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Draft report of the International Law Commission on the work of its sixty-ninth session

Rapporteur: Mr. Bogdan Aurescu

Chapter II

Summary of the work of the Commission at its sixty-ninth session

1. With respect to the topic “**Crimes against humanity**”, the Commission had before it the third report of the Special Rapporteur ([A/CN.4/704](#)), which addressed, in particular, the following issues: extradition, *non-refoulement*, mutual legal assistance, victims, witnesses and other affected persons, relationship to competent international criminal tribunals, federal State obligations, monitoring mechanisms and dispute settlement, remaining issues, the preamble to the draft articles, and final clauses of a convention.
2. As a result of its consideration of the topic at the present session, the Commission adopted, on first reading, a draft preamble, 15 draft articles and a draft annex, together with commentaries thereto, on crimes against humanity. The Commission decided, in accordance with articles 16 to 21 of its statute, to transmit the draft articles, 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 January 2019 (chap. IV).
3. With regard to the topic “**Provisional application of treaties**”, the Commission referred draft guidelines 1 to 4 and 6 to 9, provisionally adopted by the Drafting Committee in 2016, back to the Drafting Committee, with a view to having a consolidated set of draft guidelines, as provisionally worked out thus far, prepared. The Commission subsequently provisionally adopted draft guidelines 1 to 11 [12], as presented by the Drafting Committee at the current session, with commentaries thereto (chap. V).
4. Concerning the topic “**Protection of the atmosphere**”, the Commission had before it the fourth report of the Special Rapporteur ([A/CN.4/705](#) and [Corr.1](#)), which, building upon the previous three reports, proposed four guidelines on the interrelationship between the rules of international law relating to the protection of the atmosphere and other relevant rules of international law, including the rules of international trade and investment law, the law of the sea, and international human rights law.
5. Following the debate in the Commission, which was preceded by an informal dialogue with atmospheric scientists organized by the Special Rapporteur, the Commission decided to refer the four draft guidelines, as contained in the Special Rapporteur’s fourth



report, to the Drafting Committee. Upon its consideration of the report of the Drafting Committee (A/CN.4/L.894), the Commission provisionally adopted draft guideline 9 and three preambular paragraphs, together with commentaries thereto (chap. VI).

6. Concerning the topic “**Immunity of State officials from foreign criminal jurisdiction**”, the Commission continued its consideration of the fifth report of the Special Rapporteur (A/CN.4/701), which had commenced during the sixty-eighth session. The report analysed the question of limitations and exceptions to the immunity of State officials from foreign criminal jurisdiction and proposed a single draft article on the issue.

7. Following the plenary debate, the Commission referred draft article 7, as proposed by the Special Rapporteur in her fifth report, to the Drafting Committee. Upon its consideration of the report of the Drafting Committee (A/CN.4/L.893), the Commission voted to adopt draft article 7, an annex to the draft articles and a footnote to two of its headings, together with commentaries thereto (chap. VII).

8. With regard to the topic “**Peremptory norms of general international law (*jus cogens*)**”, the Commission had before it the second report of the Special Rapporteur (A/CN.4/706), which sought to set out the criteria for the identification of peremptory norms (*jus cogens*), taking the 1969 Vienna Convention on the Law of Treaties as a point of departure. The Commission subsequently decided to refer draft conclusions 4 to 9, as contained in the report of the Special Rapporteur, to the Drafting Committee, and decided to change the title of the topic from “*Jus cogens*” to “Peremptory norms of general international law (*jus cogens*)”, as proposed by the Special Rapporteur. The Commission subsequently took note of the interim report of the Chairperson of the Drafting Committee on draft conclusions 2 [3 (2)], 4, 5, 6 and 7 provisionally adopted by the Committee, which was submitted to the Commission for information (chap. VIII).

9. With regard to the topic “**Succession of States in respect of State responsibility**”, the Commission had before it the first report of the Special Rapporteur (A/CN.4/708), which sought to set out the Special Rapporteur’s approach to the scope and outcome of the topic, and to provide an overview of general provisions relating to the topic. Following the debate in plenary, the Commission decided to refer draft articles 1 to 4, as contained in the report of the Special Rapporteur, to the Drafting Committee. The Commission subsequently took note of the interim report of the Chairperson of the Drafting Committee on draft articles 1 and 2 provisionally adopted by the Committee, which was submitted to the Commission for information (chap. IX).

10. With respect to the topic “**Protection of the environment in relation to armed conflicts**”, the Commission established a Working Group on the topic, chaired by Mr. Marcelo Vázquez-Bermúdez. The Working Group had before it the draft commentaries prepared by the Special Rapporteur, even though she was no longer with the Commission, on draft principles 4, 6 to 8, and 14 to 18 provisionally adopted by the Drafting Committee at the sixty-eighth session of the Commission, and taken note of by the Commission at the same session. The Working Group focused its discussion on considering the way forward (chap. X).

11. As regarded “**Other decisions and conclusions of the Commission**”, the Commission decided to include the topic “Succession of States in respect of State responsibility” in its programme of work and decided to appoint Mr. Pavel Šturma as Special Rapporteur for the topic (chap. XI, sect. A).

12. The Commission also established a Planning Group to consider its programme, procedures and working methods, which in turn decided to establish the Working Group on the long-term programme of work, under the chairmanship of Mr. Mahmoud Hmoud, and the Working Group on methods of work, under the chairmanship of Mr. Hussein Hassouna (chap. XI, sect. B).

13. The Commission will hold a seventieth anniversary commemorative event during its seventieth session in 2018. The commemorative event under the theme “70 years of the International Law Commission — Drawing a balance for the future”, will be held in two parts, the first during the first part of its seventieth session, to be held in New York on 21

May 2018, and the second during the second part of its seventieth session, to be held in Geneva on 5 and 6 July 2018 (chap. XI, sect. B).

14. The Commission continued its traditional visit of the President of the International Court of Justice, and its exchange of information with the Committee of Legal Advisers on Public International Law of the Council of Europe, the African Union Commission on International Law, the Asian-African Legal Consultative Organization and the Inter-American Juridical Committee. An informal exchange of views was held between members of the Commission and the International Committee of the Red Cross (chap. XI, sect. D).

15. The Commission decided that its seventieth session would be held in New York from 30 April to 1 June and in Geneva from 2 July to 10 August 2018 (chap. XI, sect. C).
