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Summary record of the 3176th meeting

Topic:
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with Mr. Murase that an unduly broad approach to the principle of prevention should be avoided.

22. He recalled his earlier remark that the Commission's work pertaining to the relationship between the affected State and third States should be conceptualized in terms of cooperation rather than rights and duties. That was why he had reservations about the dual-axis approach mentioned in paragraph 36 of the report. While he accepted that there was a vertical relationship of rights and duties between an affected State and its population, he did not believe that there was any basis in customary international law, practice or policy to posit a horizontal relationship of rights and duties in the interaction of affected States and third States.

23. He remained unconvinced that in the field under consideration, a horizontal axis was supported by the duty under international law to prevent harm, as provided for in various international instruments and case law. While the principle was firmly entrenched in international law, it was applied in a completely different context, namely in ensuring that the activities carried out in one State did not cause harm to another State. The sources cited, including those relating to sustainable development, were likewise not applicable by analogy to the topic under consideration.

24. He had no doubt that there was a duty to prevent. However, in the context of inter-State relations, it operated exclusively with respect to transboundary harm. On the other hand, in the context of the vertical relationship between a State and its population or persons within its territory, the question of what was the source of the duty remained unresolved. Unlike the Special Rapporteur, he did not think the basis of the duty could be found in international environmental law. For reasons he had already discussed, the principle of prevention applied only in the context of transboundary harm. International human rights law might be a more viable basis, although a State could be fulfilling its obligations under international human rights instruments and still not be in a position to effectively manage a disaster. By the same token, it would be going too far to suggest that a State that was less well prepared than it could be was in violation of the right to life due to the occurrence of a disaster, particularly a natural disaster. The test of human or natural origin of a disaster had to be taken into account. Draft article 16, correctly, did not do so. It would be better to view the duty to prevent, in the context of the protection of persons, as a corollary of sovereignty, and not as emanating from either human rights law or environmental law.

The meeting rose at 5.10 p.m.

3176th MEETING

Tuesday, 9 July 2013, at 10.05 a.m.

Chairperson: Mr. Bernd H. NIEHAUS

Present: Mr. Al-Marri, Mr. Candiotti, Mr. Comissário Afonso, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Gevorgian, Mr. Has-souna, Mr. Hmoud, Ms. Jacobsson, Mr. Kittichaisaree,

Mr. Laraba, Mr. Murase, Mr. Murphy, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood.

Cooperation with other bodies

[Agenda item 13]

STATEMENT BY THE SECRETARY-GENERAL OF
THE ASIAN–AFRICAN LEGAL CONSULTATIVE ORGANIZATION

1. The CHAIRPERSON welcomed Mr. Rahmat Bin Mohamad, Secretary-General of the Asian–African Legal Consultative Organization (AALCO), and invited him to address the Commission.

2. Mr. MOHAMAD (Secretary-General of the Asian–African Legal Consultative Organization) said that, because the topics being studied by the Commission were of great importance to AALCO, a half-day special meeting on selected items on the Commission's agenda had been scheduled during the organization's fifty-second annual session, to be held in New Delhi in September 2013. At the current meeting, he wished to convey the views of his organization's member States on three topics, namely immunity of State officials from foreign criminal jurisdiction, protection of persons in the event of disasters, and formation and evidence of customary international law.

3. Although the immunity of State officials from foreign criminal jurisdiction, which was based on the principle of the sovereign equality of States, was already a well-established rule of treaty law and customary international law, the Commission's study of the topic was timely, owing to recent controversy surrounding the issue of whether the immunity of State officials should prevail over the duty to prosecute and punish individuals responsible for international crimes.

4. AALCO agreed with the Special Rapporteur that the topic must be approached from the dual perspective of *lex lata* and *lex ferenda*. It was vital, however, that before the topic took its final form, the Commission should clearly indicate which elements were statements of *lex lata* and which reflected *lex ferenda*. The concepts of immunity *ratione materiae* and immunity *ratione personae* helped to clarify the scope of the immunity enjoyed by various categories of State officials.

5. Immunity before international courts was already sufficiently delimited by the relevant international instruments. Moreover, diplomatic and consular immunity and the immunity of international organizations had undergone considerable development in treaty law and customary law. There was therefore no need for the Commission to consider those regimes. While the distinction between personal and functional immunity had been generally accepted in legal theory and reflected in legal practice, it was still of vital relevance when ascertaining which persons were covered by immunity. The Special Rapporteur had rightly concluded that it was impossible to find cogent arguments in favour of extending immunity *ratione personae* to officials

outside the troika of Heads of State, Heads of Government and Ministers for Foreign Affairs.

6. Turning to the sixth report on the protection of persons in the event of disasters (A/CN.4/662), he said that the concept of protection had been derived from human rights law and environmental law, which embodied the due diligence and the precautionary principles. In the sphere of disaster risk reduction, he emphasized the importance of the Association of Southeast Asian Nations (ASEAN) Agreement on Disaster Management and Emergency Response and the Africa Regional Strategy for Disaster Risk Reduction.⁸⁰ Despite the fact that many AALCO member States had adopted national legislation or guidelines and had set up regulatory bodies to deal with the prevention of, preparedness for and mitigation of disasters, pre-disaster preparedness remained very limited, and funding for such activities remained a challenge. Technology transfer should accordingly be addressed as a means of supporting post-disaster relief and rescue operations. However, the offering of assistance should be voluntary, not compulsory, and the principle of non-intervention in the internal affairs of the assisted State had to be respected by the State offering the assistance.

7. Turning to the topic of formation and evidence of customary international law, he said that notwithstanding the great increase in the number and scope of treaties, customary international law, comprising practice and *opinio juris*, remained an important source of international law. The nature and relative importance of those two constituent elements was a contentious issue, because there was no clear-cut rule on how much consent or how much consistent State practice was required for the formation of customary law. In the view of AALCO, several issues had to be addressed: the identification of State practice; the nature, function and identification of *opinio juris*; the relationship between those two elements; the manner in which new rules of customary international law emerged; the role of “specially affected States”; the time element and the density of practice; whether the criteria for the identification of a rule of customary law might vary according to the nature of the rule or the field to which it belonged; the “persistent objector” theory; treaties and the formation of customary international law; and lastly, the significance of resolutions of international organizations as possible evidence of customary international law.

8. Determining the existence of customary international rules and understanding the underlying processes required a knowledge of international practices and, most importantly, of whether such practices were produced by the will of the international community in general or of particular States. AALCO considered that the diverse practices of States from different civilizations should be taken into account when deciding whether a principle or a rule was customary in nature. Furthermore, as subjects of international law, intergovernmental organizations participated in the process of developing customary international law in the same manner as States. Hence it was of

the utmost importance for the Commission to be alive to the possibility that such organizations might facilitate the creation of State practice that might ultimately crystallize into customary law.

9. He assured the Commission of his organization’s ongoing cooperation in its work.

10. Mr. EL-MURTADI SULEIMAN GOUIDER thanked the Secretary-General of AALCO for his remarks on three of the Commission’s topics, as they would certainly enrich its work.

11. Mr. KITTICHAISAREE, responding to the comments just made on immunity of State officials from foreign criminal jurisdiction, suggested that AALCO look more carefully at the judgment of the International Court of Justice in the *Arrest Warrant* case, where the Court had held that it was an established rule of international law that some high-ranking State officials outside the troika enjoyed personal immunities. In his opinion, those senior officials enjoyed immunity because they were on a special mission. Although not many States were parties to the Convention on special missions, several non-State parties adopted that position when they welcomed visits from officials from other States. When the time came for the Commission to consider exceptions to immunity, it would be faced with the difficult task of trying to achieve a balance between State sovereignty and protection of the interests of victims of serious human rights violations.

12. The Secretary-General of AALCO had rightly recalled that international human rights law and environmental law formed part of the basis for the Commission’s work on the protection of persons in the event of disasters. Since the latter was a new field of law where there was no ironclad precedent to underpin the draft articles, they had to be predicated on other areas of law. Asian countries desperately needed such a regime as guidance in times of disaster.

13. On the formation and evidence of customary international law, he considered that it would be hard to prove the existence of consistent or virtually uniform State practice and *opinio juris* in a world comprising 193 sovereign States. AALCO could therefore greatly assist the Commission by compiling evidence of such practice and opinion in its member States in order to demonstrate the existence of international customary law, at least at the regional level.

14. Given that AALCO had a number of regional arbitration centres, he wondered if it considered that the issue of fair and equitable treatment in international investment law would be an appropriate topic for consideration by the Commission. Would it be in favour of the Commission studying the topic of the protection of the atmosphere?

15. Mr. VÁZQUEZ-BERMÚDEZ wished to know what key factors had contributed to the success of the five AALCO arbitration centres in resolving trade and investment disputes. Did such factors include the cost of arbitration or the fact that they were regional initiatives? Had the adaptation of the rules of the United Nations Commission on International Trade Law lent greater flexibility to dispute settlement? As the Union of South

⁸⁰ Adopted by the 10th Meeting of the African Ministerial Conference on the Environment, held at Sirt, Libyan Arab Jamahiriya, 26–30 June 2004; see *Africa Regional Strategy for Disaster Risk Reduction*, July 2004 (available from www.unisdr.org/we/inform/publications/).

American Nations was contemplating the drafting of a treaty establishing a centre for the settlement of investment disputes as an alternative to the Permanent Court of Arbitration or the World Bank's dispute resolution mechanisms, he was eager to learn more about the experience of AALCO in that area.

16. Mr. MOHAMAD (Secretary-General of the Asian–African Legal Consultative Organization) said that the success of the AALCO regional arbitration centres could possibly be ascribed to the fact that each one served the needs of the countries in the region where it was located. Nevertheless, the centres faced the challenge of retaining their neutrality and independence from government control. His organization would be happy to help the Commission to investigate the reasons for their success. It would be a good idea for the Commission to take up the topic of fair and equitable treatment in international investment law, because it was of great importance for both host and investing countries, particularly when they were developing countries. AALCO would likewise be pleased to see the Commission embark on the topic of the protection of the atmosphere.

17. Although his organization had not yet received comments from its member States on immunity of State officials from foreign criminal jurisdiction, he thought that most of them favoured a conservative approach and were against the extension of that immunity to officials outside the troika. As AALCO might in future formulate some model laws on the protection of persons in the event of disasters, he invited all the Commission's members to attend the organization's fifty-second annual session in New Delhi in order for them to express their views on that subject and more especially on the implementation of such protection. Lastly, he said that AALCO could compile evidence of customary international law in the shape of practice and *opinio juris* at the regional level among its member States.

18. Mr. HASSOUNA said that the traditional visit to the Commission of the Secretary-General of AALCO attested to the strong relations between the two bodies. His comments on three of the topics currently on the Commission's agenda provided a better understanding of the positions of Asian and African countries. Expressing thanks for the invitation to attend the upcoming annual session of AALCO, he said that it would be useful for its conclusions to be communicated to the Commission so that it was fully informed prior to its meetings with AALCO during the sessions of the Sixth Committee. It would also be beneficial for AALCO not only to express its views on issues currently on the Commission's agenda but also to propose new topics for its long-term programme of work.

19. He called on AALCO to urge its member States to respond to the Commission's questionnaires asking for their opinions on the various topics under discussion, as it was important that the views of African and Asian countries should be taken into account. Research and publications by AALCO would also enrich the Commission's understanding of the views of its member States on different topics of international law.

20. Sir Michael WOOD said that it was particularly useful to hear the views of AALCO on topics when they were still at an early stage of consideration. He would be interested to learn how views expressed on behalf of member States were reached. He would also welcome some account of the other matters that AALCO was working on apart from Commission-related topics. States should be encouraged individually or collectively to publish their practice in order to provide a better view of developing practice worldwide. It was important to have groups from the African and Asian regions contributing to universal international law rather than just to regional law.

21. Mr. MURPHY said that it was extremely helpful for the Commission to receive input from an organization like AALCO that represented so many member States. With regard to the Commission's project on the protection of persons in the event of disasters, he would be interested to hear more about the organization's concerns that the obligation upon States to undertake measures to reduce the risk of disasters should be characterized more as a voluntary undertaking than as a legal duty. In his view, the issue could be approached as a legal duty, subject to several conditions. Draft article 16 on the duty to prevent disasters contained a reference to "appropriate measures", and other conditions such as financial capability and the availability of technology might be included. The other possibility would be to present the issue in the form of a voluntary norm, and he asked how AALCO considered that the norm should be crafted.

22. Mr. MOHAMAD (Secretary-General of the Asian–African Legal Consultative Organization) said that his organization had not yet received any responses from its member States about whether the adoption of measures to reduce the risk of disasters should be viewed as a legal duty or a voluntary undertaking, and the views he had expressed were simply those of the organization's Secretariat. There were of course many new topics that the organization would like the Commission to take up, but it would be preferable to focus first on ongoing topics and the new topic of customary international law.

23. Further activities must certainly be undertaken to promote the progressive development of international law. His organization had recently launched the *AALCO Journal of International Law*, which dealt with contemporary issues and could be consulted on the AALCO website.⁸¹ There had been a very encouraging response from member States to the first two volumes. Contributions were accepted from member and non-member States, and contributions from Commission members would be most welcome. Despite its limited budget and resources, AALCO was also about to launch two research projects, one on the statehood of Palestine and another on unilateral sanctions.

24. As to how the views expressed on behalf of member States were formulated, he said that apart from the annual sessions, other meetings with member States, to which non-member States and international organizations were also invited, were held to provide an outlet for discussion

⁸¹ www.aalco.int, "Publications", *AALCO Journal of International Law*.

and deliberation on common issues and concerns. Representatives of the organization also attended meetings such as the Assembly of States Parties to the Rome Statute of the International Criminal Court. There was no shortage of material to collect on State practice and *opinio juris*. One potential focus area could be the work of AALCO itself, such as its development of the law of the sea.

25. Mr. VALENCIA-OSPINA said that the work of AALCO on subjects like the treatment of refugees, on which it had developed the Bangkok Principles,⁸² was extremely important. The Commission welcomed the role played by AALCO as a forum enabling African and Asian member States to express their opinions on issues being discussed by the Commission, both during the drafting process and once the texts were finalized. He appreciated the interest of African and Asian States in the project on the protection of persons in the event of disasters, for which he was Special Rapporteur. He welcomed the Secretary-General's references to the ASEAN Agreement on Disaster Management and Emergency Response, a pioneering instrument, and to the need to take inspiration from human rights law and environmental law. He hoped to be able to contribute in some way to the new AALCO model law on the protection of persons in the event of disasters.

26. Mr. CANDIOTI welcomed the interest shown by AALCO in the work of the Commission and the efforts made by its member States to develop international law. He noted with satisfaction that AALCO supported the inclusion of the topic of protection of the atmosphere on the Commission's agenda. He also welcomed what the Secretary-General had called the rather conservative attitude of AALCO member States to any extension of immunity from criminal jurisdiction to officials outside the trioka: that was in fact a modern approach, given the need to combat impunity.

27. He agreed with other members that the Commission would welcome proposals from AALCO on priority topics that it should discuss. He expressed the hope that the two bodies would continue meeting together during the sessions of the Sixth Committee. He also called on AALCO for support in ensuring that the texts submitted by the Commission to the General Assembly were actually adopted, rather than being deferred indefinitely. For instance, the Commission hoped that there would be some action on its draft articles on the law of transboundary aquifers⁸³ during the next session of the General Assembly.

28. Ms. ESCOBAR HERNÁNDEZ said that AALCO had a very important role to play in the codification and progressive development of international law and could be an important ally of the Commission. She would be interested to learn more about how AALCO reached a consensus position on a particular topic. She would also

welcome further information on the issues that AALCO considered to be of the greatest importance.

29. On the immunity of State officials from foreign criminal jurisdiction, for which she was the Special Rapporteur, she welcomed information on how her second report (A/CN.4/661) had been received by AALCO member States and the special interest they had shown in the topic.

30. She supported Mr. Hassouna's suggestion that the Commission should receive in writing the conclusions adopted by AALCO at its upcoming annual session and future meetings. AALCO should continue to encourage its member States to participate actively in the debates in the Sixth Committee, which provided an insight into their views on various topics. The Commission would be grateful for the support of AALCO in encouraging member States to respond to its annual questionnaires: the current relatively low response rate gave rise to uncertainty among special rapporteurs as to certain elements of State practice. The Commission would be interested to hear about the follow-up given by AALCO to the various items on its agenda.

31. Mr. AL-MARRI expressed the hope that cooperation between the two bodies would continue in the future. He drew attention to the work of the Cairo Regional Centre for International Commercial Arbitration and requested information about cooperation with the Gulf States in the sphere of arbitration and in the establishment of legal bodies.

32. Mr. MOHAMAD (Secretary-General of the Asian-African Legal Consultative Organization) said that AALCO had initiated and would follow up on plans to step up cooperation among its member States, in particular the Gulf countries. Steps were being taken to improve the AALCO website by adapting it to the practical needs of member States and making it more interactive. He invited the members of the Commission to attend the forthcoming fifty-second annual session of AALCO, which would be held in New Delhi in September 2013.

33. The CHAIRPERSON thanked Mr. Mohamad for his remarks and his responses to the various questions put by Commission members, which were a reflection of their lively interest in the activities of AALCO.

**Protection of persons in the event of disasters
(continued) (A/CN.4/657, sect. B, A/CN.4/662,
A/CN.4/L.815)**

[Agenda item 4]

SIXTH REPORT OF THE SPECIAL RAPPORTEUR (continued)

34. The CHAIRPERSON invited the Commission to continue its consideration of the sixth report of the Special Rapporteur on the protection of persons in the event of disasters (A/CN.4/662).

35. Mr. PARK said he agreed with the Special Rapporteur that the scope of the topic *ratione temporis* should comprise not only the disaster response phase but also the

⁸² "Final text of the AALCO's 1966 Bangkok Principles on Status and Treatment of Refugees", as adopted on 24 June 2001 at the AALCO's 40th session, New Delhi (available from the AALCO website: www.aalco.int).

⁸³ The text of the draft articles on the law of transboundary aquifers, with commentaries thereto, adopted by the Commission at its sixtieth session (2008), is reproduced in *Yearbook ... 2008*, vol. II (Part Two), pp. 19 *et seq.*, paras. 53–54.

pre- and post-disaster phases. However, it was somewhat worrying to see that no clear distinction was drawn in the report between natural and industrial disasters in the context of disaster prevention, mitigation and preparedness. Despite the existence of a set of rules that applied to both types of disasters, they displayed clear dissimilarities, the main one being that in industrial disasters, there was a so-called “perpetrator” who had caused or contributed to the occurrence of the calamity. In addition, the legal regime pertaining to industrial disasters placed heavy emphasis on the obligations of notification and compensation that were incumbent not only on an installation’s operators, but also on the State in whose territory the installation was located. Conversely, the State within whose territory or under whose jurisdiction a natural disaster occurred usually bore little or no responsibility for the disaster.

36. The existence of differences between the rules applicable to natural and to industrial disasters in the response phase was a clear indication that distinct sets of rules should apply to the various types of disasters in the pre-disaster phase. However, no such distinction had been reflected in draft article 16 on disaster prevention.

37. He wished to raise three issues related to the foregoing points. First, how should the principle of prevention be characterized—as giving rise to *erga omnes* obligations or to obligations that were subject to progressive realization depending on a State’s economic development? The human rights listed in paragraph 46 of the report as being relevant in the event of a disaster entailed obligations that, in his own view, were a mixture of the two categories. Clearly, however, States, especially developing countries that had limited financial and human resources, could not ensure the realization of all of those rights in the pre-disaster phase.

38. Second, one of the fundamental principles of environmental law was the “differentiated responsibility” approach, which took into consideration the economic situation of developing countries. However, in paragraph 64 of his report, the Special Rapporteur appeared to exclude that approach by stating that a State’s economic level could not discharge it from its obligation of due diligence.

39. Third, with respect to the issue of climate change discussed in paragraph 50 of the report, he questioned whether it was appropriate to apply the same duty of prevention to disasters with a swift onset, such as floods, earthquakes or volcanic eruptions, and to those, such as climate change, whose onset was slow.

40. With regard to terminology, he said that the reference in paragraph 36 to the “dual-axis approach”, encompassing the rights and obligations of States “vertically” in relation to persons within a State’s territory and control, placed undue emphasis on the State’s sovereignty over its nationals and might be misconstrued to imply some sort of superiority over persons who were potential victims of disasters. The report also appeared to place too much emphasis on mitigation in the sense of preparedness, namely measures taken prior to the onset of a disaster, whereas such measures were important also in the response and post-disaster phases. In draft

article 16, paragraph 1, after the word “measures”, he proposed inserting the phrase “within the capacity of each State” and redrafting the rest of the sentence to clarify what was meant by the expression “responsibilities and accountability mechanisms”.

41. With regard to draft article 5 *ter*, he recalled that the meaning of the duty to cooperate in the pre-disaster phase in order to reduce the risk of disasters was not the same for a natural disaster as for an industrial one, and the nature of the duty might vary, depending on whether the disaster had a sudden or a gradual onset. More generally, he questioned the necessity of adopting a separate draft article for cooperation during the pre-disaster phase, since article 5 was comprehensive enough to apply to all three disaster phases.

42. Mr. FORTEAU said that unlike other members of the Commission, presumably, he was not in the least bit troubled by the excessive length of the report compared to the brevity of the two draft articles proposed. The formulation of general rules on prevention was entirely appropriate, given that the two new texts covered all disasters, both natural and human-made, justifying the development of a single standard sufficiently flexible to cover all types of disasters. Moreover, the Commission’s definition of disasters in draft article 3, adopted in 2010, was limited to the most serious disasters: calamitous events resulting in great human suffering and large-scale damage. In such situations, international human rights law and international environmental law converged in order to protect the vital interests of the international community. The Special Rapporteur’s approach also had the advantages of fitting easily into the existing framework of general international law and of being in line with the Commission’s previous work on the topic. Nevertheless, the two articles proposed were too succinct: they needed to be fleshed out and, in some places, reformulated.

43. The wording of article 16 was problematic in that prevention was both its overarching subject and one of its components. The formulation failed to draw the necessary distinction between mitigation of a disaster, meaning prevention of its occurrence, and mitigation of the effects of a disaster, meaning reduction of the effects of a disaster following its occurrence. It was difficult to know which meaning was intended. Moreover, the types of preventive measures undertaken before a disaster and aimed at reducing its potential effects, such as seismic stability regulations, were not covered by the phrase “to reduce the risk of disasters” and could better be described as reduction of the effects of disasters. There was also the fact that efforts to mitigate the effects of a disaster were not limited to the field of prevention, but were also employed in the post-disaster phase. Moreover, in paragraph 48 of his report, the Special Rapporteur associated mitigation with a legal obligation in respect of disaster relief, and not with the duty of prevention. Those considerations confirmed his view that mitigation of the effects of a disaster was not restricted to prevention but extended beyond it, perhaps justifying the inclusion of a separate draft article on the subject.

44. Article 16 failed to include several aspects of practice cited in paragraphs 38 and 51 to 53 of the

report, such as the temporary evacuation of people and property, effective deterrence of threats of disaster and the need to take preventive and necessary measures when a natural hazard was “clearly identifiable”, the latter threshold being more stringent than the Special Rapporteur’s “foreseeability requirement”. Draft article 16 might also include a more explicit reference to an obligation to adopt national legislation in order to give effect to the duty to prevent. Lastly, something should be added about the regime for the duty to prevent: what constituted a violation of that duty and what the consequences might be in terms of the State’s responsibility. Although the Special Rapporteur touched on the matter briefly in paragraph 161 of his report, it merited fuller consideration. The questions that might be raised included what constituted a causal link in the event of a disaster, whether a State could be blamed for not having foreseen or prevented a disaster and what type of reparation might be envisaged. Although certain Commission members and States preferred to focus on cooperation, if the duty to prevent was to be defined rigorously, those questions needed to be answered.

45. In principle, he had no problem with draft article 5 *ter*. However, the text was not specific about the kinds of measures that States must take to reduce the risk of disasters, and he questioned whether risk reduction was entirely synonymous with prevention. The fact that mitigation had not been covered in either draft article 5 *bis* or 5 *ter* was undoubtedly a gap that needed to be filled.

46. In conclusion, he pointed out the potential inconsistency in the fact that draft articles 6, on humanitarian principles in disaster response, and 7, on human dignity, were currently formulated solely in terms of disaster response, and not of prevention.

47. With those comments, he supported the referral of the two draft articles to the Drafting Committee.

48. Mr. TLADI said that he had some doubts concerning the grounds on which Mr. Forteau was advocating a single standard for both natural and human-made disasters, namely that this was consistent with the Commission’s previous work on the topic and with general international law. He was not convinced that that was indeed the case.

The meeting rose at 1.05 p.m.

3177th MEETING

Wednesday, 10 July 2013, at 10.05 a.m.

Chairperson: Mr. Bernd H. NIEHAUS

Present: Mr. Caflisch, Mr. Candiotti, Mr. Comissário Afonso, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Gevorgian, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kittichaisaree, Mr. Laraba, Mr. Murase, Mr. Murphy, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Šturma,

Mr. Tladi, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood.

Cooperation with other bodies (*continued*)

[Agenda item 13]

STATEMENT BY THE REPRESENTATIVES
OF THE COUNCIL OF EUROPE

1. The CHAIRPERSON welcomed the representatives of the Council of Europe, Ms. Lijnzaad, Chairperson of the Committee of Legal Advisers on Public International Law (CAHDI), and Ms. Olsen, Secretary of CAHDI. He said that the Commission attached great importance to its cooperation with the Council of Europe, particularly with CAHDI, and he invited Ms. Lijnzaad to present the activities undertaken by CAHDI since the Commission’s last session.

2. Ms. LIJNZAAD (Council of Europe) expressed her appreciation for the fact that every year, the International Law Commission invited CAHDI to provide an update on its work. CAHDI was an intergovernmental committee that brought together, twice a year, the legal advisers on public international law of the Ministries of Foreign Affairs of member States of the Council of Europe as well as of a significant number of observer States and international organizations. CAHDI examined questions related to public international law, conducted exchanges, coordinated the views of member States and provided opinions at the request of the Committee of Ministers or other steering committees.

3. At its forty-fourth meeting, CAHDI had adopted comments on Recommendation 1995 (2012) of the Parliamentary Assembly entitled “The International Convention for the Protection of All Persons from Enforced Disappearance”.⁸⁴ In that Recommendation, the Parliamentary Assembly had invited the Committee of Ministers to consider launching preparations for negotiations in the framework of the Council of Europe on a European convention on enforced disappearance, pointing out four shortcomings in the International Convention for the Protection of All Persons from Enforced Disappearance. In its comments,⁸⁵ CAHDI had stressed that this Convention was a recent text and that the shortcomings had already been pointed out during discussions with the United Nations. Many speakers had also stressed that such an initiative might be seen to undermine efforts to promote universal acceptance of the Convention, which, on the contrary, should be supported. In its reply⁸⁶ to the Recommendation of the Parliamentary Assembly, the Committee of Ministers had taken into account the comments made by CAHDI.

⁸⁴ Adopted on 9 March 2012 (available from <http://assembly.coe.int>, “Documents”).

⁸⁵ CAHDI, meeting report, 44th meeting, Paris 19–20 September 2012 (CAHDI (2012) 20), appendix V (available from www.coe.int).

⁸⁶ CAHDI, document CM/Del/Dec(2013)1159, appendix 9 (available from www.coe.int).