

## Chapter II

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

13. In relation to the topic “The most-favoured-nation clause”, the Commission received and welcomed with appreciation the final report on the work of the Study Group on the most-favoured-nation clause (A/CN.4/L.852) and endorsed the summary conclusions of the Study Group. The Commission commended the final report to the attention of the General Assembly and encouraged its widest possible dissemination. The Commission thus concluded its consideration of the topic (chap. IV).

14. With regard to the topic “Protection of the atmosphere”, the Commission had before it the second report of the Special Rapporteur (A/CN.4/681), which, following further analysis of the draft guidelines submitted in the first report,<sup>4</sup> presented a set of revised draft guidelines relating to the use of terms, the scope of the draft guidelines and the common concern of humankind, as well as draft guidelines on the general obligation of States to protect the atmosphere and on international cooperation. Following its debate on the report, the Commission decided to refer draft guidelines 1, 2, 3 and 5, as contained in the Special Rapporteur’s second report, to the Drafting Committee, on the understanding that draft guideline 3 be considered in the context of a possible preamble. Upon consideration of the report of the Drafting Committee (A/CN.4/L.851), the Commission provisionally adopted draft guidelines 1, 2 and 5 and four preambular paragraphs, together with commentaries thereto (chap. V).

15. As regards the topic “Identification of customary international law”, the Commission had before it the third report of the Special Rapporteur (A/CN.4/682), which contained, *inter alia*, additional paragraphs for three of the draft conclusions proposed in the second report,<sup>5</sup> dealing with the relationship between the two constituent elements of customary international law and the role of inaction, and five new draft conclusions, relating, respectively, to the role of treaties; the resolutions of international organizations and conferences; judicial decisions and writings; particular custom; and the persistent objector. Following the debate in plenary, the Commission decided to refer the draft conclusions contained in the third report to the Drafting Committee. The Commission received the report of the Drafting Committee (A/CN.4/L.869) and took note of draft conclusions 1 to 16 [15] provisionally adopted by the Drafting Committee at the sixty-sixth and sixty-seventh sessions (chap. VI).

16. With respect to the topic “Crimes against humanity”, the Commission considered the first report of the Special Rapporteur (A/CN.4/680), which contained, *inter alia*, two draft articles relating, respectively, to the prevention

and punishment of crimes against humanity and the definition of crimes against humanity. Following the debate in plenary, the Commission decided to refer the draft articles proposed by the Special Rapporteur to the Drafting Committee. Upon consideration of the report of the Drafting Committee (A/CN.4/L.853), the Commission provisionally adopted draft articles 1 to 4, together with commentaries thereto (chap. VII).

17. As regards the topic “Subsequent agreements and subsequent practice in relation to the interpretation of treaties”, the Commission had before it the third report of the Special Rapporteur (A/CN.4/683), which contained, *inter alia*, one draft conclusion relating to constituent instruments of international organizations. Following the debate in plenary, the Commission decided to refer the draft conclusion proposed by the Special Rapporteur to the Drafting Committee. Upon consideration of the report of the Drafting Committee (A/CN.4/L.854), the Commission provisionally adopted draft conclusion 11, together with a commentary thereto (chap. VIII).

18. With respect to the topic “Protection of the environment in relation to armed conflicts”, the Commission had before it the second report of the Special Rapporteur (A/CN.4/685), which, *inter alia*, identified and examined existing rules of armed conflict directly relevant to the protection of the environment in relation to armed conflict. The report contained five draft principles and three draft preambular paragraphs relating to the scope and purpose of the draft principles and the use of terms. Following the debate in plenary, the Commission decided to refer the draft preambular paragraphs and draft principles, as contained in the report of the Special Rapporteur, to the Drafting Committee, on the understanding that the provision on use of terms was being referred for the purpose of facilitating discussions and was to be left pending by the Drafting Committee. The Commission subsequently received the report of the Drafting Committee (A/CN.4/L.870) and took note of the draft introductory provisions and draft principles I-(x) to II-5 provisionally adopted by the Drafting Committee (chap. IX).

19. In relation to the topic “Immunity of State officials from foreign criminal jurisdiction”, the Commission had before it the fourth report of the Special Rapporteur (A/CN.4/686), which was devoted to consideration of the remaining aspect of the material scope of immunity *ratione materiae*, namely what constitutes an “act performed in an official capacity”, and its temporal scope. The report contained proposals for draft article 2 (f), defining an “act performed in an official capacity”, and draft article 6, on the scope of immunity *ratione materiae*. Following the debate in plenary, the Commission decided to refer the

<sup>4</sup> *Yearbook ... 2014*, vol. II (Part One), document A/CN.4/667.

<sup>5</sup> *Ibid.*, document A/CN.4/672.

two draft articles to the Drafting Committee. The Commission subsequently received the report of the Drafting Committee (A/CN.4/L.865) and took note of draft articles 2 (f) and 6 provisionally adopted by the Drafting Committee (chap. X).

20. As regards the topic “Provisional application of treaties”, the Commission had before it the third report of the Special Rapporteur (A/CN.4/687), which considered the relationship between provisional application and other provisions of the Vienna Convention on the Law of Treaties of 1969 (1969 Vienna Convention) and the question of provisional application with regard to international organizations. The Commission also had before it a memorandum (A/CN.4/676), prepared by the Secretariat, on provisional application under the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986 (1986 Vienna Convention). The Commission referred six draft guidelines proposed by the Special Rapporteur to the Drafting Committee. The Commission subsequently received an interim oral report, presented by the Chairperson of the Drafting Committee, on draft guidelines 1 to 3 provisionally adopted by the Drafting

Committee, which was presented to the Commission for information only (chap. XI).

21. 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 “*Jus cogens*” in its programme of work and to appoint Mr. Dire D. Tladi as Special Rapporteur for the topic (*ibid.*, sect. A.1).

22. The Commission continued its exchange of information with the International Court of Justice, the Asian–African Legal Consultative Organization, the Inter-American Juridical Committee, the Committee of Legal Advisers on Public International Law of the Council of Europe and the African Union Commission on International Law. The United Nations High Commissioner for Human Rights also addressed the Commission. An informal exchange of views was held between members of the Commission and the International Committee of the Red Cross (ICRC).

23. The Commission recommended that its sixty-eighth session be held in Geneva from 2 May to 10 June and 4 July to 12 August 2016 (chap. XII, sect. B).