

Chapter II

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

13. With respect to the topic “**Protection of the atmosphere**”, the Commission had before it the sixth report of the Special Rapporteur ([A/CN.4/736](#)), as well as comments and observations received from Governments and international organizations ([A/CN.4/735](#)). The report examined the comments and observations received from Governments and international organizations on the draft preamble and guidelines, as adopted on first reading, and made recommendations for each draft guideline, as well as a proposal for a recommendation to the General Assembly.

14. The Commission adopted, on second reading, the entire set of draft guidelines on the protection of the atmosphere, comprising a draft preamble and 12 draft guidelines, together with commentaries thereto. The Commission decided, in accordance with article 23 of its statute, to recommend that the General Assembly: (a) take note in a resolution of the draft preamble and guidelines on the protection of the atmosphere, annex the draft guidelines to the resolution, and ensure their widest possible dissemination; (b) commend the draft preamble and guidelines, together with the commentaries thereto, to the attention of States, international organizations and all who may be called upon to deal with the subject (chap. IV).

15. With regard to the topic “**Provisional application of treaties**”, the Commission had before it the sixth report of the Special Rapporteur ([A/CN.4/738](#)), as well as comments and observations received from Governments and international organizations ([A/CN.4/737](#)). The report examined the comments and observations received from Governments and international organizations on the draft Guide, as adopted on first reading, and on several draft model clauses, proposed by the Special Rapporteur to the Commission at its seventy-first session (2019). It also contained proposals of the Special Rapporteur for consideration on second reading, in the light of the comments and observations, as well as a proposal for a recommendation to the General Assembly.

16. The Commission adopted, on second reading, the entire Guide to Provisional Application of Treaties, comprising 12 draft guidelines and a draft annex containing examples of provisions on provisional application of treaties, together with commentaries thereto. In accordance with article 23 of its statute, the Commission recommended to the General Assembly to take note of the Guide to Provisional Application of Treaties and to encourage its widest possible dissemination, to commend the Guide, and the commentaries thereto, to the attention of States and international organizations, and to request the Secretary-General to prepare a volume of the *United Nations Legislative Series* compiling the practice of States and international organizations in the provisional application of treaties, as furnished by the latter over the years, together with other materials relevant to the topic (chap. V).

17. With respect to the topic “**Immunity of State officials from foreign criminal jurisdiction**”, the Commission had before it the eighth report of the Special Rapporteur ([A/CN.4/739](#)), which examined the relationship between the immunity of State officials from foreign criminal jurisdiction and international criminal tribunals; considered a mechanism for the settlement of disputes between the forum State and the State of the official; considered the issue of good practices that could help to solve the problems that arise in practice in the process of determining and applying immunity; and presented proposals for draft articles 17 and 18. Following the debate in plenary, the Commission decided to refer draft articles 17 and 18 to the Drafting Committee, taking into account the debate and proposals made in plenary. The Commission received and adopted the reports of the Drafting Committee on draft articles 8 *ante*, 8, 9, 10, 11 and 12, and provisionally adopted those draft articles together with the commentaries thereto (chap. VI).

18. With regard to the topic “**Succession of States in respect of State responsibility**”, the Commission had before it the fourth report of the Special Rapporteur ([A/CN.4/743](#)), which addressed questions related to the impact of succession of States on forms of responsibility, in particular the different forms of reparation, the obligation of cessation and

assurances and guarantees of non-repetition. Following the debate in plenary, the Commission decided to refer draft articles 7 *bis*, 16, 17, 18 and 19, as contained in the fourth report of the Special Rapporteur, to the Drafting Committee, taking into account the comments made in plenary. The Commission provisionally adopted draft articles 7, 8 and 9, which had been provisionally adopted by the Drafting Committee at the seventy-first session, together with commentaries thereto. Furthermore, the Commission took note of the interim report of the Chair of the Drafting Committee on draft articles 10, 10 *bis* and 11, provisionally adopted by the Committee at the present session, which was presented to the Commission for information only (chap. VII).

19. With regard to the topic “**General principles of law**”, the Commission had before it the second report of the Special Rapporteur ([A/CN.4/741](#) and [Corr.1](#)), which discussed the identification of general principles of law in the sense of Article 38, paragraph 1 (c), of the Statute of the International Court of Justice. Following the debate in plenary, the Commission decided to refer draft conclusions 4, 5, 6, 7, 8 and 9, as presented in the second report, to the Drafting Committee, taking into account the comments made in plenary. The Commission received and adopted the report of the Drafting Committee on draft conclusions 1, 2 and 4, and provisionally adopted those draft conclusions, together with commentaries. Furthermore, the Commission took note of draft conclusion 5, which was also contained in the report of the Drafting Committee (chap. VIII).

20. With respect to the topic “**Sea-level rise in relation to international law**”, the Commission reconstituted the Study Group on sea-level rise in relation to international law. The Study Group had before it the first issues paper ([A/CN.4/740](#) and [Corr.1](#) and [Add.1](#)) concerning issues relating to the law of the sea, prepared by two of the Co-Chairs of the Study Group, Mr. Bogdan Aurescu and Ms. Nilüfer Oral, as well as informal contribution papers and comments submitted by members. The Study Group held a “plenary-like” debate on the various matters discussed in the first issues paper over five meetings, during the first part of the session. The Study Group subsequently undertook an interactive discussion, over three further meetings held during the second part of the session, on the basis of, *inter alia*, a series of guiding questions prepared by the Co-Chairs. Thereafter, the Co-Chairs reported to the plenary on the work of the Study Group (chap. IX).

21. As regards “**Other decisions and conclusions of the Commission**”, 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. X, sect. B). The Commission decided to include in its long-term programme of work the topic “**Subsidiary means for the determination of rules of international law**” (chap. X, sect. B, and annex).

22. Judge Joan E. Donoghue, President of the International Court of Justice, addressed the Commission virtually on 22 July 2021. Owing to the coronavirus disease (COVID-19) pandemic, the Commission was regrettably unable to have its traditional exchanges of information with the African Union Commission on International Law; the Asian-African Legal Consultative Organization; the Committee of Legal Advisers on Public International Law of the Council of Europe; and the Inter-American Juridical Committee. However, it was able to have an informal exchange of views with the International Committee of the Red Cross on 15 July 2021 (chap. X, sect. E).

23. The Commission decided that its seventy-third session would be held in Geneva from 18 April to 3 June and from 4 July to 5 August 2022 (chap. X, sect. C).