

Document:-
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Summary record of the 2965th meeting

Topic:
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Extract from the Yearbook of the International Law Commission:-
2008, vol. I

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2965th MEETING

Wednesday, 21 May 2008, at 10.05 a.m.

Chairperson: Mr. Edmundo VARGAS CARREÑO

Present: Mr. Brownlie, Mr. Caflisch, Mr. Candioti, Mr. Comissário Afonso, Mr. Dugard, Ms. Escameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kemicha, Mr. Kolodkin, Mr. McRae, Mr. Nolte, Mr. Ojo, Mr. Pellet, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vascianie, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Ms. Xue, Mr. Yamada.

Visit by the Under-Secretary-General for Legal Affairs, the Legal Counsel

1. The CHAIRPERSON, after noting with satisfaction the intensive and fruitful work that the sixtieth anniversary of the Commission had occasioned, welcomed Mr. Michel, Under-Secretary-General for Legal Affairs, Legal Counsel, and invited him to share his comments and reflections with the Commission.

2. Mr. MICHEL (Under-Secretary-General for Legal Affairs, Legal Counsel) said that the International Law Commission had lived up to the expectations placed in it at the time of its creation, by contributing to the building of a better world in which the rule of law prevailed. Experience had shown that the work of codification of international law was successful when useful exchanges took place between the Commission and Governments, directly and also through the intermediary of the Sixth Committee. The Codification Division played a crucial role by ensuring that those exchanges took place in the best possible conditions, and particularly by serving as the secretariat of the Commission and of the Sixth Committee. It had made considerable efforts to improve the dissemination of international law, *inter alia* through its numerous publications. Considerable efforts had also been made to exploit the new information technologies to the full, and two new websites would be set up in 2008, the first for the *United Nations Juridical Yearbook*,⁶¹ the second on diplomatic conferences that had adopted international conventions on the basis of draft articles prepared by the Commission.⁶² The revitalization of the Audiovisual Library in International Law, which had been established by resolution 52/152 of 15 December 1997, was another aspect of that ambitious programme.⁶³ As part of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, the Audiovisual Library had been redesigned as a teaching and research tool that would include a permanent collection of lectures by internationally acknowledged experts from different regions and legal systems, covering a wide range of subjects of lasting interest for the training of public and private sector legal professionals, audiovisual recordings of diplomatic

conferences and meetings at which major legal instruments (such as the Charter of the United Nations, the Universal Declaration of Human Rights,⁶⁴ the Convention on the Prevention and Punishment of the Crime of Genocide, and the 1969 Vienna Convention on the Law of Treaties) had been adopted, together with a brief presentation of each instrument, a historical overview of the procedure that had led to its adoption and links to the texts of the respective instruments, and a research library providing a number of links to United Nations legal resources such as its jurisprudence, treaties, yearbooks and other publications and other documentation concerning international law. The Audiovisual Library of International Law, which would be inaugurated in the autumn of 2008, would be accessible free of charge via the Internet⁶⁵ to all institutions and individuals worldwide, not least in the developing countries. The new Treaty Section website would also be inaugurated in the coming months.⁶⁶ It would be provided with a dedicated search engine allowing unlimited access to the texts of treaties and depositary notifications concerning them.

3. The United Nations remained the international centre of intense legal activity, as was witnessed by the recent expansion in the range of legal issues considered by the General Assembly in the Sixth Committee and in special committees. First, with regard to the promotion of and respect for the rule of law, the General Assembly, in its resolution 62/70 of 6 December 2007, had reiterated its request to the Secretary-General to prepare an inventory of the activities and programmes within the United Nations system devoted to the promotion of the rule of law at the national and international levels for submission at its sixty-third session. That inventory, which took the form of a repertory giving an overview of the Organization's capacity to undertake those activities, would serve as a practical guide for the work done by United Nations organs in that field to meet the specific needs of Member States.⁶⁷ In the same resolution, the General Assembly had expressed support for the Rule of Law Coordination and Resource Group responsible for coordinating system-wide activities concerning the rule of law with a view to ensuring quality, policy coherence and follow-up to the 2005 World Summit. It had also stressed the important role that the International Law Commission could play in promoting the rule of law and had invited it, together with the ICJ and the United Nations Commission on International Trade Law, to comment, in their respective annual reports to the General Assembly, on their current roles in that regard.

4. Secondly, the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission⁶⁸ had met for the first time in 2007⁶⁹ following allegations of sexual exploitation and abuse especially

⁶⁴ General Assembly resolution 217 A (III) of 10 December 1948.

⁶⁵ www.un.org/law/avl.

⁶⁶ <http://treaties.un.org>.

⁶⁷ Report of the Secretary-General, "The rule of law at the national and international levels" (A/63/64).

⁶⁸ General Assembly resolution 61/29 of 4 December 2006.

⁶⁹ The first session took place at United Nations Headquarters in New York, from 9 to 13 April 2007. For the report of the session, see *Official Records of the General Assembly, Sixty-second Session, Supplement No. 54* (A/62/54).

⁶¹ www.un.org/law/UNJuridicalYearbook/.

⁶² <http://legal.un.org/diplomaticconferences/index.html>.

⁶³ General Assembly resolution 62/62 of 6 December 2007, para. 12.

concerning mission zones and the staff responsible for bringing stability to them and helping the victims of social and political upheavals to recover after conflicts. The Committee's mandate was to determine how the Organization could strengthen its policy of zero tolerance of sexual exploitation and abuse on the basis of the report of the group of legal experts established by the Secretary-General, under General Assembly resolution 59/300 of 22 June 2005, to look into the question.⁷⁰ Thanks to those efforts, the General Assembly had been able to adopt resolution 62/63 of 6 December 2007, in which it had strongly urged all States to consider establishing jurisdiction, particularly over crimes of a serious nature that could have been committed by their nationals while serving as United Nations officials or experts on mission. It had also requested the Secretary-General to bring allegations of crimes committed by United Nations officials and experts to the attention of the States against whose nationals such allegations were made, and to request from those States an indication of their efforts to investigate and, as appropriate, prosecute crimes of a serious nature. At its spring 2008 session, held in New York on 7, 8, 9 and 11 April 2008, the Ad Hoc Committee had endeavoured to determine how international cooperation could be enhanced. The working document drawn up for that purpose by its Chairperson⁷¹ would be considered again in the autumn of 2008 by a working group of the Sixth Committee, which would also consider the report on implementation of resolution 62/63 to be prepared by the Secretary-General on the basis of the information provided by States,⁷² which should enable it to be ascertained whether any jurisdictional gaps existed which the Ad Hoc Committee might seek to fill in its future work.

5. Thirdly, with regard to the administration of justice at the United Nations, the General Assembly had adopted resolution 62/228 of 22 December 2007, providing for additional measures to establish the new procedure. It had, in particular, reiterated its decision to create a single integrated and decentralized Office of the Ombudsman for the United Nations Secretariat, funds and programmes, and a two-tier formal system of administration of justice, comprising a first instance United Nations Dispute Tribunal and an appellate instance United Nations Appeals Tribunal. Furthermore, the Ad Hoc Committee on the Administration of Justice at the United Nations, established by the General Assembly on the recommendation of the Sixth Committee,⁷³ had held its first session from 10 to 18 and on 21 and 24 April 2008 and had made important progress in its consideration of the draft statutes of the two Tribunals.⁷⁴ The work of redrafting would continue over the coming months; delegations were holding informal intersessional consultations on the draft statutes, the Fifth Committee would consider the question again at the

resumed sixty-second session and the item would remain on the agenda of the General Assembly's sixty-third session, the continuing objective being to introduce the new procedure early in 2009.

6. Fourthly, with regard to measures to eliminate international terrorism, since 2001 an ad hoc committee and a working group of the Sixth Committee had been attempting to resolve the questions raised by the drafting of a comprehensive convention against international terrorism,⁷⁵ which in the main related to the elements to be excluded from the scope of application of the convention. In 2007, the coordinator responsible for outstanding issues had circulated a document summarizing the elements identified in the course of extensive contacts with delegations,⁷⁶ and the work on achieving a better understanding of those elements had continued during the autumn of 2007 in the Working Group of the Sixth Committee and during the winter of 2007 in the Ad Hoc Committee. It was still hoped that the work would lead to the adoption of a convention on the matter.

7. As to the other activities of the Office of Legal Affairs, the Division for Ocean Affairs and the Law of the Sea, in response to recent calls by the General Assembly⁷⁷ and other forums for increased integrated ocean governance and the adoption of ecosystem approaches to ocean management, including in areas beyond the limits of national jurisdiction, had been actively involved in those efforts, *inter alia* by preparing a training manual and a course on the implementation of such approaches.⁷⁸ The Division also serviced forums in which integrated oceans governance was discussed, including the informal consultative process on oceans and the law of the sea and the ad hoc open-ended informal working group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. It also served as the secretariat of the Commission on the Limits of the Continental Shelf,⁷⁹ which made recommendations to coastal States on matters related to the establishment of the outer limits of the continental shelf beyond 200 nautical miles. That Commission's recommendations were based on an examination of complex scientific and technical data submitted by States in their reports. The Division's capacity-building activities had been developed in response to the increasing needs of Member States. In particular, training courses were being developed and delivered in emerging areas such as biodiversity, marine protected areas and the delineation of the extended continental shelf.

8. While, on the whole, the Organization's privileges and immunities were respected by Member States, nevertheless, it continued to experience difficulties in ensuring that they were respected by the relevant national authorities, in particular its immunity from legal process.

⁷⁰ The report of the Group of Legal Experts on recommendations to ensure the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations (A/60/980).

⁷¹ *Official Records of the General Assembly, Sixty-third Session, Supplement No. 54* (A/63/54), annex II.

⁷² Document A/63/260 and Add.1.

⁷³ Decision 62/519 of 6 December 2007. See www.un.org/law/administrationofjustice.

⁷⁴ *Official Records of the General Assembly, Sixty-third Session, Supplement No. 55* (A/63/55).

⁷⁵ See www.un.org/law/terrorism/index.html.

⁷⁶ See *Official Records of the General Assembly, Sixty-second Session, Supplement No. 37* (A/62/37), annex.

⁷⁷ General Assembly resolution 61/222 of 20 December 2006, para. 119, and General Assembly resolution 62/215 of 22 December 2007, para. 99.

⁷⁸ For more information on the TRAIN-SEA-COAST Programme, see www.un.org/Depts/los/tsc_new/TSCindex.htm.

⁷⁹ www.un.org/Depts/los/clcs_new/clcs_home.htm.

For example, legal actions had been instituted against it in the national courts of Member States concerning labour-related issues. While Governments were requested to assert the United Nations immunities before national courts, it had become increasingly difficult to ensure that the Organization's independence, *modus operandi* and self-regulatory mechanisms were respected by such courts and the relevant government branches. At the same time, it should be stressed that the Organization continued to cooperate with Member States in the administration of justice, which had become more important in view of the Organization's commitment to ensuring criminal accountability of its officials and experts.

9. With regard to international justice, the importance of which must be underlined, the Office of Legal Affairs was responsible for carrying out certain functions of the Secretary-General under the Statute of the International Court of Justice. In addition to those statutory functions, the Secretary-General was also responsible for the maintenance of the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice,⁸⁰ the purpose of which was to encourage member States to settle their disputes peacefully by lending financial assistance to those States that might not have the requisite funds readily available. The Trust Fund currently had funds amounting to slightly more than US\$ 2 million, following the recent financial award granted to Djibouti in its dispute against France in the case concerning *Certain Questions of Mutual Assistance in Criminal Matters*. Finally, the election of judges to the five vacancies at the Court was tentatively scheduled to be held on 6 November 2008 during the sixty-third session of the General Assembly, and a list of the nominated candidates would be published, as was customary, in August or September 2008.

10. With regard to the International Criminal Court,⁸¹ the Office of the Prosecutor had decided to open a formal investigation into the situation in the Central African Republic, where there were, in particular, many allegations of rape and other acts of sexual violence against women. As to the situation in the Democratic Republic of the Congo, where the Court relied heavily on cooperation from the United Nations, former Ituri warlords Germain Katanga and Mathieu Ngudjolo Chui had been surrendered to the Court and the arrest warrant against Bosco Ntaganda had been unsealed. While Katanga and Ngudjolo Chui were awaiting their confirmation hearings, the trial phase of the Prosecutor's case against Thomas Lubanga Dyilo was scheduled to begin on 23 June 2008.

11. However, the investigation into the situation in Darfur initiated by the Prosecutor at the request of the Security Council⁸² had made little progress. As long ago as his briefing to the Council on 5 December 2007, the Prosecutor had criticised the failure of the Government of the

Sudan to cooperate.⁸³ A further briefing was scheduled for 5 June 2008. Although he did not wish to comment on that sensitive issue, it must be borne in mind that Security Council resolution 1593 (2005) explicitly obligated the Government of the Sudan to cooperate fully with the Court in that matter. The Sudanese authorities must comply with their international obligations; impunity for the serious crimes committed in Darfur was unacceptable.

12. With regard to the situation in northern Uganda, which had also seen significant developments, the Prosecutor was conducting a formal investigation at the request of the Government of Uganda. In the framework of the Juba peace process, the Lord's Resistance Army and the Government of Uganda had concluded a series of agreements with a view to ending a conflict that had lasted more than 20 years, devastated the north of the country and affected many neighbouring countries. While it was true that the refusal of the leader of the Lord's Resistance Army, Joseph Kony, to sign the final peace agreement as scheduled must be seen as a setback, that did not mean that the Juba peace process had failed, as was occasionally asserted, and it was to be hoped that the process could be brought to a successful completion in the very near future. The challenge in that connection was that Joseph Kony and some of his commanders were indicted by the International Criminal Court, which raised the difficult question of the relationship between peace and justice. Nevertheless, he strongly believed that, in the case of northern Uganda, it should be possible to find a solution whereby both the desire for a sustainable peace and the duty of justice could be satisfied. In addition, the Prosecutor had indicated that he was monitoring the situation in two other countries, Afghanistan and Colombia.

13. The Division's cooperation with the International Criminal Court, the centrepiece of an international system of criminal justice, continued to expand. A special event was planned to celebrate the tenth anniversary of the adoption of the Rome Statute of the International Criminal Court by the Conference of Plenipotentiaries on 17 July 1998. As the Secretary-General had declared on a number of occasions, the International Criminal Court could count on the support of the United Nations in the future, just as it had done in the past.

14. The International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, which in some respects could be regarded as precursors of the International Criminal Court, though without the latter's permanent character, were both working towards the completion of their mandates, pursuant to Security Council resolution 1503 (2003) of 28 August 2003, in which the Security Council had called upon them to complete all trials by the end of 2008 and all appeals by the end of 2010. With those completion dates fast approaching, the two Tribunals were working with the Security Council's informal working group on the Tribunals to determine which residual functions would necessarily continue beyond completion and whether some form of residual mechanism or mechanisms would be needed to carry out those functions. A number of judicial,

⁸⁰ For the terms of reference, guidelines and rules of the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice, see the report of the Secretary-General (A/47/444, annex).

⁸¹ For the above-mentioned situations (paras. 10–11), see the Situations and Cases link on www.icc-cpi.int/en_menus.

⁸² Security Council resolution 1593 (2005) of 31 March 2005.

⁸³ See the procès-verbal of the 5789th meeting of the Security Council on 5 December 2007 (S/PV.5789).

prosecutorial and registry functions would not simply come to an end with the completion of those mandates. The most difficult issue was that of fugitives, and it was becoming increasingly urgent for the States concerned to ensure the arrest and transfer to the Tribunals of those fugitives responsible for the most serious international crimes, including Karadžić, Mladić and Kabuga. Should they remain at large upon the completion of the mandates, there would be a need to ensure their accountability, one of the possibilities envisaged being some form of standing mechanism or mechanisms, with rosters of available judges and prosecutors to ensure international trial proceedings.

15. There had also been significant developments in the field of transitional justice, and hybrid tribunals faced a wide range of challenges. The Special Court for Sierra Leone, for example, was at a crucial juncture, with the trial of Charles Taylor continuing in The Hague and only enough voluntary funding available to take the Court through the next few months. With its operations due to be completed by the end of 2009 or early 2010, it had also to plan for completion and the possibility of establishing a mechanism to carry out residual functions such as hearing further appeals, commutation of sentences, ongoing witness protection and the question of the Court's relationship with domestic jurisdictions.

16. Unlike the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia were part of Cambodia's national judicial system, and thus worked within and as part of its national legal system. At the same time, however, they were required, under the agreement between the United Nations and the Government of Cambodia,⁸⁴ to function in accordance with international standards of justice, fairness and due process of law. The process of combining Cambodian norms with international standards had been a difficult one, but the internal rules and procedures of the Extraordinary Chambers had been successfully adopted. Five accused were currently in custody, and the Extraordinary Chambers, which comprised both international and Cambodian judges, were working towards the commencement of the first trial by late summer 2008.

17. Steady progress had been made towards the establishment of the Special Tribunal for Lebanon, established under Security Council resolution 1757 (2007) of 30 May 2007. Judges had been selected, the Prosecutor appointed, the Management Committee established and adequate funds provided for the establishment of the Tribunal and its first year of operation. The Registrar had already begun his work. A headquarters agreement had been signed with the Government of the Netherlands, which would host the Tribunal in the urban area of The Hague.

18. Drawing members' attention to the Strategic Framework 2010–2011, which had been distributed to them, he said that the support given to the work of the International

Law Commission constituted one of the main targets of the Codification Division. In conclusion, he informed the Commission that he was addressing it for the last time as the Legal Counsel of the United Nations. His annual visit to the Commission had been close to his heart, and he left the Organization with the satisfaction of having worked to the best of his ability to advance the rule of law and to end impunity. The Commission's celebration of its 60 years of accomplishments bore witness to the centrality of its role in the progressive development of international law and its codification, and augured well for the future.

19. The CHAIRPERSON thanked the Legal Counsel for his statement and invited members to put questions to him.

20. Mr. PELLET asked whether users would continue to be required to pay in order to access the new Treaty Section website, a state of affairs that he found scandalous, or whether the United Nations was finally going to offer the free-of-charge public information service that it was its duty to provide. With regard to relations between the Commission and the Sixth Committee, it had often been suggested that one way of improving them would be to enhance the role of the special rapporteurs. However, not all of them were in New York during the discussion of the Commission's report, and the Codification Division's present resources enabled only one special rapporteur to make the journey each year. It would be interesting to learn whether funds could be made available to enable the special rapporteurs to attend at least the few days of debates covering their own topics. Lastly, he asked for further details of the role that the Commission was expected to play in the promotion of the rule of law.

21. Ms. ESCARAMEIA asked whether the Audiovisual Library in International Law would be accessible to universities. She too would welcome further indications of the way in which the Commission should approach the question of its role in the promotion of the rule of law, as it was requested to refer to the matter in its report on the work of its current session. On the question of special rapporteurs, not only was it important that they should be able to participate in the debate in the Sixth Committee, but they also needed sufficient financial resources to enable them to carry out their research work.

22. Mr. MICHEL (Under-Secretary-General for Legal Affairs, Legal Counsel) said that the present Treaty Section website should already be accessible free of charge, partly thanks to Mr. Pellet's remarks on the matter, and that he would ensure that the new site was accessible to all free of charge, together with the Audiovisual Library. On the question of the special rapporteurs, it was true that the resources available to them had been reduced. However, the circumstances prevailing when that decision had been taken had changed, and he considered that the dialogue with the special rapporteurs should be further developed and that they should be given more resources. Accordingly, he would make a point of bringing the matter to the attention of his successor. Lastly, on the rule of law, it would be preferable to determine jointly with the Secretariat and the Director of the Codification Division what was expected of the Commission, for its contribution must be coordinated with that expected of other entities.

⁸⁴ Agreement between the United Nations and the Royal Government of Cambodia concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea (Phnom Penh, 6 June 2003), United Nations, *Treaty Series*, vol. 2329, No. 41723, p. 1.

23. Mr. HASSOUNA asked to what extent the seminar with legal advisers held the previous day would enable the Commission to improve its methods of work and its cooperation with the Sixth Committee. On the Special Tribunal for Lebanon, he noted that the work of the International Independent Investigation Commission on Lebanon was still under way and that one of its members had been appointed Prosecutor of the Court, which raised the question of how that person was to reconcile those two functions. Lastly, he asked whether the fact that a domestic solution appeared to have been found to the Lebanese crisis would facilitate the Tribunal's work.

24. Mr. MICHEL (Under-Secretary-General for Legal Affairs, Legal Counsel) endorsed the conclusions of the seminar with legal advisers held the previous day and said that enhancement of a genuine dialogue between the Commission and the legal advisers was extremely important as it helped to move the Commission's work forward.

25. With regard to the Special Tribunal for Lebanon, he reminded members that the mandate of the Commission of Inquiry was due to end on 15 June 2008,⁸⁵ but that the Government of Lebanon had requested its extension until the end of the year. The possibility of the International Independent Investigation Commission continuing to function with one of its members working in parallel as Prosecutor had been considered but did not seem to be the most desirable solution. If the mandate of the International Independent Investigation Commission were to be extended, the Prosecutor would not take up his duties while the work of that Commission continued. There could be no question of exerting pressure on the Investigation Commission, as the challenge that it and the Tribunal must meet was for them to be seen as a truly independent judicial process. That process must not be used as a political instrument in the regional context, for that would undermine the credibility both of the Investigation Commission and of the Special Tribunal for Lebanon.

26. On the relationship between that Tribunal and the internal situation in Lebanon, he was of the view that the Tribunal must not be a further divisive element, as the situation was already very tense. Instead, it must serve as a genuine judicial organ, and to do so must have the necessary resources to enable it to reveal the truth, punish those responsible and put an end to impunity as rapidly as possible. In that regard, the conclusion of a peace agreement would clearly be helpful.

27. Mr. GALICKI asked what was the Legal Counsel's opinion concerning the phenomenon, apparent in recent years, of the multiplication of international judicial institutions. In particular, he wondered, with regard to the criminal courts, whether there was a risk of conflicts between them in the future, especially as their legal basis was sometimes called into question.

28. Mr. NOLTE asked whether there had been any new developments concerning the possibility of recourse against sanctions adopted by the Security Council. He mentioned the matter because in January 2008 an Advocate General of the Court of Justice of the European Communities had delivered an opinion in the *Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities* case that, if it were adopted, would have serious repercussions on the regime of sanctions.

29. Mr. FOMBA asked how the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice was funded, how long it had been operational, and how many States had already benefited from its resources.

30. Mr. MICHEL (Under-Secretary-General for Legal Affairs, Legal Counsel) said that the Secretary-General's Trust Fund relied on voluntary contributions by Member States. Its resources currently stood at about US\$ 2 million. With regard to its functioning, the Trust Fund tended to make disbursements on the basis of the amount of funds it currently held. Consequently, its resources were dwindling, but only slowly, which encouraged Member States not to increase their contributions. The Trust Fund had existed for a number of years, but the rules governing its functioning had been so strict that few States had been able to benefit from them. Now that the rules had been changed, its operations should be simpler.

31. With regard to the multiplication of international judicial institutions, he personally felt that there were both advantages and disadvantages. With specific regard to the international criminal tribunals, he believed that the future of international criminal justice lay with the International Criminal Court. However, the existing tribunals must complete their work, and he would also not rule out the possibility that, in some very particular situations, hybrid tribunals might be created in the future. Furthermore, owing to the principle of complementarity, it would be necessary to build the capacity of the judicial systems of those States that wished to bring them into line with international standards, so that they could themselves deal with the cases referred to international courts.

32. On targeted individual sanctions, at the end of 2006 the Security Council had adopted a number of resolutions that had enabled it to improve its methods of work and those of its committees, and had appointed a "focal point" on the question in the Secretariat.⁸⁶ In 2005, the Secretary-General had addressed a letter to the members of the Security Council indicating the fundamental requirements that would allow the sanctions process to be fair and transparent. If those requirements were compared with the current situation, it would be seen that further progress needed to be made. On the whole, he believed that, if the Court of Justice of the European Communities endorsed the opinion of Advocate General Maduro, this would not have the effect of undermining the sanctions regime, but, on the contrary, would contribute to strengthening it.

⁸⁵ For the extension of the mandate of International Independent Investigation Commission to 15 June 2008, see Security Council resolution 1748 (2007) of 27 March 2007. The Security Council later extended the mandate of the International Independent Investigation Commission to 31 December 2008 (see Security Council resolution 1815 (2008) of 2 June 2008).

⁸⁶ Security Council resolution 1730 (2006) of 19 December 2006.

Shared natural resources (*continued*)* (A/CN.4/588, sect. B, A/CN.4/591, A/CN.4/595 and Add.1, A/CN.4/L.722, A/CN.4/L.724)

[Agenda item 4]

NOTE BY THE SPECIAL RAPPORTEUR REGARDING A PREAMBLE

33. Mr. YAMADA (Special Rapporteur) introduced the draft preamble contained in document A/CN.4/L.722. The draft had been prepared on the basis of precedents elaborated by the Commission and various treaties on groundwater resources. It referred to the importance of groundwater; Article 13, paragraph 1 (a) of the Charter of the United Nations; General Assembly resolution 1803 (XVII) of 14 December 1962 on permanent sovereignty over natural resources; the Rio Declaration;⁸⁷ and Agenda 21,⁸⁸ the need to protect groundwater resources; the vulnerability of aquifers to pollution; the need to ensure the development of groundwater resources in the context of the optimum and sustainable development of water resources for present and future generations; the importance of international cooperation and good-neighbourliness; the special needs of developing countries; and the importance of promotion of international cooperation.

34. He requested the Commission to refer the draft preamble to the Drafting Committee.

It was so decided.

Organization of the work of the session (*continued*)

[Agenda item 1]

35. Mr. COMISSÁRIO AFONSO (Chairperson of the Drafting Committee) announced that the Drafting Committee on the topic of responsibility of international organizations would be chaired by himself, and was composed of the following members: Mr. Brownlie, Mr. Dugard, Mr. Fomba, Mr. Hmoud, Ms. Jacobsson, Mr. Kolodkin, Mr. McRae, Mr. Niehaus, Mr. Nolte, Mr. Singh, Mr. Valencia-Ospina, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Ms. Xue and Mr. Yamada, together with Mr. Gaja (Special Rapporteur) and Ms. Escameia (Rapporteur, *ex officio*).

36. Mr. CAFLISCH (Chairperson of the Working Group on effects of armed conflicts on treaties) said that the Working Group would be composed of Mr. Brownlie (Special Rapporteur), Mr. Comissário Afonso, Mr. Dugard, Mr. Fomba, Ms. Jacobsson, Mr. McRae, Mr. Niehaus, Mr. Ojo, Mr. Perera, Mr. Saboia, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Ms. Xue and Ms. Escameia (Rapporteur, *ex officio*).

The meeting rose at 12.20 p.m.

* Resumed from the 2959th meeting.

⁸⁷ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992 (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: Resolutions adopted by the Conference, resolution 1, Annex I.

⁸⁸ *Ibid.*, Annex II.

2966th MEETING

Friday, 23 May 2008, at 10.05 a.m.

Chairperson: Mr. Edmundo VARGAS CARREÑO

Present: Mr. Caflisch, Mr. Candioti, Mr. Comissário Afonso, Ms. Escameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kemicha, Mr. Kolodkin, Mr. McRae, Mr. Nolte, Mr. Ojo, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Ms. Xue, Mr. Yamada.

Organization of the work of the session (*continued*)

[Agenda item 1]

1. The CHAIRPERSON said that the one-and-a-half-day seminar with Legal Advisers, held on 19 and 20 May 2008, had been a resounding success. He wished to thank all those who had contributed to organizing the meeting, including the coordinating committee chaired by Mr. Pellet, the Secretariat, and especially Ms. Arsanjani, Secretary to the Commission, for their invaluable support and great efficiency in making the requisite arrangements.

2. Many interesting issues had been raised at the seminar. Particularly useful discussions had been held on the questions of qualifications of members; the procedure for their election; topics for consideration by the Commission; its methods of work; and the outcome of that work. An *aide-memoire* on the outcome of the seminar would be prepared by the Secretariat in due course.

3. Mr. CANDIOTI invited members to inform him of their interest in participating in the work of the Working Group on the responsibility of international organizations.

4. The CHAIRPERSON said that the meeting would be adjourned to enable members to review the results of the meeting with legal advisers.

The meeting rose at 10.10 a.m.

2967th MEETING

Tuesday, 27 May 2008, at 10.05 a.m.

Chairperson: Mr. Edmundo VARGAS CARREÑO

Present: Mr. Brownlie, Mr. Caflisch, Mr. Candioti, Mr. Comissário Afonso, Ms. Escameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kamto, Mr. Kolodkin, Mr. McRae, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Petrić, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Ms. Xue, Mr. Yamada.