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Summary record of the 3108th meeting

Topic:
Cooperation with other bodies

Extract from the Yearbook of the International Law Commission:-
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beyond recognition or operational utility. As the debate on his fourth report had confirmed beyond any doubt, the Commission had endorsed the Secretary-General's stand, which he, as Special Rapporteur, had made his own.

14. Some of the comments made during the debate had been intended to draw attention to the need for a corresponding explanation in the commentary to a particular draft article. To the extent that those comments remained relevant once the Commission had adopted the respective draft articles, they should be included in the commentaries.

15. The debate had focused to a large extent on drafting. Many suggestions had been made for amendments to the form and content of draft articles 10 to 12, which the Drafting Committee would have to discuss in detail. A specific objection had been raised to draft article 10 on the grounds that it dealt with States unwilling to provide assistance to affected persons in their territory. It had been argued that if an affected State did not wish to use its own resources, it should not seek assistance. To facilitate comprehension in that regard, he explained that, while the positioning of the words "as appropriate" in the draft article might mislead the reader into believing that they qualified the preceding phrase, "the duty to seek assistance", the real intention had been to stress the discretionary power of the affected State to choose from among the potential donors listed. Furthermore, the term "unwilling" did not appear in draft article 10 but in draft article 11, which dealt not with the duty to seek assistance, but rather with the duty of the affected State not to withhold arbitrarily its consent to external assistance offered. In that connection, he recalled that the Drafting Committee had not yet considered paragraph 2 of former draft article 8, which he had proposed in his third report³⁴⁰ and which reaffirmed in unequivocal terms that an affected State was required to give its consent to any offer of external assistance before that assistance could be provided. It had been suggested that paragraph 2 of former draft article 8 should be inserted as paragraph 1 of draft article 11.

16. In conclusion, and in accordance with the express will of all members, with the exception of one who had abstained, he requested that draft articles 10 to 12 be referred to the Drafting Committee, together with all suggestions concerning the text thereof and possible commentaries, in the hope that improved draft articles would result.

17. The CHAIRPERSON said she took it that the Commission wished to refer draft articles 10 to 12 to the Drafting Committee.

It was so decided.

³⁴⁰ Draft article 8 read as follows:

"Primary responsibility of the affected State

"1. The affected State has the primary responsibility for the protection of persons and provision of humanitarian assistance on its territory. The State retains the right, under its national law, to direct, control, coordinate and supervise such assistance within its territory.

"2. External assistance may be provided only with the consent of the affected State."

Yearbook ... 2010, vol. II (Part One), document A/CN.4/629. See also *ibid.*, vol. II (Part Two), pp. 183–184, paras. 316–324, and footnote 1339.

Organization of the work of the session (concluded)*

[Agenda item 1]

18. Mr. MELESCANU (Chairperson of the Drafting Committee) announced that Mr. Candiotti and Ms. Escobar Hernández would be joining the Drafting Committee.

The meeting rose at 3.45 p.m.

3108th MEETING

Wednesday, 20 July 2011, at 10 a.m.

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

Present: Mr. Cafilisch, Mr. Candiotti, Mr. Dugard, Ms. Escobar Hernández, Mr. Fomba, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Mr. Kemicha, Mr. McRae, Mr. Melescanu, Mr. Murase, Mr. Niehaus, Mr. Nolte, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood.

Cooperation with other bodies (continued)**

[Agenda item 13]

STATEMENT BY THE REPRESENTATIVE OF THE
INTER-AMERICAN JURIDICAL COMMITTEE

1. The CHAIRPERSON welcomed Ms. Hyacinth Lindsay, of the Inter-American Juridical Committee, and invited her to address the Commission.

2. Ms. LINDSAY (Inter-American Juridical Committee) said that it was an honour for her to present the 2010 annual report on the activities of the Inter-American Juridical Committee, which consisted of three chapters. The first discussed the origin, legal bases and structure of the IAJC. The second chapter considered the issues discussed at the Committee's two regular sessions held in 2010 and also contained the texts of the resolutions adopted at the two regular sessions and related documents. The third chapter concerned the other activities of the IAJC and other resolutions adopted by it. Budgetary matters were also discussed in the report.

3. With respect to innovative forms of access to justice in the Americas, the rapporteur for that topic had presented a document entitled "Access to justice: preliminary considerations". As the IAJC had decided that the most important issue was to approach access to justice in innovative ways and to expand the channels of access to justice, it intended to approve general guidelines on the topic. A report entitled "Comprehensive training of

* Resumed from the 3105th meeting.

** Resumed from the 3101st meeting.

judges: a need in the administration of justice” had been prepared on the basis of guiding principles presented at the previous session and the ensuing discussions. The report placed emphasis on the need for greater rigour in the training of judges, the importance of the independence and modernization of the judiciary, and accessibility to all communities with equality and timeliness. It also emphasized the training of workers in the justice system and the resources required to simplify judicial proceedings.

4. With respect to the International Criminal Court, the IAJC had adopted a resolution entitled “Promotion of the International Criminal Court” to be forwarded by the General Secretariat of the OAS to the Permanent Council for submission to the General Assembly at its thirty-sixth regular session. A request had also been made via the Secretariat to member States which had not yet replied to the Committee’s questionnaire to do so. States parties to the Rome Statute of the International Criminal Court that had adopted laws and applied Parts IX and X of the Statute had been requested to report any other measures implemented to facilitate cooperation with the Court. The IAJC had decided to keep the topic of the promotion of the International Criminal Court under consideration and requested the rapporteur concerned to submit an updated report at the next regular session.

5. As to the topic entitled “Considerations on an inter-American jurisdiction of justice”, it had been decided at the seventy-sixth regular session to postpone the study of the topic. With regard to the promotion and strengthening of democracy, the rapporteur for the topic had presented a report highlighting shortcomings in the preventive actions available to the Permanent Council for remedying threatened breakdowns in the democratic order and the relationship between democracy and development and the scant usage made of the provisions of the Charter of the Organization of American States in promoting economic and social development. A working group comprising five members of the IAJC had been established to review the draft resolution on the topic. A revised version, entitled “Essential and fundamental elements of representative democracy and their relationship with collective action under the Inter-American Democratic Charter”, had been approved. The Committee had decided to prepare a briefer text for distribution to the press and publication on the OAS web page.

6. As to the issue of international humanitarian law in the OAS member States, the IAJC had adopted a report on war crimes in international humanitarian law and another on international criminal tribunals. The IAJC had received a visit from Mr. Anton Camen of the ICRC, who had referred to the work of the IAJC, in conjunction with other organizations, in drafting model laws on anti-personnel mines, the use of biological weapons and the implementation of the Geneva Conventions for the protection of war victims. Mr. Camen had given a summary of the progress made in the implementation of international humanitarian law treaties by OAS member States and made recommendations for juridical measures by States in relation to international humanitarian law.

7. On the issue of cultural diversity in the development of international law, it had been recommended that diversity

be recognized as a cultural heritage, different cultural expressions be promoted, cultural goods be considered as spiritual assets and not merely as merchandise, educational spaces be developed to consolidate collective awareness about cultural diversity, and public and private initiatives be promoted to reflect on problems caused by the recognition of diversity and its impact in the field of international law.

8. Migratory topics included migrants’ rights, the rights of refugees and the right of asylum. The annual report highlighted the causes of migration, which were multiple, complex and heterogeneous, while focusing on the economic factor, differences in development between the country of origin and the country of destination, the divergence between work markets, and the natural aspiration to overcome poverty and inequality. The report also examined the positive and negative consequences of migration, including the illicit traffic of migrants, actions taken to facilitate illegal entry, and trafficking in people for the purpose of exploiting forced labour. The IAJC had unanimously adopted the resolution entitled “Protection of the rights of migrants”, and two other documents entitled “Refugees” and “Refugees [asylum]” had been included in the report.

9. The OAS General Assembly had requested the IAJC to conduct a study on the importance of guaranteeing the right of freedom of thought and expression, in the light of the fact that free and independent media carried out their activities guided by ethical standards, which could in no case be imposed by the State, consistent with applicable principles of international law. The IAJC had recognized the difference between freedom of expression and freedom of thought and noted the fact that those rights were not absolute. In that connection, both the American Convention on Human Rights: “Pact of San José, Costa Rica” and the International Covenant on Civil and Political Rights regulated the conditions whereby the exercise of freedom of expression might be restricted. Reference had also been made to a series of recommendations by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights regarding the duty of States to uphold the utmost impartiality and due process in all administrative and judicial procedures for enforcing the law. The study had concluded that the initiation of proceedings and the imposition of sanctions must be the task of impartial and independent agencies, be regulated by legal provisions and abide by the terms of the conventions, and that in no instance could the editorial line of a media outlet be a factor of relevance in pursuing sanctions in that area.

10. With regard to topics on private international law, the report recounted the actions taken since the adoption of the relevant resolution of the OAS General Assembly. The IAJC had approved a proposal for inclusion of alternative dispute-solving methods on its agenda with a view to the forthcoming Inter-American Specialized Conference on Private International Law. At the fortieth regular session of the OAS General Assembly in June 2010, the member States had failed to reach consensus on the proposals related to the seventh Inter-American Specialized Conference on Private International Law. The IAJC had not discussed the proposals at its seventy-seventh regular session in August 2010.

11. In respect of new topics, the IAJC had been asked to conduct a legal study into the mechanisms for participatory democracy and citizen participation provided for in the laws of some of the region's countries and a comparative analysis of the principal legal instruments of the inter-American system related to peace, security and cooperation. The Committee had agreed that the subject should be addressed using a restrictive interpretation and separately from the topic of strengthening democracy, and that the aim should not be to discuss participatory democracy but rather to identify citizen participation mechanisms for making representative democracy more effective. The Chairperson of the IAJC had asked the secretariat to prepare a note for the delegations of the OAS member States requesting the information necessary to progress with the topic.

12. Within the framework of new topics, the IAJC had also studied the issue of peace, security and cooperation. At the fortieth regular session of the OAS General Assembly, the IAJC had been asked to conduct a comparative analysis of the principal legal instruments of the inter-American system related to peace, security and cooperation. Members had indicated, *inter alia*, that new concepts of security had emerged which were not solely restricted to the use of weapons or war-related activities, but also covered topics related to human security and poverty. They had also noted that it was necessary to start with an analysis of the treaties in force within the OAS regulatory framework and that consideration should be given to the concept of democratic security, including multidimensional security as set out in the 2003 Declaration on security in the Americas adopted by the Special Conference on Security held in Mexico City on 27 and 28 October 2003.³⁴¹ It had also been stressed that security was no longer seen as a merely legal or territorial issue but that the concept had been expanded to include human security and multidimensional security. A decision had been taken to return to the topic at a later date.

13. With respect to simplified stock companies, a document entitled "Draft model law on simplified stock companies" had been presented by a group of Colombian lawyers, who had explained the rationale behind it for analysis by the IAJC. Since the topic was one of private international law, some members had requested that it be included under that heading.

14. As to concluded topics, during the period covered by the report the IAJC had approved two documents entitled "Strengthening the consultative function of the Inter-American Juridical Committee" and "Comments on the draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance".

15. The CHAIRPERSON invited members of the Commission to put questions and make comments.

16. Mr. MURASE, recalling that the United Nations General Assembly was due to consider the draft articles on the law of transboundary aquifers at its 2011 session,³⁴²

³⁴¹ OAS, "Declaration on security in the Americas" (OEA/Ser.K/XXXVIII CES/DEC.1/03 rev. 1) (available from the website of the OAS, at www.oas.org).

³⁴² General Assembly resolution 63/124 of 11 December 2008, para. 6. For the draft articles adopted by the Commission and the commentary thereto, see *Yearbook ... 2008*, vol. II (Part Two), pp. 19 *et seq.*, paras. 53–54.

asked what the members of the IAJC thought that the Sixth Committee should do in that regard, in particular whether the General Assembly should adopt a resolution with a view to the possible adoption of a framework convention on the topic. In that context, it was to be welcomed that four Latin American countries had already concluded an agreement on the basis of the draft articles.³⁴³

17. With respect to the United Nations Convention on Jurisdictional Immunities of States and Their Property, adopted on the basis of draft articles prepared by the Commission,³⁴⁴ only 11 States had ratified the Convention and a further 19 ratifications were still necessary for the instrument to enter into force. As Mexico and Paraguay were the only countries in Latin America to have ratified the text, the IAJC should encourage its members to do so.

18. Mr. NOLTE asked whether the IAJC, like CAHDI in Europe, might consider playing a role in respect of reservations to treaties, for instance in the context of deciding whether reservations were compatible with the object and purpose of the treaty or giving opinions to States on how to formulate reservations or react to reservations.

19. Noting that the Council of Europe's European Commission for Democracy through Law (Venice Commission), an institution dealing mainly with constitutional law but also with international law, also had members from the Americas, including Brazil, Chile, Mexico and Peru, he wondered whether the IAJC had considered the relationship between its work and that of the Venice Commission.

20. Mr. VARGAS CARREÑO highlighted the importance of activities for coordination between universal forums, such as the Commission, and regional forums like the IAJC. Endorsing the comments made by Mr. Murase and Mr. Nolte, he said that contacts should be strengthened so that the results of the Commission's work were better disseminated at the regional level. Noting that some items on the Committee's agenda had been codified at the global level, he emphasized that duplication should be avoided.

21. Mr. VASCIANNIE, noting that the IAJC was undertaking work on migration, asked what its goal was and whether, for example, the Committee was intending to prepare a draft convention or an information document on the topic.

22. Noting also that several topics on the Committee's agenda would need contributions from member States of the IAJC, he asked what measures the IAJC took to obtain information from its member States and what their general reaction was.

23. Ms. LINDSAY (Inter-American Juridical Committee) said that she would report the comments by members of the Commission to the IAJC at its upcoming August 2011 session.

³⁴³ Guarani Aquifer Agreement, signed at San Juan (Argentina) on 2 August 2010, between Argentina, Brazil, Paraguay and Uruguay (available from the website of the Food and Agriculture Organization of the United Nations, at <http://faolex.fao.org/docs/pdf/mul-143888English.pdf>).

³⁴⁴ *Yearbook ... 1991*, vol. II (Part Two), p. 13, para. 28.

24. With respect to the topic of migration, the IAJC had taken up the issue because the State of Arizona in the United States of America had adopted a law on immigration. Fears had been expressed that the law was discriminatory, but after considering the matter the IAJC had concluded that all immigrants were treated in the same way, that no particular group was targeted and that, therefore, the text did not involve any discrimination.

25. Mr. CANDIOTI said he agreed with Mr. Vargas Carreño that coordination between the IAJC and the Commission should be improved and, to that end, it would be useful for a member of the Commission to be able to inform the IAJC annually of the work it had undertaken. Noting that the Working Group on the long-term programme of work, which he chaired, had the task of recommending new topics for inclusion in the long-term programme of work of the Commission, he said he would like to know the Committee's opinion in that regard and which topics it thought that the Commission should consider for codification or progressive development. He also looked forward to hearing the Committee's reaction to the Guide to Practice on Reservations to Treaties, which the Commission would forward to it after the Guide had been adopted at the current session.

26. Mr. VÁZQUEZ-BERMÚDEZ, noting that the IAJC was undertaking work on cultural diversity in the development of international law, recalled that in 2005 UNESCO had adopted the Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Although the Convention had been adopted only recently, it was a clear success, since 117 States had already ratified it. He wondered what contribution the IAJC intended to make in that regard, for example, whether it was planning to promote accession to the Convention or to help States to enact appropriate legislation for its implementation.

27. Ms. LINDSAY (Inter-American Juridical Committee) said that the topic of cultural diversity in the development of international law was being considered in depth by the IAJC and that, as work was still ongoing, the Committee had not yet identified the ultimate objectives.

The meeting rose at 10.55 a.m.

3109th MEETING

Thursday, 21 July 2011, at 10 a.m.

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

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

Draft report of the International Law Commission on the work of its sixty-third session (*continued*)*

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

1. The CHAIRPERSON invited the Commission to resume 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* (*continued*)*

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

(b) *Text of the guidelines and the commentaries thereto* (*continued*)* (A/CN.4/L.783/Add.3)

1.4 *Conditional interpretative declarations* (*concluded*)*

Commentary (*concluded*)*

Paragraphs (4) to (7)

Paragraphs (4) to (7) were adopted.

Paragraph (8)

2. Mr. NOLTE said that, in the first sentence, the word “so” should be deleted because it did not apply to paragraph (7), as it seemed to indicate, but rather to paragraph (6).

Paragraph (8), as amended, was adopted.

Paragraph (9)

Paragraph (9) was adopted.

Paragraph (10)

3. Mr. PELLET (Special Rapporteur) proposed that, in the final sentence, the phrase “application of the” [*l'application des*] should be inserted between “legal effect on the” and “provisions of the treaty”.

Paragraph (10), as amended, was adopted.

Paragraphs (11) to (14)

Paragraphs (11) to (14) were adopted.

The commentary to guideline 1.4, as amended, was adopted.

1.5 *Unilateral statements other than reservations and interpretative declarations*

Guideline 1.5 was adopted.

Commentary

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

* Resumed from the 3106th meeting.