

## Chapter II

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

13. Concerning the topic “Expulsion of aliens”, the Commission had before it the eighth report of the Special Rapporteur (A/CN.4/651), which provided an overview of the comments made by States and by the European Union on the topic during the debate that had taken place in the Sixth Committee at the sixty-sixth session of the General Assembly on the report of the International Law Commission on the work of its sixty-third session.<sup>5</sup> The eighth report also contained a number of final observations by the Special Rapporteur, including on the form of the outcome of the Commission’s work on the topic.

14. As a result of its consideration of the topic at the present session, the Commission adopted on first reading a set of 32 draft articles, together with commentaries thereto, on the expulsion of aliens. 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 January 2014 (chap. IV).

15. In relation to the topic “Protection of persons in the event of disasters”, the Commission had before it the fifth report of the Special Rapporteur (A/CN.4/652), providing elaboration on the duty to cooperate, as well as consideration of the conditions for the provision of assistance and of the termination of assistance. Following a debate in plenary, the Commission decided to refer draft articles A, 13 and 14, as proposed by the Special Rapporteur, to the Drafting Committee.

16. The Commission subsequently took note of five draft articles provisionally adopted by the Drafting Committee, relating to forms of cooperation, offers of assistance, conditions on the provision of external assistance, facilitation of external assistance and termination of external assistance, respectively (A/CN.4/L.812) (chap. V).

17. Concerning the topic “Immunity of State officials from foreign criminal jurisdiction”, the Commission appointed Ms. Concepción Escobar Hernández as Special Rapporteur. The Commission considered the preliminary report of the Special Rapporteur (A/CN.4/654), which provided an overview of the work of the previous Special Rapporteur, as well as the debate on the topic in the Commission and in the Sixth Committee of the General Assembly; addressed the issues to be considered during the present quinquennium, focusing in particular on the distinction and the relationship between, and basis for, immunity *ratione materiae* and immunity

*ratione personae*, the distinction and the relationship between the international responsibility of the State and the international responsibility of the individual and their implications for immunity, the scope of immunity *ratione personae* and immunity *ratione materiae*, and the procedural aspects of immunity; and gave an outline of the workplan. The debate revolved around, *inter alia*, the methodological and substantive issues highlighted by the Special Rapporteur in the preliminary report (chap. VI).

18. As regards the topic “Provisional application of treaties”, the Commission decided to include it in its programme of work and appointed Mr. Juan Manuel Gómez Robledo as Special Rapporteur. The Special Rapporteur presented to the Commission an oral report on the informal consultations that he had chaired with a view to initiating an informal dialogue with members of the Commission on a number of issues that could be relevant for the consideration of the topic. Aspects addressed in the informal consultations included the scope of the topic, the methodology, the possible outcome of the Commission’s work and a number of substantive issues relating to the topic (chap. VII).

19. Concerning the topic “Formation and evidence of customary international law”, the Commission decided to include it in its programme of work and appointed Sir Michael Wood as Special Rapporteur. During the second part of the session, the Commission had before it a note by the Special Rapporteur (A/CN.4/653), which aimed at stimulating an initial debate and which addressed the possible scope of the topic, terminological issues, questions of methodology and a number of specific points that could be dealt with in considering the topic. The debate revolved around, *inter alia*, the scope of the topic as well as the methodological and substantive issues highlighted by the Special Rapporteur in his note (chap. VIII).

20. As regards the topic “The obligation to extradite or prosecute (*aut dedere aut judicare*)”, the Commission established a Working Group to make a general assessment of the topic as a whole, focusing on questions concerning its viability and steps to be taken in moving forward, against the background of the debate on the topic in the Sixth Committee of the General Assembly. The Working Group requested its Chairperson to prepare a working paper, to be considered at the sixty-fifth session of the Commission, reviewing the various perspectives in relation to the topic in the light of the judgment of the International Court of Justice of 20 July 2012,<sup>6</sup> any further developments, as well as the comments made in the Working Group and in the debate in the Sixth Committee (chap. IX).

<sup>5</sup> See *Yearbook ... 2011*, vol. II (Part Two), chap. VIII.

<sup>6</sup> *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p. 422.

21. As regards 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 subsequent practice. The Study Group completed its consideration of the second report by its Chairperson on the jurisprudence under special regimes relating to subsequent agreements and subsequent practice, by examining some remaining preliminary conclusions contained in that report. In the light of the discussions in the Study Group, the Chairperson reformulated the text of six additional preliminary conclusions by the Chairperson of the Study Group on the following issues: subsequent practice as reflecting a position regarding the interpretation of a treaty; specificity of subsequent practice; degree of active participation in a practice and silence; effects of contradictory subsequent practice; subsequent agreement or practice and formal amendment or interpretation procedures; and subsequent practice and possible modification of a treaty. The Study Group also considered the third report by its Chairperson on subsequent agreements and subsequent practice of States outside judicial and quasi-judicial proceedings. Furthermore, the Study Group discussed the modalities of the Commission’s work on the topic and recommended that the Commission change the format of that work and appoint a special rapporteur.

22. At the present session, the Commission decided (a) to change, with effect from its sixty-fifth session (2013), the format of the work on this topic as suggested by the Study Group; and (b) to appoint Mr. Georg Nolte as Special Rapporteur for the topic “Subsequent agreements and subsequent practice in relation to the interpretation of treaties” (chap. X).

23. Regarding the topic “The most-favoured-nation clause”, the Commission reconstituted the Study Group on the most-favoured-nation clause, which continued to have a discussion concerning factors that appeared to influence investment tribunals in interpreting most-favoured-nation clauses, on the basis, *inter alia*, of working papers concerning the interpretation and application of most-favoured-nation clauses in investment agreements and the effect of the mixed nature of investment tribunals on the application of most-favoured-nation clauses to procedural provisions. The Study Group also considered elements of the outline of its future report (chap. XI).

24. 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.

25. The Commission established a Planning Group to consider its programme, procedures and working methods (chap. XII, sect. E).

26. The Commission continued traditional exchanges of information with the International Court of Justice, the Asian–African Legal Consultative Organization, the European Committee on Legal Co-operation and the Committee of Legal Advisers on Public International Law of the Council of Europe, and the Inter-American Juridical Committee. The Commission had also an exchange of information with the African Union Commission on International Law. Members of the Commission also held informal meetings with other bodies and associations on matters of mutual interest (chap. XII, sect. G).

27. A training seminar was held with 24 participants of different nationalities (chap. XII, sect. J).