

Chapter II

Summary of the work of the Commission at its seventy-first session

12. With respect to the topic “**Crimes against humanity**”, the Commission had before it the fourth report of the Special Rapporteur (A/CN.4/725 and Add.1), as well as comments and observations received from Governments, international organizations and others (A/CN.4/726, Add.1 and Add.2). The fourth report addressed the comments and observations made by Governments, international organizations and others on the draft articles and commentaries adopted on first reading and made recommendations for each draft article.

13. The Commission adopted, on second reading, the entire set of draft articles on prevention and punishment of crimes against humanity, comprising a draft preamble, 15 draft articles and a draft annex, together with commentaries thereto. The Commission decided, in conformity with article 23 of its statute, to recommend the draft articles on prevention and punishment of crimes against humanity to the General Assembly. In particular, the Commission recommended the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles (chap. IV).

14. With regard to the topic “**Peremptory norms of general international law (*jus cogens*)**”, the Commission had before it the fourth report of the Special Rapporteur (A/CN.4/727), which discussed the question of the existence of regional *jus cogens* and the inclusion of an illustrative list, based on norms previously recognized by the Commission as possessing a peremptory character. Following the plenary debate, the Commission decided to refer the draft conclusion proposed in the fourth report to the Drafting Committee.

15. The Commission subsequently adopted, on first reading, 23 draft conclusions and a draft annex, together with commentaries thereto, on peremptory norms of general international law (*jus cogens*). The Commission decided, in accordance with articles 16 to 21 of its statute, to transmit the draft conclusions, 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 December 2020 (chap. V).

16. 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.4/728), which discussed questions related to the protection of the environment in non-international armed conflicts, and matters related to responsibility and liability for environmental damage. Following the plenary debate, the Commission decided to refer the seven draft principles, as proposed by the Special Rapporteur in her second report, to the Drafting Committee.

17. As a result of its consideration of the topic at the present session, the Commission adopted, on first reading, 28 draft principles, together with commentaries thereto, on protection of the environment in relation to armed conflicts. The Commission decided, in accordance with articles 16 to 21 of its statute, to transmit the draft principles, through the Secretary-General, to Governments, international organizations, including from the United Nations and its Environment Programme, and others, including the International Committee of the Red Cross and the Environmental Law Institute, for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 1 December 2020 (chap. VI).

18. With regard to the topic “**Succession of States in respect of State responsibility**”, the Commission had before it the third report of the Special Rapporteur (A/CN.4/731), which addressed introductory issues, including certain general considerations, questions of reparation for injury resulting from internationally wrongful acts committed against the predecessor State as well as its nationals, and technical proposals in relation to the scheme of the draft articles. Following the debate in plenary, the Commission decided to refer draft articles 2, paragraph (f), X, Y, 12, 13, 14 and 15, and the titles of Part Two and Part Three,

as contained in the third report of the Special Rapporteur, to the Drafting Committee. Upon its consideration of a first report of the Drafting Committee, the Commission provisionally adopted draft articles 1, 2 and 5, with commentaries thereto. Furthermore, the Commission took note of the interim report of the Chair of the Drafting Committee on draft articles 7, 8 and 9 provisionally adopted by the Committee, which was presented to the Commission for information only (chap. VII).

19. With regard to the topic “**Immunity of State officials from foreign criminal jurisdiction**”, the Commission had before it the sixth (A/CN.4/722) and the seventh (A/CN.4/729) reports of the Special Rapporteur, which were devoted to addressing procedural aspects of immunity from foreign criminal jurisdiction. In particular, the sixth report, on which the debate was not completed at the seventieth session in 2018, provided an analysis of three components of procedural aspects related to the concept of jurisdiction, namely: (a) timing; (b) kinds of acts affected; and (c) the determination of immunity. The seventh report completed the examination of the procedural aspects of immunity regarding the relationship between jurisdiction and the procedural aspects of immunity; addressed questions concerning the invocation of immunity and the waiver of immunity; examined aspects concerning procedural safeguards related to the State of the forum and the State of the official, considered the procedural rights and safeguards of the official, and proposed nine draft articles. Following the debate in plenary, the Commission decided to refer draft articles 8 to 16 to the Drafting Committee, taking into account the debate and proposals made in plenary. The Commission received and took note of the interim report of the Chair of the Drafting Committee on draft article 8 *ante*, which was presented to the Commission for information only (chap. VIII).

20. With regard to the topic “**General principles of law**”, the Commission had before it the first report of the Special Rapporteur (A/CN.4/732), which addressed the scope of the topic and the main issues to be addressed in the course of the work of the Commission. The report also addressed previous work of the Commission related to general principles of law and provided an overview of the development of general principles of law over time, as well as an initial assessment of certain basic aspects of the topic and future work on the topic. Following the debate in plenary, the Commission decided to refer draft conclusions 1 to 3, as contained in the report of the Special Rapporteur, to the Drafting Committee. The Commission subsequently took note of the interim report of the Chair of the Drafting Committee on draft conclusion 1 provisionally adopted by the Committee, which was presented to the Commission for information only (chap. IX).

21. With respect to the topic “**Sea-level rise in relation to international law**”, the Commission decided to include the topic in its programme of work and established a Study Group, to be co-chaired, on a rotating basis, by Mr. Bogdan Aurescu, Mr. Yacouba Cissé, Ms. Patrícia Galvão Teles, Ms. Nilüfer Oral and Mr. Juan José Ruda Santolaria. The Study Group held one meeting, at which time it agreed on its composition, methods and programme of work, based on the three subtopics identified in the syllabus. The Commission subsequently took note of the joint oral report of the Co-Chairs of the Study Group (chaps. X and XI, sect. B).

22. As regards “**Other decisions and conclusions of the Commission**”, the Commission took note of an oral report of the Special Rapporteur on the topic “**Provisional application of treaties**”, Mr. Juan Manuel Gómez Robledo, on the informal consultations convened to consider the draft model clauses on provisional application of treaties, and decided to annex the Special Rapporteur’s revised proposal for the draft model clauses to the report, with a view to seeking comments from Governments in advance of the commencement of the second reading of the draft Guide to Provisional Application of Treaties at the seventy-second session of the Commission (chap. XI, sect. A, and annex A).

23. The Commission re-established a Planning Group to consider its programme, procedures and working methods, which in turn decided to re-establish the Working Group on the long-term programme of work, chaired by Mr. Mahmoud D. Hmoud, and the Working Group on methods of work, chaired by Mr. Hussein A. Hassouna (chap. XI, sect. D). The Commission decided to include in its long-term programme of work the topics: (a) “**Reparation to individuals for gross violations of international human rights law and**

serious violations of international humanitarian law”; and (b) **“Prevention and repression of piracy and armed robbery at sea”** (chap. XI, sect. D, and annexes B and C).

24. The Commission received Mr. Abdulqawi Ahmed Yusuf, President of the International Court of Justice and continued its traditional exchanges of information with the Committee of Legal Advisers on Public International Law of the Council of Europe; the Inter-American Juridical Committee; the Asian-African Legal Consultative Organization; and the African Union Commission on International Law. Members of the Commission also held an informal exchange of views with the International Committee of the Red Cross (chap. XI, sect. F).

25. The Commission decided that its seventy-second session would be held in Geneva from 27 April to 5 June and from 6 July to 7 August 2020 (chap. XI, sect. E).