

Document:-
A/CN.4/3101

Summary record of the 3101st meeting

Topic:
<multiple topics>

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same difficulties in the context of preliminary objections, but it could, under article 79 of its Rules, decide to defer its decision until the merits phase. The same was not true in the case of a request for indication of provisional measures, where there might be an element of urgency.

34. The CHAIRPERSON thanked the President of the International Court of Justice for sharing his insights and observations, which would undoubtedly provide members of the Commission with food for thought.

The meeting rose at 12.40 p.m.

3101st MEETING

Friday, 8 July 2011, at 10 a.m.

Chairperson: Mr. Maurice KAMTO

Present: Mr. Cafilisch, Mr. Candiotti, Mr. Comissário Afonso, Ms. Escobar Hernández, Mr. Fomba, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. McRae, Mr. Melescanu, Mr. Murase, Mr. Niehaus, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood.

Cooperation with other bodies (*continued*)

[Agenda item 13]

STATEMENT BY THE CHAIRPERSON OF THE COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW

1. The CHAIRPERSON welcomed the representatives of the Council of Europe: Ms. Belliard, Chairperson of the Committee of Legal Advisers on Public International Law (CAHDI), and Mr. Lezertua, Director of Legal Advice and Public International Law (Jurisconsult), and invited them to address the Commission.

2. Ms. BELLIARD (Chairperson of the Committee of Legal Advisers on Public International Law) explained that CAHDI had been set up originally as a subcommittee of the European Committee on Legal Cooperation. In 1991, it had become a full committee, reporting directly to the Committee of Ministers of the Council of Europe. CAHDI was responsible for holding exchanges of views on questions of public international law, including the most topical issues. It might be asked to coordinate member States' positions on various topics of international law; on several occasions, the Committee of Ministers and the Steering Committee for Human Rights had requested it to provide legal opinions.

3. The membership of CAHDI was unique in that it brought together the legal advisers to the Ministries of Foreign Affairs of 55 States as well as the representatives of several intergovernmental organizations. A number of observer States and organizations also participated very

actively in its work, although they had no voting rights. That diversity greatly enriched its deliberations.

4. CAHDI was more than a coordinating body: it was also a discussion forum. The senior positions occupied by its members and their high level of commitment to the Committee's work lent undeniable credibility to its reports, opinions, comments and recommendations.

5. By convening twice a year, CAHDI was able to keep up to date on the subjects regularly on its agenda. That was particularly true of reservations and interpretative declarations concerning international treaties. Since States had only 12 months in which to react or to make representations to a reserving State after being notified of the latter's ratification of a given treaty, the Committee had to be capable of responding quickly.

6. The CAHDI agenda covered a wide range of subjects, and its meetings provided an opportunity for all the participants to exchange information on current developments and national practices. Based on those exchanges, CAHDI had created databases on such subjects as the organization and functions of the Office of the Legal Adviser in the Ministry for Foreign Affairs; State practice regarding State immunities; and national implementation of United Nations sanctions and respect for human rights.

7. At the 41st meeting of CAHDI—the first she had chaired—held in Strasbourg on 17 and 18 March 2011, a discussion of the immunity of States and international organizations had been particularly instructive. Mr. Joël Sollier, representing the International Criminal Police Organization (INTERPOL), had highlighted the importance of opening up channels of police and judicial cooperation that concurred not only with the neutrality of INTERPOL but also with general principles of international law governing immunity. He had explained that INTERPOL practice in that regard rested primarily on the precedent established by the ICJ in its judgment in the *Arrest Warrant* case, although the scope of that precedent was still unclear. At its 41st meeting, the Committee had also taken note of the rather disappointing level of accession to the United Nations Convention on Jurisdictional Immunities of States and Their Property and had emphasized how vital it was for more States to ratify the Convention.

8. As an advisory body, CAHDI was frequently called on by the Committee of Ministers of the Council of Europe to give an opinion on certain matters. At its 41st meeting, in response to a Committee of Ministers decision of 2 March 2011, CAHDI had held an exchange of views on the draft Council of Europe Convention on preventing and combating violence against women and domestic violence and had examined the compatibility of several of the draft Convention's articles with international law, including human rights law. After a very lively discussion, delegations had agreed that, in view of the Convention's importance, it should be adopted without delay, although some of its wording required clarification.²⁶⁰ CAHDI had recommended, and achieved, the amendment of the title—no small matter—and the clarification of certain

²⁶⁰ CAHDI, Meeting report, 41st meeting, Strasbourg, 17–18 March 2011 [CAHDI (2011) 5], Appendix X.

articles. At the end of the discussion, CAHDI had adopted a text that could be regarded as an opinion. The Committee of Ministers had adopted the Council of Europe Convention on preventing and combating violence against women and domestic violence on 7 April 2011 and it had been opened for signature on 11 May 2011.

9. CAHDI was addressed by several outside speakers at each of its meetings. At its 41st meeting, some extremely interesting presentations dealing with highly topical issues had been given, sparking lively and instructive exchanges of views.

10. Ms. Kimberly Prost, Ombudsperson²⁶¹ of the Security Council Committee established pursuant to resolution 1267 (1999) of 15 October 1999, had detailed the many challenges she faced, including the need to publicize the newly created Office of the Ombudsperson so as to facilitate access to it by persons on the Security Council's Consolidated Sanctions List and to cope with a lack of resources and problems with access to information. Mr. Jean-Claude Bonichot, the French judge at the Court of Justice of the European Union, speaking in his personal capacity, had addressed the problems posed by the accession of the European Convention on Human Rights. Mr. Erik Wennerström, CAHDI observer to the Informal Working Group on the Accession of the European Union to the European Convention on Human Rights, had reported on progress in the Group's work. Mr. Hans van Loon, Secretary-General of The Hague Conference on Private International Law, had drawn attention to the difficulty of reconciling certain recent decisions of the European Court of Human Rights not to grant applications for the return of children to their country of residence with the provisions of the 1980 Convention on the Civil Aspects of International Child Abduction.

11. The work of the International Law Commission was regularly on the agenda of CAHDI and was usually discussed at length. The Council of Europe's comments and observations on the Commission's draft articles on the responsibility of international organizations had recently been forwarded to the Office of the Under-Secretary-General for Legal Affairs. With regard to the topic of reservations to treaties, CAHDI members were invited at its meetings to examine reservations and declarations made to international treaties concluded under the auspices of the Council of Europe and elsewhere and to announce their intentions with regard to objections. CAHDI had thus become one of the key players in the reservations dialogue.

12. At the March 2011 meeting of CAHDI, States had expressed their concerns and outlined the representations they had made with regard to the reservations by Pakistan to the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The partial withdrawal by Malaysia and Thailand of their reservations to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the rights of the child had led to a discussion by CAHDI members of the legal consequences of partial withdrawal.

They had agreed that objections to the original version of a reservation were maintained if they related to an aspect of the reservation not covered by the withdrawal, but that objections formulated for the first time at the time of the partial withdrawal had no effect. Those conclusions were fully in line with the Commission's findings on the topic, as contained in the Guide to Practice. CAHDI looked forward to the outcome of the second reading of the guidelines and of the draft articles on the responsibility of international organizations. It would also follow with great interest the Commission's consideration of the topic of immunity of State officials from foreign criminal jurisdiction, since that was naturally of importance to the legal advisers to the Ministries of Foreign Affairs that made up its membership.

13. In conclusion, she said that the members of CAHDI were committed to furthering the role of public international law and respect for the rule of law in international relations.

STATEMENT BY THE DIRECTOR OF LEGAL ADVICE AND PUBLIC INTERNATIONAL LAW, COUNCIL OF EUROPE; JURISCONSULT

14. Mr. LEZERTUA (Director of Legal Advice and Public International Law, Council of Europe; Jurisconsult), describing developments in the legal field at the Council of Europe in the past year, said that Turkey had held the rotating Chairpersonship of the Committee of Ministers from November 2010 to May 2011. During that period, priority had been given to reform of the Council of Europe, reform of the European Court of Human Rights, strengthening the supervisory machinery set up by the European Convention on Human Rights and accession of the European Union to the Convention.

15. In a major innovation in the Committee's *modus operandi* prompted by a concern for continuity, Ukraine, which had taken over the Chairpersonship from Turkey, was working in consultation with the United Kingdom and Albania, the States that would next chair the Committee, to promote the reform of the Council of Europe, something that was high on the agenda of its Secretary General.

16. On 20 January 2010, the Secretary General had presented to the Committee of Ministers a series of measures designed to revitalize the Council by streamlining its work. One measure to which priority was being given was a review of the Council of Europe's conventions with a view to: creating a common legal platform in the areas of human rights, the rule of law and democracy; identifying any conventions that had become obsolete or that needed to be updated; and developing measures to facilitate the European Union's accession to existing and future conventions of the Council of Europe. The Secretary General's preliminary report on the review would be submitted to CAHDI in September 2011.

17. Since he had last addressed the Commission, two new Council of Europe conventions had been opened for signature. The Third Additional Protocol to the European Convention on Extradition, aimed at simplifying and accelerating the extradition procedure when the person concerned consented to extradition, had been opened for signature in November 2010. So far, 11 States had signed and 1 State had ratified the Protocol, which

²⁶¹ The Office of the Ombudsperson was established by Security Council resolution 1904 (2009), of 17 December 2009, and Ms. Prost was appointed by the Secretary-General on 3 June 2010 (S/2010/282).

required three ratifications in order to enter into force. On 11 May 2011, the Council of Europe Convention on preventing and combating violence against women and domestic violence had been opened for signature. It was a landmark instrument at the European level in that it was the first legally binding text that offered a comprehensive framework for preventing such violence, ending the immunity of its perpetrators and protecting victims. It defined various forms of violence against women, including forced marriage, female genital mutilation, harassment and physical and psychological violence, and it established a monitoring mechanism to ensure effective implementation by States parties. So far it had been signed by 13 member States of the Council of Europe.

18. On 8 December 2010, the Committee of Ministers had adopted the Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health. It was the first binding international instrument to criminalize the counterfeiting, manufacture and supply of medical products without authorization or in breach of medical safety requirements. It introduced sanctions and outlined measures to protect victims and to improve coordination at the national and international levels and would probably be opened for signature in October 2011.

19. Turning to relations between the Council of Europe and the European Union, he said that the accession of the European Union to the European Convention on Human Rights was a key priority. At its meeting in June 2011, the Informal Working Group on the Accession of the European Union to the European Convention on Human Rights had made considerable progress towards the finalization of a revised draft accession agreement. The Group had also held a second round of consultations with representatives of civil society on the European Union's accession to all the additional protocols to the Convention, third-party interventions and the apportionment of responsibility.

20. One of the high-level meetings and conferences organized recently was the 30th Council of Europe Conference of Ministers of Justice, held in November 2010 in Istanbul, Turkey, and focusing on the need for modern, transparent and efficient justice, prison policy in today's Europe and data protection and privacy in the third millennium. The Turkish Chairpersonship of the Committee of Ministers had organized a High-Level Conference on the Future of the European Court of Human Rights in Izmir, Turkey, in April 2011. It had built on the progress achieved at the conference on the same subject held in Interlaken, Switzerland, in 2010 and had paved the way for crucial decisions on the Court's work and role in the long term.

21. The Council of Europe attached great importance to cooperation with the International Law Commission. Like the Commission, the Council was working to solve the legal problems facing contemporary society. Those efforts were consistently informed by the attachment to democracy, human rights and the rule of law shared by the members of the Council of Europe.

22. Mr. PELLET said he would be interested to know whether members of CAHDI discussed the Commission's work with a view to developing a coordinated or common

Council of Europe position. He asked how the work of CAHDI related to that of COJUR, since there seemed to be a certain amount of duplication between the two bodies. What expectations did members of CAHDI have of the Guide to Practice on Reservations to Treaties—to what extent were they likely to regard it as authoritative? Lastly, he would like to know when the European Union could be expected to become a party to the European Convention on Human Rights.

23. Ms. BELLIARD (Chairperson of the Committee of Legal Advisers on Public International Law) said that members of CAHDI usually discussed the Commission's work at their September meetings. Those discussions enabled members to develop a shared understanding of certain concerns and to agree on certain points, but their aim was not to develop common positions. In her opinion, there was no duplication of work between CAHDI and COJUR. There was some overlap between the issues discussed, but it provided different perspectives that shed new light on topics. With its broad membership, CAHDI was a valuable forum in that regard. As to the Guide to Practice, CAHDI members were awaiting the final version, which would perhaps confirm the opinions of some and cause others to reconsider their positions.

24. Mr. LEZERTUA (Director of Legal Advice and Public International Law, Council of Europe; Jurisconsult) said that it was difficult to predict exactly when the European Union would become a party to the European Convention on Human Rights, since the accession process was lengthy and complex. Work was currently moving forward within the framework of the Informal Working Group established to negotiate an accession agreement. Once an agreement had been concluded, it would require ratification by the individual member States of the European Union. The ratification process would take place in accordance with the constitutional requirements of those States.

25. Mr. HASSOUNA asked whether the topical issue of the movement of persons across borders, including the question of expulsion of aliens, had been discussed within CAHDI.

26. Ms. BELLIARD (Chairperson of the Committee of Legal Advisers on Public International Law) said the issue as such was not currently on the agenda of CAHDI. Nonetheless, certain aspects of the question could be addressed under an item devoted to cases before the European Court of Human Rights involving issues of public international law. Those discussions provided a valuable opportunity for States to share information and exchange views on such cases.

27. Mr. NOLTE asked for further details concerning the cases of partial withdrawal of reservations mentioned earlier, and, in particular, how States that considered a reservation to be contrary to the object and purpose of a treaty viewed its partial withdrawal.

28. Ms. BELLIARD (Chairperson of the Committee of Legal Advisers on Public International Law) said that some States had wondered whether they should renew their objection to a reservation that had been partially withdrawn, but had decided that it was not necessary as

long as the objection continued to apply to that part of the reservation which had not been withdrawn. There was general agreement that an objection could not be made at the time a reservation was partially withdrawn if one had not been formulated at the time the reservation had been originally made.

29. Ms. ESCOBAR HERNÁNDEZ said that Spain had considered that issue in connection with the partial withdrawal of the reservation made by Malaysia to the Convention on the Elimination of All Forms of Discrimination against Women. Spain had concluded that the reservation had been formulated at the proper time and was still valid, since its partial withdrawal had introduced no new elements.

30. Mr. NOLTE asked whether it was legal or political criteria that were used to determine whether a convention was obsolete.

31. Mr. LEZERTUA (Director of Legal Advice and Public International Law, Council of Europe; Jurisconsult) said that currently only technical criteria were applied in reviewing the relevance of conventions. Among the conventions concerned by such review were those that had not entered into force 20 years after being opened for signature, those that were no longer being implemented and those that had been superseded by more recent conventions. However, it was up to member States or the Committee of Ministers to decide on follow-up measures in that regard.

32. Sir Michael WOOD raised the question of what practical steps CAHDI could take to encourage States, for example France and the United Kingdom, to speed up the process of ratifying the United Nations Convention on Jurisdictional Immunities of States and Their Property, and what the prospects were that more States would become parties to the Convention in the near future. The Council of Europe was renowned for its human rights work, but more should perhaps be done to publicize the important work it did in public international law through CAHDI and other bodies. The very valuable database on the organization and functions of the office of legal advisers to Ministries of Foreign Affairs deserved to be consulted more widely outside the Council of Europe. CAHDI might take steps to make its excellent website more accessible and develop promotional materials on the various activities undertaken by the Council of Europe in the field of public international law.

33. Ms. BELLIARD (Chairperson of the Committee of Legal Advisers on Public International Law), responding to the question on the United Nations Convention on Jurisdictional Immunities of States and Their Property, said that CAHDI had noted that the ratification process was slow but that there was no cause for pessimism as to its eventual outcome. It was her understanding that the French Parliament had recently authorized ratification of the Convention and that the instrument of ratification had been deposited. She encouraged the United Kingdom to take steps to have its Parliament do the same.

34. Mr. LEZERTUA (Director of Legal Advice and Public International Law, Council of Europe; Jurisconsult) said that some actions had already been undertaken to publicize the Council of Europe's work in the field of

public international law. However, he agreed that further efforts could be made, and he took note of the suggestion regarding the production of information materials.

35. Mr. VÁZQUEZ-BERMÚDEZ asked what steps were being taken to promote the accession of non-member States to the Council of Europe's conventions, and which conventions might be considered of particular interest in that regard. He would also like to know which of the issues currently under consideration by the Council were likely to form the basis of future conventions.

36. Mr. LEZERTUA (Director of Legal Advice and Public International Law, Council of Europe; Jurisconsult) said that the procedure for accession of non-member States to Council of Europe conventions had evolved significantly over the years. Initially, treaties were opened for signature by member States only, but it had now become possible for non-member States to be invited to become parties to some conventions. Additional recent developments included the opportunity for non-member States to participate in the negotiation of certain treaties and to sign conventions before they entered into force without the need for an invitation to do so. If a non-member State expressed a wish to become a party to a convention, an informal consultation process could be initiated in order to identify any potential obstacles. Those developments had contributed to an increase in the number of treaties to which non-member States had become parties. Future conventions were likely to include treaties on the trafficking of human organs and on the accession of the European Union to the European Convention on Human Rights.

37. Mr. PETRIČ said that the decision of the European Union to accede to the European Convention on Human Rights was a fundamentally sound one, but that the difficulties entailed had been underestimated. He asked what general ideas had been expressed at the High-Level Conference on the Future of the European Court of Human Rights organized by the Committee of Ministers.

38. Mr. LEZERTUA (Director of Legal Advice and Public International Law, Council of Europe; Jurisconsult) said that the accession of the European Union to the European Convention on Human Rights was an idea that dated back to the late 1970s and was actually a requirement under article 6 of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community. The Council of Europe and the European Union were currently engaged in complying with that requirement. A number of adaptations had proved necessary, primarily for two reasons. The first was that, until Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, which envisaged the European Union's accession, had entered into force, the Convention had been a closed treaty aimed at member States only. Although it had a privileged status, the European Union was not a member State of the Council of Europe. The second reason was that the Convention was intended for States, and the European Union was not a State. Those problems were in the process of being solved by establishing mechanisms for cases that raised issues under both European Union law and the European Convention on Human Rights, to enable the Court of

Justice of the European Union to provide its opinion on an issue pending before the European Court of Human Rights and to ensure the participation of the European Union in the Committee of Ministers.

39. The two High-Level Conferences on the Future of the European Court of Human Rights had been premised on the view held by most Council of Europe member States that the provisions introduced by Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, which had entered into force only on 1 June 2010, were necessary but not sufficient, and that it was crucial to explore additional ways of addressing the problems faced by the Court. The High-Level Conferences were steps in a longer process being carried out by the Council of Europe and its intergovernmental bodies. In order to afford the members of the Commission greater insight into the status of issues remaining to be resolved, he would transmit to it the conclusions of the two Conferences.

40. Ms. BELLIARD (Chairperson of the Committee of Legal Advisers on Public International Law) said that it had been known from the start of negotiations on the European Union's accession to the European Convention on Human Rights that practical and technical problems would arise, but also that every effort would be made to overcome them. What was important was to ensure that accession was accomplished under the best possible conditions and without impairing either the mechanism of the European Convention on Human Rights or the legal system of the European Union. Despite the difficulty of those adaptations, progress had already been made and would continue to be made.

41. As the Chairperson of CAHDI, she was regularly kept informed of developments regarding the future of the European Court of Human Rights. She had recently received a request for an opinion on the introduction of a simplified amendment procedure for provisions relating to organizational matters of the Court, aimed at ensuring greater flexibility. The Court currently had a workload of some 140,000 cases and the number was growing by some 20,000 cases a year. That had led to the proposal of such solutions as case screening, heightening awareness of the Court's decisions, promoting procedures for the amicable settlement of disputes and, ultimately, ensuring that the Court was regarded by petitioners as a supreme court. There was no doubt that the Court faced a number of challenging problems, and CAHDI was likely to be involved in addressing many of them.

42. Mr. MURASE said that he was gratified to hear that CAHDI had held a discussion on the United Nations Convention on Jurisdictional Immunities of States and Their Property. Eleven States had ratified the Convention thus far and 19 more ratifications were needed in order for it to enter into force. He hoped that CAHDI would promote the ratification process among member States of the Council of Europe.

43. At the sixty-sixth session of the General Assembly, the Sixth Committee was scheduled to discuss the form to be given to the draft articles on the law of transboundary aquifers. In his view, they should be adopted as a framework convention, and, to that end, at its sixty-sixth

session, the General Assembly should adopt them as a declaration, thereby recognizing the legal principles they contained. Perhaps members of CAHDI could hold a discussion on the draft articles.

44. Ms. BELLIARD (Chairperson of the Committee of Legal Advisers on Public International Law) said that CAHDI usually had an in-depth discussion of questions relating to the International Law Commission at its autumn meetings. If member States agreed, an exchange of views could be organized on topics likely to be taken up at the sixty-sixth session of the General Assembly.

45. Mr. CANDIOTI asked whether any opinions had been expressed in CAHDI or the Council of Europe on new topics that the International Law Commission could include in its long-term programme of work. If not, it would be useful for CAHDI to consider formulating suggestions in that regard.

46. Ms. BELLIARD (Chairperson of the Committee of Legal Advisers on Public International Law) said that CAHDI could address Mr. Candiotti's request during the exchange of views to be held at its September 2011 meeting. It could also place the United Nations Convention on Jurisdictional Immunities of States and Their Property on the agenda of that meeting. She wondered, however, whether the International Law Commission really needed new topics or whether its workload was already sufficiently full.

47. Mr. CANDIOTI said that the Commission was in the process of concluding work on three separate topics and needed to incorporate new ones in its long-term programme of work. It would therefore welcome any suggestions for new topics.

48. Ms. ESCOBAR HERNÁNDEZ said that cooperation with CAHDI and the Council of Europe could be taken as a model in the context of the Commission's methods of work, particularly in terms of creating synergies with other international organizations dedicated to strengthening the rule of law at the international level.

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

CHAPTER IV. Reservations to treaties (A/CN.4/L.783 and Add.1-8)

49. The CHAIRPERSON invited the Commission to begin its consideration of chapter IV of the draft report and drew attention to the portion of the chapter contained in document A/CN.4/L.783/Add.3.

F. Text of the Guide to Practice on reservations to treaties, adopted by the Commission at its sixty-third session

2. TEXT OF THE GUIDE TO PRACTICE, COMPRISING AN INTRODUCTION, THE GUIDELINES AND COMMENTARIES THERETO, AN ANNEX ON THE RESERVATIONS DIALOGUE AND A BIBLIOGRAPHY

(b) *Text of the guidelines and the commentaries thereto*

1. *Definitions (A/CN.4/L.783/Add.3)*

1.1 *Definition of reservations*

Guideline 1.1 was adopted.

Commentary

Paragraph (1)

50. Mr. PELLET (Special Rapporteur) proposed that, in the French text, the word “*précise*” should be replaced with “*reflète*”, with the other language versions to be modified accordingly.

Paragraph (1), as amended, was adopted.

Paragraphs (2) to (6)

Paragraphs (2) to (6) were adopted.

Paragraph (7)

51. Sir Michael WOOD proposed that the final phrase, “in addition, this would excessively complicate the task of the depositary”, be deleted, as it referred to a very minor consideration.

52. Mr. PELLET (Special Rapporteur) said that he agreed, but reluctantly, to the proposal.

Paragraph (7), as amended, was adopted.

Paragraphs (8) and (9)

Paragraphs (8) and (9) were adopted.

Paragraph (10)

53. Mr. PELLET (Special Rapporteur), drawing attention to the last footnote to the paragraph, suggested that, since an English translation of the work cited therein had been published in 2011, the English, not the French title of the work, be cited throughout in the English text.

Paragraph (10), with that drafting amendment to the English text, was adopted.

Paragraph (11)

54. In response to remarks by Sir Michael WOOD and Mr. PELLET (Special Rapporteur), the CHAIRPERSON said that the secretariat would ensure consistency in the way authors’ names were cited throughout the Guide to Practice.

Paragraph (11) was adopted.

Paragraph (12)

55. Mr. PELLET (Special Rapporteur) suggested deleting the phrase “As one member of the Commission pointed out” [*Comme l’a fait remarquer un membre de la Commission*] and amending the beginning of the second sentence to read: “It is, indeed, improbable that” [*Il est, à vrai dire, peu vraisemblable que*].

Paragraph (12), as amended, was adopted.

Paragraphs (13) and (14)

Paragraphs (13) and (14) were adopted.

Paragraph (15)

56. Mr. NOLTE proposed the deletion of the final sentence, which was somewhat confusing and seemed superfluous.

Paragraph (15), as amended, was adopted.

Paragraphs (16) and (17)

Paragraphs (16) and (17) were adopted.

Paragraph (18)

57. Mr. PELLET (Special Rapporteur) pointed out that the references to *Multilateral Treaties ...*, contained in several footnotes, needed to be standardized throughout the Guide to Practice. It would also be useful if footnote references were updated to reflect the latest edition of the texts cited.

Paragraph (18) was adopted.

Paragraph (19)

58. Mr. PELLET (Special Rapporteur) suggested that the words “*soient entachées d’illicéité*” (“are tainted by impermissibility”) be amended to read “*ne soient pas valides*” (“are impermissible”). Changes to the French text alone included the replacement of the words “*cette illicéité*” with “*cette non-validité*”; of “*une réserve illicite*” with “*une réserve non-valide*”; and of “*déclarée illicite*” with “*déclarée non-valide*”.

Paragraph (19), as amended, was adopted.

Paragraphs (20) and (21)

Paragraphs (20) and (21) were adopted.

Paragraph (22)

59. Sir Michael WOOD proposed that the phrase “with regard to the expected effect of reservations” be deleted as its meaning was obscure.

60. Mr. PELLET (Special Rapporteur) said he could go along with that proposal.

Paragraph (22), as amended, was adopted.

Paragraph (23)

Paragraph (23) was adopted.

Paragraph (24)

61. Mr. NOLTE proposed that the word “treaty”, between the words “author of the” and “which lies”, be replaced with “reservation”, to bring it into line with the French text.

62. Sir Michael WOOD proposed, in addition, that the word “draft”, preceding “guidelines”, be deleted.

Paragraph (24) was adopted with those drafting amendments.

Paragraph (25)

63. Mr. PELLET (Special Rapporteur) suggested that the phrase “Some members of the Commission” [*Certains membres de la Commission ont*] be replaced by “It was” [*On a*].

Paragraph (25), as amended, was adopted.

Paragraphs (26) and (27)

Paragraphs (26) and (27) were adopted.

Paragraph (28)

64. Mr. NOLTE proposed that paragraph (28) be deleted because it was a general statement that applied to the Guide to Practice as a whole, not just to the definition of reservations in guideline 1.1.

65. Mr. PELLET (Special Rapporteur) said that he was against deleting the paragraph because it explained the difficulties involved in making a distinction between reservations and other unilateral statements and indicated that some degree of uncertainty would inevitably remain in that regard.

Paragraph (28) was adopted.

The commentary to guideline 1.1 as a whole, as amended, was adopted.

1.1.1 *Statements purporting to limit the obligations of their author*

Guideline 1.1.1 was adopted.

Commentary

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

Paragraph (5)

66. Mr. NOLTE proposed that the expression “the partners of the author of the reservation” should be replaced with “other contracting States or organizations”.

67. Mr. PELLET (Special Rapporteur) said that he could accept Mr. Nolte’s proposal.

Paragraph (5), as amended, was adopted.

Paragraphs (6) to (8)

Paragraphs (6) to (8) were adopted.

Paragraph (9)

68. Mr. NOLTE pointed out the need to check whether reservations attributed to “Germany”, such as in the last footnote to the paragraph, had in fact been made by the former German Democratic Republic or the Federal Republic of Germany. He queried the phrase “widens its rights (and not its obligations)”, which was misleading and imprecise, and suggested that both instances of its use in paragraph (9) be deleted.

69. Sir Michael WOOD said that he, too, had had difficulty understanding the phrase “widens its rights (and not its obligations)”, which appeared twice in

paragraph (9). In the example relating to the immunity of State vessels, that phrase was incorrect, because the reserving State did in fact widen its obligations: it acquired an additional obligation of recognizing the immunity of all the ships of the other parties to the treaty.

70. Mr. PELLET (Special Rapporteur) said that the first use of the phrase was in a direct quote from a work by Renata Szafarz, which must remain unchanged. Paragraph (9) had to be read together with the explanation in paragraph (6) concerning two types of statements included under the general heading of “extensive reservations”.

71. Sir Michael WOOD said that the second type of statement listed in paragraph (6) referred to statements designed to impose on the parties new obligations not provided for by a treaty. If a State did that, then it also imposed new obligations on itself, because treaties were reciprocal. Therefore, in his view, Ms. Szafarz’s argument was wrong. Nonetheless, the Commission should not tamper with the quotations from her work. However, the phrase “because the reserving State simply widens its rights (and not its obligations), increasing by the same token the obligations of its partners” should be amended to read “because the reserving State widens its rights, increasing by the same token the obligations of its partners”. There, the Commission was expressing its own view and merely paraphrasing, not quoting, Ms. Szafarz.

It was so decided.

72. Mr. CANDIOTI proposed that, in the first sentence, the expression “socialist countries” should be replaced with “Eastern European countries”, a more neutral phrase reflecting contemporary usage.

73. Mr. NOLTE said he had always interpreted the expression “socialist countries” as being broader than “Eastern European countries”, encompassing Cuba for example, and he would prefer to retain it.

74. Mr. MELESCANU said that he supported the proposal made by Mr. Candiotti, although he would like it to be slightly modified to read “the countries of Eastern and Central Europe”.

75. Mr. GALICKI said that he was in favour of maintaining the phrase “socialist countries” because it referred not only to a group of countries but also to the period in history during which the reservation in question had been made and to the political and economic attitude of its authors towards vessel ownership.

76. Mr. SABOIA said that he failed to understand the relevance of citing a specific political regime. Nowhere else was reference made to the political reasons underlying an author’s reservation or objection. He proposed replacing “socialist countries” with “several other countries”, thus eliminating any reference to political ideology or geographical location.

77. Mr. NOLTE said he could accept Mr. Saboia’s proposal if it was not taken as a general rule. Collective reservations or positions had historically been taken by a group of countries that could not be reduced to Eastern

Europe; moreover, the Commission should not purge references to the socialist past from its terminology.

78. Mr. PELLET (Special Rapporteur) said that he was not in favour of establishing a general rule whereby the political systems of countries could not be mentioned. In general, that aspect could be germane, and in the specific example relating to the immunity of State vessels, it was particularly revealing to see that the States that had entered what qualified as an “extensive reservation” were socialist States.

79. The CHAIRPERSON, speaking as a member of the Commission, said that the reference to “socialist” States was indeed historically important, given that they usually took positions as a bloc. The manner in which a State’s ideological choices determined its behaviour was not irrelevant.

80. Mr. McRAE said that, if it was true that socialist countries typically made extensive reservations, then it would indeed be appropriate to retain the word “socialist”.

Paragraph (9), as amended by Sir Michael Wood, was adopted.

The meeting rose at 1.05 p.m.

3102nd MEETING

Monday, 11 July 2011, at 3 p.m.

Chairperson: Ms. Marie G. JACOBSSON
(Vice-Chairperson)

Present: Mr. Caflich, Mr. Candiotti, Mr. Comissário Afonso, Mr. Dugard, Ms. Escobar Hernández, Mr. Fomba, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Mr. Huang, Mr. McRae, Mr. Melescanu, Mr. Murase, Mr. Niehaus, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood.

Protection of persons in the event of disasters²⁶² (A/CN.4/638, sect. D, A/CN.4/643,²⁶³ A/CN.4/L.794²⁶⁴)

[Agenda item 7]

REPORT OF THE DRAFTING COMMITTEE

1. The CHAIRPERSON invited the members of the Commission to begin their consideration of the topic

²⁶² At its sixty-second session (2010), the Commission adopted draft articles 1 to 5 and the commentaries thereto (*Yearbook ... 2010*, vol. II (Part Two), pp. 185–190, paras. 330–331) and took note of draft articles 6 to 9 provisionally adopted by the Drafting Committee (*ibid.*, p. 180, para. 297).

²⁶³ Reproduced in *Yearbook ... 2011*, vol. II (Part One).

²⁶⁴ Mimeographed; available from the Commission’s website, documents of the sixty-third session.

of the protection of persons in the event of disasters. She reminded them that, before listening to the Special Rapporteur’s introduction of his fourth report on the topic, they needed to revisit draft articles 6 to 9, on which the Drafting Committee had completed work in 2010 and of which the Commission had taken note at its 3067th meeting, on 20 July 2010. She drew the Commission’s attention to the draft articles, contained in document A/CN.4/L.776,²⁶⁵ and invited members to adopt them one by one.

Article 6. *Humanitarian principles in disaster response*

Article 6 was adopted.

Article 7. *Human dignity*

Article 7 was adopted.

Article 8. *Human rights*

2. Mr. PELLET, supported by Mr. CAFLISCH, said that the use in the French text of the word “*touché*” to mean “affected” seemed inappropriate. He preferred to see the English term translated as “*affecté(e)*” when it was used to refer to both persons and States.

3. Mr. NOLTE said that the term occurred quite often and that the change should be made throughout the text.

4. Mr. VALENCIA-OSPINA (Special Rapporteur) said that he intended, in due course, to propose a provision on the definitions and expressions used, and that the phrase rendered in English as “affected State” would be included there. The change proposed by Mr. Pellet, which he himself supported, could then be made throughout the text.

It was so decided.

Article 8 was adopted, subject to that editorial correction to the French text.

Article 9. *Role of the affected State*

Article 9 was adopted, subject to an editorial correction to the French text.

5. The CHAIRPERSON said she took it that the Commission wished to adopt the report of the Drafting Committee on the protection of persons in the event of disasters, the complete text of which was contained in document A/CN.4/L.776.

It was so decided.

FOURTH REPORT OF THE SPECIAL RAPPORTEUR

6. The CHAIRPERSON invited the Special Rapporteur to introduce his fourth report on the protection of persons in the event of disasters (A/CN.4/643).

7. Mr. VALENCIA-OSPINA (Special Rapporteur) said that, as Secretary-General Ban Ki-moon had noted when he had opened the third session of the Global Platform for

²⁶⁵ Mimeographed; available from the Commission’s website, documents of the sixty-second session.