

Chapter IX

Succession of States in respect of State responsibility

A. Introduction

231. At its sixty-ninth session (2017), the Commission decided to include the topic “Succession of States in respect of State responsibility” in its programme of work and appointed Mr. Pavel Šturma as Special Rapporteur.³⁰⁴ The General Assembly, in its resolution 72/116 of 7 December 2017, took note of the decision of the Commission to include the topic in its programme of work.

232. The Special Rapporteur submitted five reports from 2017 to 2022.³⁰⁵ The Commission also had before it, at the seventy-first session (2019), a memorandum prepared by the Secretariat providing information on treaties which may be of relevance to its future work on the topic.³⁰⁶ Following the debate on each report, the Commission decided to refer the proposals for draft articles made by the Special Rapporteur to the Drafting Committee. The Commission heard interim reports and statements from the successive Chairs of the Drafting Committee on succession of States in respect of State responsibility at the sixty-ninth to seventy-third sessions (2017 to 2019, 2021 and 2022).

233. At its seventy-third session (2022), on 17 May 2022, the Commission decided, on the recommendation of the Special Rapporteur, to instruct the Drafting Committee to proceed with the preparation of draft guidelines on the basis of the provisions previously referred to the Drafting Committee (including those provisions provisionally adopted by the Commission at previous sessions), taking into account the debate held in the plenary on the Special Rapporteur’s fifth report.

234. Also at its seventy-third session, the Commission provisionally adopted, with commentaries, draft guidelines 6, 10, 10 *bis* and 11, which had been provisionally adopted by the Drafting Committee in 2018 and 2021, as well as draft guidelines 7 *bis*, 12, 13, 13 *bis*, 14, 15 and 15 *bis*, which were provisionally adopted by the Drafting Committee in 2022. As a result of the change of form of the outcome, the Commission also took note of draft articles 1, 2, 5, 7, 8 and 9, as revised by the Drafting Committee to be draft guidelines.

B. Consideration of the topic at the present session

235. At the present session, the Commission had no report before it on the topic, as the Special Rapporteur was no longer with the Commission. At its 3621st meeting, on 10 May 2023, the Commission decided to establish a Working Group on the topic and appointed Mr. August Reinisch as Chair of the Working Group.

236. The Working Group held four meetings, on 14, 18, 19 and 20 July 2023.

237. The Working Group focused its discussion on considering the way forward for the topic. It considered whether the Commission should continue developing a text in the Drafting Committee and proceed to conclude the first reading of the draft guidelines, or whether it should pursue a different course, as suggested in the plenary in 2022, and convene a dedicated Working Group with a view to eventually producing a report on the topic to be adopted by the Commission. The Working Group expressed its deep appreciation to the former Special Rapporteur for his outstanding contribution to the topic.

238. In the course of a broad and inclusive discussion in the Working Group, which highlighted both merits and shortcomings of the earlier work carried out on the topic, two

³⁰⁴ At its 3354th meeting, on 9 May 2017. The topic had been included in the long-term programme of work of the Commission during its sixty-eighth session (2016), on the basis of the proposal contained in annex B to the report of the Commission (*Official Records of the General Assembly, Seventy-first Session, Supplement No. 10 (A/71/10)*).

³⁰⁵ [A/CN.4/708](#), [A/CN.4/719](#), [A/CN.4/731](#), [A/CN.4/743](#) and [Corr.1](#), and [A/CN.4/751](#), respectively.

³⁰⁶ [A/CN.4/730](#).

main trends emerged. According to one approach, it was preferable to proceed in an incremental manner such that the Working Group would be reconstituted at the seventy-fifth session (2024) to continue its deliberations on the way forward and with a clear mandate to take a decision, as far as possible within a defined time period and on the basis of a working paper to be prepared by the Chair of the Working Group. That paper should also situate the topic within a broader global framework, reflecting more comprehensively the diversity of State practice across regions.

239. The alternative approach was to take a decision, at the present session, to discontinue the present Special Rapporteur-led format of the work, and instead opt for a Working Group-driven process aimed at preparing a final report to be adopted by the Commission, for eventual submission to the General Assembly. The Working Group considered a proposal along such lines, which would have involved recommending the reconstitution of the Working Group with a new mandate, and possibly with a restricted membership, precisely to prepare such a final report on the topic, within a period of two years.

240. While the preponderance of views within the Working Group favoured the conversion of the present format into a Working Group-based process, with the goal of producing a final report as opposed to the adoption of draft guidelines, there was nonetheless a preference for the more incremental approach, whereby a decision on such a way forward would be taken only at the seventy-fifth session, so as to allow more time for reflection.

241. Accordingly, the Working Group decided to recommend that the Commission continue its consideration of the topic, but not proceed with the appointment of a new Special Rapporteur.

242. It further recommended that the Working Group be re-established at the seventy-fifth session of the Commission, with the present open-ended composition, with a view to undertaking further reflection on the way forward for the topic, taking into account the views expressed, and the options identified, in the Working Group at the current session.

243. Such further reflection should be undertaken on the basis of a working paper identifying the various complexities surrounding the provisions adopted by the Commission thus far and outlining the options open to the Commission, to be prepared by the Chair of the Working Group in advance of the seventy-fifth session of the Commission, in close collaboration with interested members of the Working Group.

244. It was recommended that the re-established Working Group should seek to make a recommendation with a view to the Commission taking a decision on the way forward at its next session.

245. At its 3648th meeting, on 27 July 2023, the Commission took note of the oral report of the Chair of the Working Group, including the recommendations contained therein.

246. Following consultations within the Bureau and among members, the Commission decided, at its 3655th meeting, on 3 August 2023, to appoint Mr. August Reinisch as Chair of the Working Group to be re-established at the seventy-fifth session and to report to the Commission for further deliberation and decision.