



## General Assembly

Distr.  
LIMITED

A/CN.4/L.677  
27 July 2005

Original: ENGLISH

INTERNATIONAL LAW COMMISSION  
Fifty-seventh session  
Geneva, 2 May-3 June and 11 July-5 August 2005

### **DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FIFTY-SEVENTH SESSION**

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#### **CHAPTER XI**

#### **FRAGMENTATION OF INTERNATIONAL LAW: DIFFICULTIES ARISING FROM THE DIVERSIFICATION AND EXPANSION OF INTERNATIONAL LAW**

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## A. Introduction

1. Following its consideration of a feasibility study<sup>1</sup> that had been undertaken on the topic entitled “Risks ensuing from fragmentation of international law” at its fifty-second session (2000), the Commission decided to include the topic in its long-term programme of work.<sup>2</sup> At its fifty-fourth session (2002), the Commission included the topic in its programme of work and established a Study Group. It also decided to change the title of the topic to “Fragmentation of international law: difficulties arising from the diversification and expansion of international law”.<sup>3</sup> In addition, the Commission agreed on a number of recommendations, including on a series of studies to be undertaken, commencing with a study by the Chairman of the Study Group on the question of “The function and scope of the *lex specialis* rule and the question of ‘self-contained regimes’”.

2. At its fifty-fifth session (2003), the Commission appointed Mr. Martti Koskenniemi as Chairman of the Study Group. The Study Group set a tentative schedule for work to be carried out during the remaining part of the present quinquennium (2003-2006), distributed among members of the Study Group work on the other studies agreed upon in 2002, and decided upon the methodology to be adopted for that work. The Study Group also held a preliminary discussion of an outline produced by the Chairman of the Study Group on the question of the “Function and scope of the *lex specialis* rule and the question of ‘self-contained regimes’”.

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<sup>1</sup> G. Hafner, “Risks Ensuing from Fragmentation of International Law”, *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 10 (A/55/10)*, annex.

<sup>2</sup> *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 10 (A/55/10)*, chap. IX.A.1, para. 729.

<sup>3</sup> *Ibid.*, *Fifty-seventh Session, Supplement No. 10 (A/57/10)*, chap. IX.A, paras. 492-494.

3. At its fifty-sixth session (2004) the Commission reconstituted the Study Group. It held discussions on the study on the “Function and scope of the *lex specialis* rule and the question of ‘self-contained regimes’”, as well as discussions on the outlines prepared in respect of the other remaining studies.<sup>4</sup>

#### **B. Consideration of the topic at the present session**

4. At the current session, the Study Group was reconstituted and it held ... meetings on 12, 17 and 23 May, on 2 June, on 12, 18, 27 ... July 2005. It had before it the following: (a) a memorandum on regionalism in the context of the study on “the function and scope of the *lex specialis* rule and the question of self-contained regimes”; (b) a study on the interpretation of treaties in the light of “any relevant rules of international law applicable in the relations between the parties” (article 31 (3) (c) of the Vienna Convention on the Law of Treaties), in the context of general developments in international law and concerns of the international community; (c) a study on the application of successive treaties relating to the same subject matter (article 30 of the Vienna Convention on the Law of Treaties); (d) a study on the modification of multilateral treaties between certain of the parties only (article 41 of the Vienna Convention on the Law of Treaties); and (e) a study on hierarchy in international law: *jus cogens*, obligations *erga omnes*, Article 103 of the Charter of the United Nations, as conflict rules. The Study Group also had an informal paper on the “Disconnection Clause”.<sup>5</sup>

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<sup>4</sup> (a) the interpretation of treaties in the light of “any relevant rules of international law applicable in the relations between the parties” (article 31 (3) (c) of the Vienna Convention on the Law of Treaties), in the context of general developments in international law and concerns of the international community; (b) the application of successive treaties relating to the same subject matter (article 30 of the Vienna Convention on the Law of Treaties); (c) the modification of multilateral treaties between certain of the parties only (article 41 of the Vienna Convention on the Law of Treaties); and (d) hierarchy in international law: *jus cogens*, obligations *erga omnes*, Article 103 of the Charter of the United Nations, as conflict rules.

<sup>5</sup> The documents are available from the Codification Division of the Office of Legal Affairs.

5. At its ... meeting, on ... July 2005, the Commission held an exchange of views on the topic on the basis of a briefing by the Chairman of the Study Group on the status of work of the Study Group.

6. At its ... meeting, on ... July 2005, the Commission took note of the Report of the Study Group.

### **C. Report of the Study Group**

[For text of the report, see document A/CN.4/L.676, sect. C]

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