

Provisional

**For participants only**

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**International Law Commission**  
**Seventy-fourth session (second part)**

**Provisional summary record of the 3637th meeting**

Held at the Palais des Nations, Geneva, on Thursday, 6 July 2023, at noon

**Contents**

Cooperation with other bodies (*continued*)

*African Union Commission on International Law*

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***Present:***

*Chair:* Ms. Galvão Teles

*Members:* Mr. Akande  
Mr. Asada  
Mr. Aurescu  
Mr. Cissé  
Mr. Fathalla  
Mr. Fife  
Mr. Forteau  
Mr. Galindo  
Mr. Grossman Guiloff  
Mr. Huang  
Mr. Jalloh  
Mr. Laraba  
Mr. Lee  
Ms. Mangklatanakul  
Mr. Mavroyiannis  
Mr. Mingashang  
Mr. Nesi  
Mr. Nguyen  
Ms. Okowa  
Ms. Oral  
Mr. Ouazzani Chahdi  
Mr. Oyarzábal  
Mr. Paparinskis  
Mr. Patel  
Ms. Ridings  
Mr. Ruda Santolaria  
Mr. Sall  
Mr. Savadogo  
Mr. Tsend  
Mr. Vázquez-Bermúdez

***Secretariat:***

Mr. Llewellyn Secretary to the Commission

*The meeting was called to order at 12.05 p.m.*

**Cooperation with other bodies** (agenda item 10) (*continued*)

*African Union Commission on International Law*

**Ms. Gueldich** (Chairperson of the African Union Commission on International Law), welcoming the opportunity to collaborate with the Commission in person once more, said that, since its creation in 2009 as an independent advisory body of the African Union, the African Union Commission on International Law (AUCIL) had come to play a major role in the codification and progressive development of international law in Africa and at the African regional level. Its 11-person membership currently consisted of six women and five men, elected with due regard for the principles of equitable regional geographical representation, balance among the various legal systems of the continent and equitable gender representation. Working within the framework of the African Union and its Agenda 2063, AUCIL had already finalized a number of studies, with more in progress. Under article 25 of its statute, AUCIL was entrusted with responsibility for engaging in consultations with intergovernmental, international and national organizations on matters falling within its scope. The participation of the International Law Commission in that regard would be of immense value. Existing arrangements for cooperation between the two bodies provided a solid foundation for joint endeavours.

Over time, the African Union had assumed an important role in shaping the landscape of international law and advocating for the rights and interests of African States at the global level. AUCIL had been at the forefront of championing the principles and values of African Union law and international law within the confines of the African continent and beyond, playing a pivotal role in formulating and promoting legal frameworks that effectively addressed the multifaceted needs and challenges encountered by the Union's member States.

The International Law Commission had consistently paved the way for the evolution of international law. Its groundbreaking research and seminal publications had expanded the boundaries of legal understanding and served as a guiding light for legal practitioners, scholars and policymakers across the globe. By exploring and dissecting the complexities inherent in the application of international legal norms, the Commission had played an instrumental role in shaping the course of legal development on a global scale. As international law had adapted to global challenges over the previous seven decades, the Commission had adjusted its approach, delving into specialized areas and using flexible frameworks. In an era of globalization, the Commission's work could not be accomplished in isolation; it required active engagement and support from Member States and academia and close coordination with other international bodies and institutions, including AUCIL.

Although the codification of international law might be perceived as a technical endeavour, it was a nuanced process that must navigate conflicts of State interests, evolving geopolitical conditions and the diverse array of legal traditions. It required a delicate balance between preserving the continuity of international law and innovating where necessary, adapting the rules and structures of the global legal system in response to emerging challenges. The Commission placed significant emphasis on the consideration of emerging developments and pressing issues in international law, including matters such as international security, humanitarian response, non-State entities and technological advances. Its work was vital in clarifying the existing state of the law and providing impartial guidance to facilitate the necessary progressive development. Establishing well-defined legal parameters was crucial for preventing the politicization, double standards and abuse that undermined international relations and the rule of law. The Commission should transcend the confines of the legal expertise provided by its members and engage with the broader international community to effectively fulfil its mandate.

A key aspect of such enhanced engagement was the selection of topics for the Commission's agenda. Although, under the Commission's statute, proposals for the progressive development of international law could come from entities such as the General Assembly and specialized agencies, such contributions had been infrequent. The Commission should encourage greater involvement by other United Nations entities and even

contemplate incorporating suggestions from non-governmental organizations into the topic-selection process.

To address the prevailing disparities in political power and legal expertise, the Commission must intensify its engagement with developing nations. Promoting awareness of international law in such countries and enabling them to participate in its development could help to counter the perception that international law exclusively served the interests of influential States. Achieving such cooperation would require developing nations to promote international law actively in academia and judicial practice and to afford lawyers the opportunity to engage globally in research and in the practice of international law.

The Commission's statute permitted formal consultations with United Nations organs and other organizations. Expanding upon its existing partnerships with regional institutions such as AUCIL, the Inter-American Juridical Committee and the Asian-African Legal Consultative Organization (AALCO) was of great importance. Joint sessions and collaborative initiatives on specific subjects could foster mutual inspiration and obviate redundancy by combining collective wisdom and resources. The importance of fostering collaboration among institutions could not be overstated. The world was experiencing an unprecedented era of rapid technological advancements, climate change, migration crises and the emergence of novel dimensions of conflicts. Such profound developments necessitated adaptability and innovation, requiring legal frameworks to evolve in tandem in order to remain relevant and effective. Only by forging a collaborative path could AUCIL and the Commission bolster the resilience and adaptability of international law, enabling it to respond effectively to ever-evolving challenges. She was confident that their deliberations and actions would pave the way to a brighter future, where international law served as the bedrock of a just and harmonious global order.

**Mr. Ndjimba** (General Rapporteur of the African Union Commission on International Law), accompanying his remarks with a digital slide presentation, said that he wished to begin by paying tribute to former International Law Commission member Guillaume Pambou-Tchivounda, who had passed away recently. In addition to the codification and progressive development of international law and the law of the African Union, the statutory mandate of AUCIL included the teaching, study and dissemination of international law. It sought to ensure that international law and African law were taught at universities across the continent.

AUCIL undertook studies either on its own initiative or at the request of States members of the African Union, focusing on issues of particular interest to the region. A number of studies had already been finalized, including a model law for the implementation of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa and a study on the juridical basis of reparation for slavery and other related matters inflicted on the African continent. In the context of the institutional transition from the Organization of African Unity to the African Union, a study on the revision of treaties had been carried out. A related – and thorny – topic, on which a study had also been finalized, was the ratification of treaties and the harmonization and acceleration of ratification procedures. Its importance needed to be emphasized to States members of the Union, as some treaties had never come into force for lack of sufficient ratifications. A study had been completed on amending article 5 (1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights with a view to facilitating direct access to the Court by the African Committee of Experts on the Rights and Welfare of the Child. Other studies already finalized concerned the development of an African convention on judicial cooperation and mutual assistance and a similar convention on avoiding double taxation.

Studies under way included one on international environmental law and another on an African convention against slavery. A comparative study of the developed jurisprudence of regional integration among the eight regional economic communities in Africa would, it was hoped, lead to further integration across the continent. Another comparative study focused on constitutional law and the divergences among legal systems in the common-law, French and Arabic traditions. Two specific aspects of human rights – women's rights and the rights of the child – were being studied individually in relation to the domestication of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and

the African Charter on the Rights and Welfare of the Child, respectively, with a view to increased harmonization. Other current study topics included immunities in international law; piracy and maritime security; African States' practice in international law; and the implementation of the African Union's pandemic strategy. In connection with the African Mining Vision, a comparative study and codification of mining and petroleum law in Africa was being undertaken; the topic tied into the study of piracy, which significantly affected those industries. Further, AUCIL was undertaking studies on the reform of the African Union's internal administration of justice, international law and unconstitutional changes of government, the prohibition of intervention in international law and the African contribution to the development of rules of international law governing cyberspace, in addition to a study and recommendations on the teaching, study and dissemination of international law.

Nine editions of the Forum on International Law, each focusing on a specific theme, had been organized under the auspices of AUCIL and the results of seven had already been published in the *Journal* of AUCIL. Initially, the Forums had examined international legal issues from a largely global perspective, but the focus was becoming increasingly specific to Africa.

In accordance with article 24 of its statute, AUCIL cooperated with bodies and institutions of the African Union, including the Permanent Representatives' Committee and the Peace and Security Council, both of which were made up of member States; the Pan-African Parliament; the African Court on Human and Peoples' Rights; the African Commission on Human and Peoples' Rights; and the African Committee of Experts on the Rights and Welfare of the Child, which had sought the views of AUCIL on various matters. Cooperation with other organizations under article 25 of its statute included the discussion of issues of shared interest and concern with bodies such as the International Law Commission, the Inter-American Juridical Committee, the International Committee of the Red Cross and AALCO.

In 2024, AUCIL would introduce several new activities with a view to raising its profile and enhancing its relevance. They included capacity-building for States members of the African Union on the law of the Union; incorporation of African Union law into legal training programmes at universities and law schools in Africa; legal capacity-building for African Union bodies with a mandate to draft laws for the Union; interaction between AUCIL and States members of the Union; participation in the activities and sessions of African Union bodies and institutions and other international institutions on matters of interest to Africa; and the granting of an award for the best doctoral thesis on African Union law. The focus of AUCIL on education, as one of its statutory activities, reflected the fact that international law was less widely taught in Africa than elsewhere. AUCIL would also continue various existing activities: editing and publishing the *Journal*; holding the annual Forum on International Law; and cooperating and collaborating with the International Law Commission and the Sixth Committee of the General Assembly and participating in their annual sessions.

Among the challenges AUCIL faced, one of the most significant was a lack of engagement by the States it served, as shown by the very low rates of response to its questionnaires. As a young institution, it faced challenges in terms of its organizational structure and everyday functioning, especially given its human resource constraints and increasingly limited financial resources. Its secretariat services were provided by the Office of the Legal Counsel of the African Union Commission, but a February 2022 amendment to the AUCIL statute had made it possible for the AUCIL secretariat to be hosted by a member State; expressions of interest had been sought.

Future cooperation between AUCIL and the Commission could focus on emerging themes in international law; capacity-building for States members of the African Union to enable them to participate more effectively in discussions of international law at the global level, particularly where technical subjects were concerned; more focused and in-depth interaction on specific subjects; participation by Commission members in the annual Forum on International Law; and participation in each other's sessions. International law should take account of all perspectives, including that of Africa, be informed by the vision of the African continent and be made with the active participation of States members of the African Union.

**Ms. Oral**, applauding the impressive depth and extent of the work done by AUCIL, asked what could be done to strengthen communication with the Commission with a view to ensuring that the topics it selected were relevant and important to States in the African region. She also asked how cooperation could be enhanced so as to enable young scholars from Africa to participate in the Commission's work.

**Mr. Jalloh** said that he fully endorsed the goal of deeper engagement between AUCIL and the Commission. Cooperation among international legal expert bodies was mutually beneficial. During the Commission's discussion with a representative of the Inter-American Juridical Committee at the preceding meeting, he had raised the issue of how to increase State participation. That question was also relevant in relation to AUCIL, particularly with the aim of promoting an African perspective on international law. Would AUCIL be in a position to take up topics on the Commission's agenda so that it could advise the Commission on the regional view?

**Mr. Cissé**, noting that he had been appointed Special Rapporteur for the topic "Prevention and repression of piracy and armed robbery at sea", enquired about the progress made by AUCIL on the issue of piracy and requested that any reports should be forwarded to the Commission, as the African perspective would be significant in informing his work on the topic. He also asked whether AUCIL had procedures in place for requesting States members of the African Union to submit relevant domestic legislation. Many African States lacked such legislation; where it existed, it was often not in line with the United Nations Convention on the Law of the Sea.

**Ms. Gueldich** (Chairperson of the African Union Commission on International Law) said that a beneficial way to deepen cooperation between the Commission and AUCIL would be through the exchange of expertise. The two bodies worked on many of the same topics, and there was nothing in the AUCIL statute to prevent it from asking for the Commission's input. Similarly, AUCIL had been consulted in connection with the Commission's work on crimes against humanity. It was important for the African vision of international law to be taken into account. Mr. Jalloh had recently taken part in a capacity-building exercise to assist AUCIL in tackling the very technical topic of cybersecurity; similar activities could be organized in other areas, supplemented by joint forums or other means of exchanging knowledge. Special rapporteurs for specific topics, including piracy, could be put in touch with one another directly.

The United Nations Regional Course in International Law for Africa, in which she had had the honour to take part, was an important means of raising the profile of the relatively recent body of African law, which was constantly evolving. The outreach efforts of AUCIL were hampered by a lack of resources; however, its members were passionate about their work and would continue striving to overcome the challenges they faced. High-quality thematic and annual reports were produced, though the lack of financial and human resources meant that the online presence of AUCIL was severely restricted. Meetings were being held with States to acquaint them with the work of AUCIL and encourage them to participate. Codification, in particular, was a long-term activity. AUCIL needed to know what areas States wished to prioritize. Its central role in serving Africa was beginning to be recognized. For example, the recent cyberattack on the African Union secretariat had inspired AUCIL to propose that it should carry out work on a common position of the African States on cybersecurity, and the topic had attracted considerable interest. One of the principal challenges, however, was the low rate of response to questionnaires on specific topics.

**Mr. Ndjimba** (General Rapporteur of the African Union Commission on International Law), emphasizing the importance of establishing direct contacts between members of AUCIL and members of the Commission, in addition to the existing institutional cooperation between the two bodies, said that the AUCIL study on piracy had yet to be finalized. Through the African Union Peace and Security Council, AUCIL was trying to encourage States to provide it with examples of their relevant domestic legislation, but progress was difficult. In general, AUCIL sought to start from a general perspective and focus increasingly on the specific interests of States as the work on each topic progressed.

**Mr. Patel** said that he hoped AUCIL would be able to participate in an AALCO project on treaty law and practice in Africa and Asia.

**Mr. Sall** asked whether there was a role for international legal bodies beyond the traditional tasks of codification and progressive development, specifically in organizing legal defence for actions taken in the collective interest.

**Mr. Ouazzani Chahdi** said that, in addition to direct contacts between Commission and AUCIL members, joint seminars could be organized on topics of shared interest. His recent work with Mr. Cissé on Africa and the law of the sea might be of specific interest to AUCIL, for example. Students could be invited to attend such events and others; it was vital to engage young people in the study of international law. A thesis of particular note had recently been submitted at the Hassan II University of Casablanca; he considered it worthy of an award such as that offered by AUCIL.

**Ms. Gueldich** (Chairperson of the African Union Commission on International Law) said that AUCIL unfortunately lacked the resources to hold a thesis award competition during the current budget cycle; nonetheless, it welcomed opportunities to increase the visibility of its work, especially by involving young people in its endeavours. All possible avenues of cooperation with the Commission should be explored. In addition, the prospect of further work with AALCO was certainly of interest.

Under article 4 of its statute, AUCIL enjoyed a mandate much broader than codification and progressive development, as it could advise African Union member States and other bodies on any question of international law. In matters of collective interest, it was important to present the African position. Codifying international law at both the global and regional levels was a complex task, given the many points of divergence, and concerted efforts were needed to arrive at a unified result. However, AUCIL had been called upon to give advice to organs of the African Union only twice in 14 years. Raising its profile among States and securing more resources for its work remained its key challenges.

**The Chair** said that ways must be found to deepen cooperation between the Commission and AUCIL, for instance by holding online meetings in their respective intersessional periods. The Commission looked forward to continued and improved cooperation with AUCIL in the future.

*The meeting rose at 1.20 p.m.*