

## Chapter II

### SUMMARY OF THE WORK OF THE COMMISSION AT ITS SIXTY-SECOND SESSION

12. As regards the topic “Reservations to treaties”, the Commission had before it the chapter on the validity of reservations and interpretative declarations of the fourteenth report of the Special Rapporteur,<sup>7</sup> contained in addendum 2, as well as the fifteenth and sixteenth reports (A/CN.4/624 and Add.1–2, and A/CN.4/626 and Add.1, respectively) of the Special Rapporteur.

13. Addendum 2 to the fourteenth report and the fifteenth report considered the legal effects of reservations, acceptances of reservations and objections to reservations, as well as the legal effects of interpretative declarations and reactions thereto. Following a debate in plenary on these reports, the Commission referred 37 draft guidelines to the Drafting Committee. The sixteenth report considered the issue of reservations, objections to reservations, acceptances of reservations and interpretative declarations in relation to the succession of States. Following a debate in plenary, the Commission referred 20 draft guidelines, as contained in that report, to the Drafting Committee.

14. The Commission provisionally adopted 59 draft guidelines, together with commentaries, including 11 draft guidelines that had been provisionally adopted by the Drafting Committee at the sixty-first session and that deal with the freedom to formulate objections and with matters relating to the permissibility of reactions to reservations and of interpretative declarations and reactions thereto. The Commission thus completed the provisional adoption of the set of draft guidelines (chap. IV).

15. Concerning the topic “Expulsion of aliens”, the Commission had before it a set of draft articles on the protection of the human rights of persons who have been or are being expelled, revised and restructured by the Special Rapporteur in the light of the debate that had taken place in plenary during the sixty-first session of the Commission (2009).<sup>8</sup> The Commission had referred the revised draft articles 8 to 15 to the Drafting Committee. The Commission also had before it the chapters of the sixth report of the Special Rapporteur (A/CN.4/625 and Add.1–2) that considered collective expulsion, disguised expulsion, extradition disguised as expulsion, the grounds for expulsion, detention pending expulsion and expulsion proceedings. Following a debate in plenary, the Commission referred to the Drafting Committee draft articles A, 9, B1 and C1, as contained in the sixth report, and draft articles B and A1, as revised by the Special Rapporteur during the session. The Commission also had before it a new draft workplan with a view to

restructuring the draft articles,<sup>9</sup> which had been presented by the Special Rapporteur to the Commission at its sixty-first session (2009), as well as comments and information received thus far from Governments (A/CN.4/604<sup>10</sup> and A/CN.4/628 and Add.1) (chap. V).

16. As regards the topic “Effects of armed conflicts on treaties”, the Commission commenced the second reading of the draft articles on the effects of armed conflicts on treaties (which had been adopted on first reading at its sixtieth session (2008)<sup>11</sup>) on the basis of the first report of the Special Rapporteur (A/CN.4/627 and Add.1). Following a debate in plenary on the report of the Special Rapporteur, the Commission referred all the draft articles and the annex proposed by the Special Rapporteur to the Drafting Committee (chap. VI).

17. In relation to the topic “Protection of persons in the event of disasters”, the Commission had before it the third report of the Special Rapporteur (A/CN.4/629), dealing with the humanitarian principles of neutrality, impartiality and humanity, as well as the underlying concept of respect for human dignity. The report also considered the question of the primary responsibility of the affected State to protect persons affected by a disaster on its territory, and undertook an initial consideration of the requirement that external assistance be provided on the basis of the consent of the affected State. Following a debate in plenary, the Commission decided to refer draft articles 6 to 8, as proposed by the Special Rapporteur, to the Drafting Committee. The Commission also adopted draft articles 1 to 5, of which it had taken note at its sixty-first session (2009),<sup>12</sup> together with commentaries.

18. The Commission subsequently took note of four draft articles provisionally adopted by the Drafting Committee, relating to the humanitarian principles in disaster response, the inherent human dignity of the human person, the obligation to respect the human rights of affected persons and the role of the affected State, respectively (A/CN.4/L.776) (chap. VII).

19. As regards the topic “The obligation to extradite or prosecute (*aut dedere aut judicare*)”, the Commission reconstituted the Working Group, which continued its discussions with the aim of specifying the issues to be addressed to further facilitate the work of the Special Rapporteur. It had before it a survey of multilateral conventions which may be of relevance for the Commission’s

<sup>7</sup> *Yearbook ... 2009*, vol. II (Part One), document A/CN.4/614 and Add.1–2.

<sup>8</sup> *Ibid.*, document A/CN.4/617.

<sup>9</sup> *Ibid.*, document A/CN.4/618.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Yearbook ... 2008*, vol. II (Part Two), para. 65.

<sup>12</sup> *Yearbook ... 2009*, vol. II (Part Two), p. 135, para. 152.

work on the topic, prepared by the Secretariat (A/CN.4/630), and a working paper prepared by the Special Rapporteur (A/CN.4/L.774) containing some observations and suggestions based on the general framework proposed in 2009<sup>13</sup> and drawing upon the survey by the Secretariat (chap. VIII).

20. Concerning the topic “Immunity of State officials from foreign criminal jurisdiction”, the Commission did not consider it in the course of the present session (chap. IX).

21. In relation to the topic “Treaties over time”, the Commission reconstituted the Study Group on treaties over time. The Study Group began its work on the aspects of the topic relating to subsequent agreements and practice, on the basis of an introductory report prepared by its Chairperson on the relevant jurisprudence of the International Court of Justice and of arbitral tribunals of *ad hoc* jurisdiction. A variety of issues relating to the significance and role of subsequent agreements and practice in the interpretation of treaties, and possibly also in their modification, were touched upon in the discussions (chap. X).

22. As regards the topic “The most-favoured-nation clause”, the Commission reconstituted the Study Group on the most-favoured-nation clause. The Study Group considered and reviewed the various papers prepared on the basis of the framework which had been agreed upon in 2009,<sup>14</sup> including a catalogue of most-favoured-nation provisions and papers on the 1978 draft articles,<sup>15</sup> the practice of the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO), the work of the Organisation for Economic Co-operation and

Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD) on most-favoured nation, and the *Maffezini* issue,<sup>16</sup> and set out a programme of work for next year (chap. XI).

23. In relation to the topic “Shared natural resources”, the Commission once more established the Working Group on shared natural resources. The Working Group continued its assessment on the feasibility of future work on oil and gas on the basis of a working paper (A/CN.4/621). The Working Group considered all aspects of the matter, taking into account the views of Governments, including as reflected in the working paper, as well as in light of its previous discussions. The Commission endorsed the recommendation of the Working Group that the Commission not take up the consideration of the oil and gas aspects of the topic “Shared natural resources” (chap. XII).

24. Concerning “Other matters”, the Commission, pursuant to its 2009 decision,<sup>17</sup> devoted a discussion to “Settlement of disputes clauses”. It had before it a note on settlement of disputes clauses, prepared by the Secretariat (A/CN.4/623). The Commission decided to continue debate on the issue under “Other matters” at its next session. It was also agreed that a member of the Commission would prepare a working paper for that purpose (chap. XIII, sect. A.1). The Commission set up the Planning Group to consider its programme, procedures and working methods (*ibid.*, sect. A). The Working Group on the long-term programme of work was reconstituted (*ibid.*, sect. A.3). The Commission decided that its sixty-third session would be held in Geneva from 26 April to 3 June and 4 July to 12 August 2011 (*ibid.*, sect. B).

<sup>13</sup> *Ibid.*, pp. 143–144, para. 204.

<sup>14</sup> *Ibid.*, pp. 146–147, para. 216.

<sup>15</sup> *Yearbook ... 1978*, vol. II (Part Two), para. 74.

<sup>16</sup> *Maffezini v. Kingdom of Spain*, ICSID Case No. ARB/97/7 (available at <https://icsid.worldbank.org>).

<sup>17</sup> *Yearbook ... 2009*, vol. II (Part Two), p. 151, para. 238.