

DOCUMENT A/68/10*

Report of the International Law Commission on the work of its sixty-fifth session
(6 May–7 June and 8 July–9 August 2013)

CONTENTS

| | <i>Page</i> |
|---|-------------------|
| Abbreviations | 4 |
| Note concerning quotations | 4 |
| Multilateral instruments cited in the present volume..... | 5 |
| <i>Chapter</i> | <i>Paragraphs</i> |
| I. ORGANIZATION OF THE SESSION | 1–12 11 |
| A. Membership | 2 11 |
| B. Casual vacancy | 3 11 |
| C. Officers and the Enlarged Bureau..... | 4–6 11 |
| D. Drafting Committee | 7–8 12 |
| E. Working groups and study groups | 9–10 12 |
| F. Secretariat | 11 12 |
| G. Agenda..... | 12 12 |
| II. SUMMARY OF THE WORK OF THE COMMISSION AT ITS SIXTY-FIFTH SESSION..... | 13–24 13 |
| III. SPECIFIC ISSUES ON WHICH COMMENTS WOULD BE OF PARTICULAR INTEREST TO THE COMMISSION | 25–28 15 |
| A. Immunity of State officials from foreign criminal jurisdiction | 25 15 |
| B. Formation and evidence of customary international law..... | 26 15 |
| C. Provisional application of treaties | 27 15 |
| D. Protection of the environment in relation to armed conflicts | 28 15 |
| IV. SUBSEQUENT AGREEMENTS AND SUBSEQUENT PRACTICE IN RELATION TO THE INTERPRETATION OF TREATIES | 29–39 16 |
| A. Introduction | 29–32 16 |
| B. Consideration of the topic at the present session..... | 33–37 16 |
| C. Text of the draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, as provisionally adopted by the Commission at its sixty-fifth session..... | 38–39 17 |
| 1. Text of the draft conclusions | 38 17 |
| 2. Text of the draft conclusions and commentaries thereto provisionally adopted by the Commission at its sixty-fifth session..... | 39 17 |
| Introduction | 17 |
| Conclusion 1. General rule and means of treaty interpretation..... | 17 |
| Commentary..... | 18 |
| Conclusion 2. Subsequent agreements and subsequent practice as authentic means of interpretation..... | 22 |
| Commentary..... | 22 |
| Conclusion 3. Interpretation of treaty terms as capable of evolving over time | 24 |
| Commentary..... | 24 |
| Conclusion 4. Definition of subsequent agreement and subsequent practice | 28 |
| Commentary..... | 28 |
| Conclusion 5. Attribution of subsequent practice..... | 34 |
| Commentary..... | 34 |
| V. IMMUNITY OF STATE OFFICIALS FROM FOREIGN CRIMINAL JURISDICTION..... | 40–49 38 |
| A. Introduction | 40–42 38 |
| B. Consideration of the topic at the present session..... | 43–47 38 |

* Initially distributed as *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 10.*

| Chapter | Paragraphs | Page |
|---|------------|------|
| C. | | |
| Text of the draft articles on immunity of State officials from foreign criminal jurisdiction provisionally adopted so far by the Commission | 48–49 | 39 |
| 1. | | |
| Text of the draft articles | 48 | 39 |
| 2. | | |
| Text of the draft articles and commentaries thereto provisionally adopted by the Commission at its sixty-fifth session | 49 | 39 |
| PART ONE. INTRODUCTION | | 39 |
| Article 1. | | |
| Scope of the present draft articles | | 39 |
| Commentary | | 39 |
| PART TWO. IMMUNITY <i>RATIONE PERSONAE</i> | | 43 |
| Article 3. | | |
| Persons enjoying immunity <i>ratione personae</i> | | 43 |
| Commentary | | 43 |
| Article 4. | | |
| Scope of immunity <i>ratione personae</i> | | 47 |
| Commentary | | 47 |
| VI. | | |
| PROTECTION OF PERSONS IN THE EVENT OF DISASTERS | 50–62 | 51 |
| A. | | |
| Introduction | 50–55 | 51 |
| B. | | |
| Consideration of the topic at the present session | 56–60 | 52 |
| C. | | |
| Text of the draft articles on the protection of persons in the event of disasters provisionally adopted so far by the Commission | 61–62 | 52 |
| 1. | | |
| Text of the draft articles | 61 | 52 |
| 2. | | |
| Text of the draft articles and commentaries thereto provisionally adopted by the Commission at its sixty-fifth session | 62 | 53 |
| Article 5 <i>bis</i> . | | |
| Forms of cooperation | | 53 |
| Commentary | | 53 |
| Article 5 <i>ter</i> . | | |
| Cooperation for disaster risk reduction | | 54 |
| Commentary | | 54 |
| Article 12. | | |
| Offers of assistance | | 55 |
| Commentary | | 55 |
| Article 13. | | |
| Conditions on the provision of external assistance | | 56 |
| Commentary | | 56 |
| Article 14. | | |
| Facilitation of external assistance | | 57 |
| Commentary | | 57 |
| Article 15. | | |
| Termination of external assistance | | 58 |
| Commentary | | 58 |
| Article 16. | | |
| Duty to reduce the risk of disasters | | 59 |
| Commentary | | 59 |
| VII. | | |
| FORMATION AND EVIDENCE OF CUSTOMARY INTERNATIONAL LAW | 63–107 | 64 |
| A. | | |
| Introduction | 63 | 64 |
| B. | | |
| Consideration of the topic at the present session | 64–107 | 64 |
| 1. | | |
| Introduction by the Special Rapporteur of the first report | 66–72 | 64 |
| 2. | | |
| Summary of the debate | 73–100 | 65 |
| (a) | | |
| General comments | 73–75 | 65 |
| (b) | | |
| Scope of the topic | 76–82 | 65 |
| (c) | | |
| Methodology | 83–89 | 66 |
| (d) | | |
| Range of materials to be consulted | 90–97 | 67 |
| (e) | | |
| Future work on the topic | 98–100 | 67 |
| 3. | | |
| Concluding remarks of the Special Rapporteur | 101–107 | 68 |
| VIII. | | |
| PROVISIONAL APPLICATION OF TREATIES | 108–129 | 69 |
| A. | | |
| Introduction | 108 | 69 |
| B. | | |
| Consideration of the topic at the present session | 109–129 | 69 |
| 1. | | |
| Introduction by the Special Rapporteur of the first report | 111–116 | 69 |
| 2. | | |
| Summary of the debate | 117–125 | 70 |
| 3. | | |
| Concluding remarks of the Special Rapporteur | 126–129 | 71 |
| IX. | | |
| PROTECTION OF THE ENVIRONMENT IN RELATION TO ARMED CONFLICTS | 130–144 | 72 |
| A. | | |
| Introduction | 130–131 | 72 |
| B. | | |
| Consideration of the topic at the present session | 132–144 | 72 |
| Report of the Special Rapporteur on the informal consultations held on the topic | 133–144 | 72 |

| <i>Chapter</i> | <i>Paragraphs</i> | <i>Page</i> |
|--|-------------------|-------------|
| X. THE OBLIGATION TO EXTRADITE OR PROSECUTE (<i>AUT DEDERE AUT JUDICARE</i>) | 145–149 | 74 |
| A. Introduction | 145–147 | 74 |
| B. Consideration of the topic at the present session..... | 148–149 | 74 |
| XI. THE MOST-FAVoured-NATION CLAUSE..... | 150–164 | 75 |
| A. Introduction | 150–151 | 75 |
| B. Consideration of the topic at the present session..... | 152–164 | 75 |
| 1. Work of the Study Group..... | 154–158 | 75 |
| 2. Discussions of the Study Group at the present session | 159–164 | 76 |
| XII. OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION | 165–218 | 78 |
| A. Programme, procedures and working methods of the Commission and its documentation..... | 165–191 | 78 |
| 1. Inclusion of new topics on the programme of work of the Commission | 167–168 | 78 |
| 2. Working Group on the long-term programme of work..... | 169–170 | 78 |
| 3. Consideration of General Assembly resolution 67/97 of 14 December 2012 on the rule of law at the national and international levels..... | 171–180 | 79 |
| 4. Honoraria..... | 181 | 79 |
| 5. Documentation and publications | 182–187 | 79 |
| 6. Trust fund on the backlog relating to the <i>Yearbook of the International Law Commission</i> | 188 | 80 |
| 7. <i>Yearbook of the International Law Commission</i> | 189 | 80 |
| 8. Assistance of the Codification Division..... | 190 | 80 |
| 9. Websites | 191 | 80 |
| B. Date and place of the sixty-sixth session of the Commission..... | 192 | 80 |
| C. Cooperation with other bodies | 193–198 | 81 |
| D. Representation at the sixty-eighth session of the General Assembly | 199–200 | 81 |
| E. Gilberto Amado Memorial Lecture..... | 201 | 81 |
| F. International Law Seminar | 202–215 | 81 |
| G. Commemoration of the 50th anniversary of the International Law Seminar | 216–218 | 82 |
| ANNEXES | | |
| I. Report of the Working Group on the obligation to extradite or prosecute (<i>aut dedere aut judicare</i>) | | 84 |
| II. Crimes against humanity | | 93 |