Commission**”, the Commission decided to include the following topics on its programme of work: (a) “Settlement of international disputes to which international organizations are parties”, appointing Mr. August Reinisch as Special Rapporteur; (b) “Prevention and repression of piracy and armed robbery at sea”, appointing Mr. Yacouba Cissé as Special Rapporteur; and (c) “Subsidiary means for the determination of rules of international law”, appointing Mr. Charles Chernor Jalloh as Special Rapporteur (chap. X, sect. A). The Commission requested the Secretariat to prepare memorandums on those three topics and on sea-level rise in relation to international law (chap. X, sect. B).

21. The Commission re-established a Planning Group to consider its programme, procedures and working methods, which in turn decided to re-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. X, sect. C). The Commission decided to include in its long-term programme of work the topic “Non-legally binding international agreements” (chap. X, sect. C, and annex I). The Commission also provided the General Assembly with the information requested in paragraph 34 of Assembly resolution 76/111 of 9 December 2021 (chap. X, sect. E, annex II and appendix).

22. Judge Joan E. Donoghue, President of the International Court of Justice, addressed the Commission virtually on 1 June 2022. The Commission was once again regrettably unable to have its traditional exchanges of information with the African Union Commission on International Law; the Asian-African Legal Consultative Organization; the Committee of Legal Advisers on Public International Law of the Council of Europe; and the Inter-American Juridical Committee. However, it was able to have an informal exchange of views with the International Committee of the Red Cross on 21 July 2022 (chap. X, sect. F).

23. The Commission decided that its seventy-fourth session would be held in Geneva from 24 April to 2 June and from 3 July to 4 August 2023 (chap. X, sect. D).