

## Chapter II

### SUMMARY OF THE WORK OF THE COMMISSION AT ITS SIXTIETH SESSION

12. Concerning the topic “Shared natural resources”, the Commission adopted, on second reading, a preamble and a set of 19 draft articles, together with commentaries thereto, on the law of transboundary aquifers and in accordance with article 23 of its statute recommended a two-step approach consisting in the General Assembly: (a) taking note of the draft articles to be annexed to its resolution and recommending that States concerned make appropriate bilateral and regional arrangements for the proper management of their transboundary aquifers on the basis of the principles enunciated in the draft articles; and (b) considering, at a later stage, the elaboration of a convention on the basis of the draft articles. Since there would be some time before a decision would be made on the second step, the Commission decided to refrain from formulating a draft article on the relationship between these draft articles and other international agreements, and also a draft article on the settlement of disputes, the formulation of which would become necessary only when the second step would be initiated.

13. In the consideration of the topic at the present session, the Commission had before it the fifth report of the Special Rapporteur (A/CN.4/591), containing a set of 20 draft articles on the law of transboundary aquifers, together with comments and observations received from Governments on the draft articles adopted on first reading (A/CN.4/595 and Add.1). Having adopted a two-step approach, it was considered premature to address issues relating to relationship with other agreements and dispute settlement (see chapter IV).

14. As regards the topic “Effects of armed conflicts on treaties”, the Commission provisionally adopted, on first reading, a set of 18 draft articles and an annex (containing a list of categories of treaties the subject matter of which implies 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. 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 a request that such comments and observations be submitted to the Secretary-General by 1 January 2010. The draft articles, which apply to situations where at least one of the parties to a treaty is a party to an armed conflict whether international or non-international, proceed on the premise of the basic principle of continuity of treaty relations—the outbreak of such armed conflict does not necessarily terminate or suspend the operation of treaties—and draw relevant expository consequences therefrom.

15. In the consideration of the topic at the present session, the Commission had before it the fourth report of

the Special Rapporteur (A/CN.4/589) dealing with the procedure for the suspension or termination of treaties as a consequence of an armed conflict. The report was considered in the context of the work of the Working Group on effects of armed conflicts on treaties, which continued the work it began in 2007. The remaining draft articles it completed were referred to the Drafting Committee (A/CN.4/L.726) (see chapter V).

16. Concerning the topic “Reservations to treaties”, the Commission adopted 23 draft guidelines dealing with formulation and withdrawal of acceptances and objections, as well as the procedure for acceptance of reservations, together with commentaries thereto.

17. In the consideration of these draft guidelines at the present session, the Commission proceeded on the basis of the note by the Special Rapporteur on a new draft guideline 2.1.9 on statement of reasons of reservations<sup>5</sup> and draft guidelines contained in the eleventh<sup>6</sup> and twelfth reports<sup>7</sup> of the Special Rapporteur, which were referred to the Drafting Committee in 2007.

18. The Commission also considered the thirteenth report of the Special Rapporteur (A/CN.4/600) on reactions to interpretative declarations and referred to the Drafting Committee 10 draft guidelines on reactions to interpretative declarations. The main issues in the debate concerned the relation between conditional interpretative declarations and reservations, as well as the effects of silence as a reaction to an interpretative declaration (see chapter VI).

19. Concerning the topic “Responsibility of international organizations”, the Commission provisionally adopted eight draft articles, together with commentaries thereto, dealing with the invocation of the international responsibility of an international organization, and constituting chapter I of Part Three of the draft articles concerning the implementation of the international responsibility of an international organization. It also took note of seven draft articles provisionally adopted by the Drafting Committee, focusing on countermeasures and constituting chapter II of Part Three of the draft articles concerning the implementation of the international responsibility of an international organization (A/CN.4/L.725/Add.1). These draft articles, together with commentaries thereto, will be considered by the Commission next year.

20. In the consideration of the topic at the present session, the Commission had before it the sixth report of

<sup>5</sup> *Yearbook ... 2007*, vol. II (Part One), document A/CN.4/586.

<sup>6</sup> *Yearbook ... 2006*, vol. II (Part One), document A/CN.4/574.

<sup>7</sup> *Yearbook ... 2007*, vol. II (Part One), document A/CN.4/584.

the Special Rapporteur (A/CN.4/597), which focused on issues relating to the implementation of the responsibility of international organizations. Following its debate on the report, during which issues concerning countermeasures were prominent, the Commission referred six draft articles on the invocation of responsibility to the Drafting Committee. The Commission also established a working group for the purpose of considering the question of countermeasures, as well as the advisability of including in the draft articles a provision relating to admissibility of claims. Upon receipt of the reports of the Working Group, the Commission referred to the Drafting Committee an additional draft article on admissibility of claims and six draft articles on countermeasures, on the basis of the draft articles submitted by the Special Rapporteur, together with recommendations of the Working Group (see chapter VII).

21. In connection with the topic “Expulsion of aliens”, the Commission considered the fourth report of the Special Rapporteur (A/CN.4/594), dealing with questions relating to the expulsion of dual or multiple nationals, as well as loss of nationality or denationalization in relation to expulsion, prepared in the light of the debate in 2007. Following the debate on the report, the Commission established a working group to consider the issues raised by the Special Rapporteur in his report, and it determined that there was no need to have separate draft articles on the matter; the necessary clarifications would be made in the commentaries to the relevant draft articles. The seven draft articles referred to the Drafting Committee in 2007 were to remain in the Drafting Committee until all the draft articles were provisionally adopted (see chapter VIII).

22. In relation to the topic “Protection of persons in the event of disasters”, the Commission held a debate on the basis of the preliminary report of the Special Rapporteur (A/CN.4/598). It also had before it a memorandum by the Secretariat, focusing primarily on natural disasters (A/CN.4/590 and Add.1–3). Among the many issues discussed were the main legal questions to be covered by the topic, including questions concerning the approach to the topic, as well as its scope in terms of the subject matter, personal scope, space and time (see chapter IX).

23. As regards the topic “Immunity of State officials from foreign criminal jurisdiction”, the Commission

held a debate on the basis of the preliminary report of the Special Rapporteur (A/CN.4/601). It also had before it a memorandum by the Secretariat (A/CN.4/596). Among the many issues discussed were the main legal questions to be considered when defining the scope of the topic, including the officials to be covered and the nature of the acts to be covered, as well as whether there were possible exceptions (see chapter X).

24. In connection with the topic “The obligation to extradite or prosecute (*aut dedere aut judicare*)”, the Commission held a debate on the basis of the third report of the Special Rapporteur (A/CN.4/603). It also had before it comments and information received from Governments (A/CN.4/599). Among the issues discussed were the substantive questions related to the customary nature of the obligation, the relation with universal jurisdiction and international courts, and procedural aspects to be dealt with in the future (see chapter XI).

25. The Commission set up the Planning Group to consider its programme, procedures and working methods (see chapter XII, section A). The Commission was most appreciative of the efforts undertaken during the two-day event organized to commemorate its sixtieth anniversary session (see chapter XII, section A.1). The Commission, pursuant to General Assembly resolution 62/70 of 6 December 2007, commented on its current role in promoting the rule of law (see chapter XII, section A.2). The Working Group on the long-term programme of work was reconstituted, under the Chairpersonship of Mr. Enrique Candioti (see chapter XII, section A.5). The Commission decided to include in its current programme of work two new topics, namely “Treaties over time”, on the basis of a revised and updated proposal by Mr. Georg Nolte (see annex I), and “The most-favoured-nation clause”, on the basis of the 2007 report of the Working Group<sup>8</sup> chaired by Mr. Donald McRae on the subject (see annex II). In this regard, it decided to establish at its session next year two study groups on the two topics (see chapter XII, section A.5). The Commission decided that its sixty-first session would be held in Geneva from 4 May to 5 June and 6 July to 7 August 2009.

<sup>8</sup> A/CN.4/L.719 (mimeographed; available on the Commission’s website, documents of the fifty-ninth session).