

Chapter II

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

13. With regard to the topic “Subsequent agreements and subsequent practice in relation to the interpretation of treaties”, the Commission had before it the first report of the Special Rapporteur (A/CN.4/660), which, *inter alia*, contained four draft conclusions relating to the general rule and means of treaty interpretation; subsequent agreements and subsequent practice as means of interpretation; the definition of subsequent agreement and subsequent practice as means of treaty interpretation; and attribution of a treaty-related practice to a State. Following the debate in plenary, the Commission decided to refer the four draft conclusions to the Drafting Committee. Upon consideration of the report of the Drafting Committee, the Commission provisionally adopted five draft conclusions, together with commentaries thereto (chap. IV).

14. Concerning the topic “Immunity of State officials from foreign criminal jurisdiction”, the Commission had before it the second report of the Special Rapporteur (A/CN.4/661), in which, *inter alia*, six draft articles were presented, following an analysis of (a) the scope of the topic and of the draft articles; (b) the concepts of immunity and jurisdiction; (c) the distinction between immunity *ratione personae* and immunity *ratione materiae*; and (d) the identification of the normative elements comprising the regime of immunity *ratione personae*. Following the debate in plenary, the Commission decided to refer the six draft articles to the Drafting Committee. Upon consideration of the report of the Drafting Committee, the Commission provisionally adopted three draft articles, together with commentaries thereto (chap. V).

15. As regards the topic “Protection of persons in the event of disasters”, the Commission had before it the sixth report of the Special Rapporteur (A/CN.4/662), dealing with aspects of prevention in the context of the protection of persons in the event of disasters, including disaster risk reduction, prevention as a principle of international law, and international cooperation on prevention. Following the debate in plenary, the Commission decided to refer the two draft articles proposed by the Special Rapporteur to the Drafting Committee.

16. The Commission provisionally adopted seven draft articles, together with commentaries, namely draft articles 5 *bis* and 12 to 15, of which it had taken note at its sixty-fourth session (2012), dealing with forms of cooperation, offers of assistance, conditions on the provision of external assistance, facilitation of external assistance and termination of external assistance, respectively, as well as draft articles 5 *ter* and 16, concerning cooperation for disaster risk reduction and the duty to reduce the risk of disasters, respectively (chap. VI).

17. In relation to the topic “Formation and evidence of customary international law”, the Commission had before it the first report of the Special Rapporteur (A/CN.4/663), which, *inter alia*, presented an overview of the previous work of the Commission relevant to the topic, views expressed by delegates in the Sixth Committee of the General Assembly, the scope of the topic, the range of materials to be consulted, and issues relating to customary international law as a source of international law. The Commission also had before it a memorandum by the Secretariat addressing elements in the previous work of the Commission that could be particularly relevant to the topic (A/CN.4/659). The debate in plenary addressed, among other issues, the scope and methodology of the topic, the range of materials to be consulted and the future plan of work. The Special Rapporteur also held informal consultations on the title of the topic, the consideration of *jus cogens* within the scope of the topic and the need for additional information on State practice. The Commission decided to change the title of the topic to “Identification of customary international law” (chap. VII).

18. As regards the topic “Provisional application of treaties”, the Commission had before it the first report of the Special Rapporteur (A/CN.4/664), which sought to establish, in general terms, the principal legal issues that arose in the context of the provisional application of treaties by considering doctrinal approaches to the topic and briefly reviewing the existing State practice. The Commission also had before it a memorandum by the Secretariat, which traced the negotiating history of article 25 of the 1969 Vienna Convention on the law of treaties, both in the Commission and at the United Nations Conference on the Law of Treaties (A/CN.4/658). The debate revolved around the purpose of the provisional application of treaties and the elaboration of specific issues to be considered in future reports of the Special Rapporteur (chap. VIII).

19. The Commission decided to include the topic “Protection of the environment in relation to armed conflicts” in its programme of work and appointed Ms. Marie Jacobsson as Special Rapporteur (chap. XII, sect. A.1). The Special Rapporteur presented the Commission with a series of informal working papers with a view to initiating an informal dialogue with members of the Commission on a number of issues that could be relevant to the development and consideration of work on the topic. Issues addressed in the informal consultations included, *inter alia*, scope and methodology, the possible outcome of the Commission’s work and a number of substantive issues relating to the topic (chap. IX).

20. In connection with the topic “The obligation to extradite or prosecute (*aut dedere aut judicare*)”, the

Commission reconstituted the Working Group on the topic, which continued the evaluation of work on the topic, particularly in the light of the judgment of the International Court of Justice in *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*,⁶ of 20 July 2012. The Commission took note of the report of the Working Group, which is annexed to the present report (chap. X and annex I).

21. Concerning the topic “The most-favoured-nation clause”, the Commission reconstituted the Study Group on the topic, which, *inter alia*, continued to examine the various factors that seemed to influence investment tribunals in interpreting most-favoured-nation clauses, on the basis, *inter alia*, of contemporary practice and jurisprudence, in particular *Daimler Financial Services AG v. Argentine Republic*⁷ and *Kılıç İnşaat İthalat İhracat Sanayi ve Ticaret Anonim Şirketi v. Turkmenistan*⁸ (chap. XI).

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

⁷ *Daimler Financial Services AG v. Argentine Republic*, ICSID Case No. ARB/05/1, Award dispatched to the parties on 22 August 2012 (available from <https://icsid.worldbank.org/>).

⁸ *Kılıç İnşaat İthalat İhracat Sanayi ve Ticaret Anonim Şirketi v. Turkmenistan*, ICSID Case No. ARB/10/1, Award dispatched to the parties on 2 July 2013 (available from <https://icsid.worldbank.org/>).

22. The Commission established a Planning Group to consider its programme, procedures and working methods (chap. XII, sect. A). The Commission decided to include the topic “Protection of the atmosphere” in its programme of work and to appoint Mr. Shinya Murase as Special Rapporteur for the topic (chap. XII, sect. A.1). The Commission also decided to include the topic “Crimes against humanity” in its long-term programme of work (chap. XII, sect. A.2, and annex II).

23. The Commission continued its 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 likewise had 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. C).

24. The Commission decided that its sixty-sixth session would be held in Geneva from 5 May to 6 June and from 7 July to 8 August 2014 (chap. XII, sect. B).