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Summary record of the 3180th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
2013, vol. I

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25. On the other hand, he agreed that international environmental law was a secondary source for the general duty to take measures for disaster risk reduction, and that the basic concepts of damage, harm, risk, prevention and precaution should be clearly defined. However, while international environmental law was a secondary aspect of the topic under consideration, which was focused on the protection of persons, it was pertinent as far as disasters with a transboundary dimension were concerned, and by reason of its function of protecting the collective assets of humanity.

26. Draft article 16 should not focus too narrowly on certain specific means of disaster risk reduction, but rather should present them as examples which “in particular” might be “appropriate measures” to be taken by States.

27. In conclusion, he agreed with Mr. Forteau that it was necessary to adopt wording which, while establishing a uniform standard, left enough space for States to determine their priorities and the “appropriate” measures they intended to take.

28. Mr. CANDIOTI, commending the quality of the Special Rapporteur’s work and his detailed analysis of practice, agreed with other members that the topic was highly specific and of immediate concern to the international community. He fully supported the inclusion of the principle of prevention and welcomed the way it was presented in the draft articles. The analysis of the link between the topic under consideration and international human rights law seemed particularly pertinent, as did the analysis of the link between the topic and international environmental law, which, quite rightly, was not limited simply to the issue of transboundary harm.

29. The definition of disasters agreed by the members of the Commission covered natural and human-made disasters, and it was essential to take account of that dual dimension, as illustrated by the issue of climate change. Examples of recent disasters showed that natural contributing factors were very often supplemented by human factors.

30. He believed that it was essential to consider whether the principle of prevention was a general principle of law or merely a principle of environmental law. There were two aspects to the implementation of that principle, both of which were dealt with in the report: one related to the occurrence of the disaster itself and the other to its prevention or the mitigation of its effects. The work that the Commission intended to undertake on the protection of the atmosphere, a topic included in its long-term programme of work, would be particularly relevant in terms of disaster risk reduction.

31. He approved the substance of the draft articles as a whole. However, he suggested rewording article 16, paragraph 1, so as to address not only States specifically or potentially affected by disasters but all States in general. The concept of “accountability” also seemed to raise some questions in that it could not be translated into Spanish or French without reference to the idea of “responsibility”, which covered a variety of aspects, including aspects of a moral nature. While the term “accountability” should

not necessarily be excluded, its scope should therefore be defined in the context of draft article 16. In fact, it might be preferable to refer to the concept in the context of the measures mentioned in paragraph 2 of the article, which in any case could be complemented by additional examples of prevention measures drawn from the report.

32. The wording of article 5 *ter* on cooperation should also be clarified, and prevention and preparedness should be mentioned in addition to risk reduction.

33. In conclusion, he suggested that the time had perhaps come to organize the draft articles into chapters so as to make subsequent work easier.

The meeting rose at 12.35 p.m.

3180th MEETING

Tuesday, 16 July 2013, at 10.05 a.m.

Chairperson: Mr. Bernd H. NIEHAUS

Present: Mr. Cafilisch, Mr. Candiotti, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Gevorgian, Mr. Gómez Robledo, 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 REPRESENTATIVE OF THE
INTER-AMERICAN JURIDICAL COMMITTEE

1. The CHAIRPERSON welcomed Mr. Pichardo Olivier, member of the Inter-American Juridical Committee (IAJC), and invited him to address the Commission.

2. Mr. PICHARDO OLIVIER (Inter-American Juridical Committee) said that the IAJC, which was headquartered in Rio de Janeiro, Brazil, served as the advisory body of the Organization of American States (OAS) on juridical matters under the Charter of the Organization of American States. After providing an overview of the functions and current membership of the Committee, which was composed of 11 jurists, he said that in 2012, the IAJC had held two regular sessions and had adopted final reports⁹⁸ on a number of topics. Incorporated in the reports were a statement of principles for privacy and personal data protection in the Americas, a guide to principles regarding

* Resumed from the 3177th meeting.

⁹⁸ See the annual report of the Inter-American Juridical Committee to the forty-third regular session of the General Assembly of the OAS (OEA/Ser.Q CJI/doc.425/12), of 10 August 2012.

cultural diversity in the development of international law and a guide to principles of access to justice in the Americas. The latter contained proposals on the training and selection of judges, the modernization of the judicial system, observance of due process, alternative justice mechanisms and the recognition of multiculturalism.

3. In its reports, the IAJC had also adopted a draft model act on simplified stock companies, which was based on a successful Colombian initiative and proposed a lower-cost hybrid form of corporate organization that streamlined formalities for incorporation. Another document included in the reports was a guide for regulating the use of force and protection of people in situations of internal violence that did not qualify as armed conflict. The guide provided a legal framework for responding to such violence and addressed the legitimate use of force and respect for non-derogable rights. Noteworthy among the principles contained therein were the following: democracy was indispensable to the exercise of fundamental freedoms; States had the duty to provide protection and security to persons within their territory who were threatened by violence; when law enforcement officials used force, they must at all times respect the principles of legality, necessity and proportionality; and States had to guarantee the right to humane treatment of persons involved in or affected by situations of internal violence.

4. The IAJC had designated rapporteurs for four new topics: general guidelines for border integration, to develop legal models to facilitate bilateral integration; immunity of States, to clarify the status of public officials and international organizations in transnational litigation; electronic customs receipts for agricultural products, involving the modernization of customs procedures; and inter-American judicial cooperation, to further relations between judicial personnel in OAS member States and disseminate decisions handed down by their judicial authorities.

5. At its second regular session in 2012, the IAJC had decided to continue in 2013 its work on sexual orientation, gender identity and expression and on model legislation on the protection of cultural property in the event of armed conflict. At its March 2013 session, it had completed its report on the model legislation, which set standards for general, specific and heightened protection of cultural assets and proposed measures for signalling, identifying and listing such assets. It also addressed questions relating to attribution of responsibility for damages and monitoring compliance with obligations. The report had been submitted to the OAS Permanent Council. The IAJC had also decided to submit to the Council a preliminary report on sexual orientation, gender identity and expression, which explained the legal implications of those notions and incorporated principles of non-discrimination derived from national, regional and universal instruments. Information had been requested from OAS member States on relevant national legislation and case law.

6. Among the items to be addressed during the forthcoming session of the IAJC, in August 2013, were border integration, immunity of States and international organizations, and electronic customs warehouse receipts for agricultural products. New items on the agenda included inter-American judicial cooperation, corporate

social responsibility in the area of human rights and the environment in the Americas. With regard to the issue of sexual orientation and the new item on corporate responsibility, the IAJC had requested information on existing national legislation and case law. It had also sent out a questionnaire in order to determine how member States' legal systems dealt with the immunities of States and international organizations.

7. With a view to promoting international law in the region, the thirty-ninth Course on International Law had been held in Rio de Janeiro, Brazil, from 6 to 24 August 2012. Its main theme had been law and present-day international relations. The theme of the fortieth edition of the Course, which would be held alongside the August 2013 meeting of the Inter-American Juridical Committee, would be 40 years of promoting international law.

8. In keeping with the objective of establishing more direct forms of cooperation between the IAJC and the Commission, he invited the latter to send one of its members to address a plenary meeting of the IAJC during its forthcoming session in August 2013.

9. Mr. CAFLISCH asked whether, in addressing issues related to jurisdictional immunities of States, the Committee intended to base its work on the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property, the text of which had been elaborated by the Commission,⁹⁹ and whether it intended to encourage OAS member States to ratify it.

10. Mr. CANDIOTI said that the law of jurisdictional immunities was multifaceted and had been studied extensively by the Commission. He asked whether, in its work on that topic, the IAJC planned to address the topic from a general angle or to review a specific aspect of immunity that was covered by existing international treaties.

11. Ms. JACOBSSON asked how the work of the IAJC on the development of model legislation concerning the protection of cultural property in the event of armed conflict would relate to the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Protocols.

12. Mr. PICHARDO OLIVIER (Inter-American Juridical Committee) said that the Committee had taken up the topic of immunity of States and international organizations only recently and was at the information-gathering stage, having just sent out questionnaires to the respective Ministries of Foreign Affairs of OAS member States. Its goal was to take stock of existing national legislation, with a view to its harmonization, as well as to remove obstacles to accession to the United Nations Convention on Jurisdictional Immunities of States and Their Property. Most OAS member States had not ratified that instrument, and some lacked any related legislation whatsoever. The work of the IAJC was not aimed at drafting a new convention on the immunity of States and international organizations, but rather at encouraging the development in the Americas of clear and harmonized rules. The IAJC had

⁹⁹ *Yearbook ... 1991*, vol. II (Part Two), pp. 13 *et seq.*, para. 28.

just begun to develop model legislation concerning the protection of cultural property in the event of armed conflict, so he could not provide any information on progress yet.

13. Mr. KITTICHAISAREE, referring to the efforts of the Working Group of the Sixth Committee on the scope and application of the principle of universal jurisdiction, enquired about the position of the IAJC on the subject. Was universal jurisdiction justifiable under international law? Did it have a legal basis under customary international law? He also enquired as to the position of the IAJC on the current state of international law on asylum and the course that its future development should take.

14. Mr. SABOIA said that the approach of the IAJC differed from that of the Commission in that its topics were formulated more as progressive development than as codification. He requested additional information on the topic of privacy and the protection of personal data in the Americas.

15. Mr. MURPHY noted that the IAJC topic of corporate social responsibility and human rights had strong implications for the conduct of non-State actors. He would be interested to know what the IAJC envisaged as the final product of its work.

16. Mr. PICHARDO OLIVIER (Inter-American Juridical Committee) said that there was a long-standing tradition in Latin American countries of looking favourably on the issue of asylum; they even recognized forms of asylum that were not recognized in other parts of the world, such as diplomatic asylum. All OAS member States had acceded to international treaties governing asylum; therefore, efforts should focus on harmonizing the ways in which those treaties were implemented in the various States.

17. In its work on the two topics of privacy and personal data protection and of corporate social responsibility and human rights, the aim of the IAJC was not to formulate new conventions but rather to collect information on whatever national legislation member States had enacted in those areas. After the respective rapporteurs had prepared their preliminary reports, non-binding guidelines would be submitted for approval to the OAS General Assembly, which would determine the form in which OAS member States would apply them.

18. Mr. PETRIČ said that national, regional and international courts had defined what was meant by the privacy of natural persons, but the privacy of legal persons represented a large grey area. He asked whether that aspect of privacy was being considered in the IAJC study. He also asked whether its work on cultural diversity focused on or included indigenous cultures.

19. Mr. PARK commended the IAJC for its work on the guide for regulating the use of force and protection of people in situations of internal violence that did not qualify as armed conflict, which clarified a number of grey areas to which international humanitarian law did not apply. The question, however, was whether it was in fact possible to balance the contradictory interests of protecting democracy

and protecting national security. Noting that the work of the IAJC on sexual orientation would have a major social and political impact, he asked whether it had had difficulty in reaching consensus on that issue.

20. Mr. GÓMEZ ROBLEDO asked what effect would be given to the IAJC report on situations of internal violence that did not qualify as armed conflict, an issue also being dealt with by the ICRC. He suggested that it would be helpful for the IAJC to share such projects with other interested bodies.

21. Mr. PICHARDO OLIVIER (Inter-American Juridical Committee) said, with regard to privacy and personal data protection, that the intention was to present a statement of principles for approval by the OAS General Assembly. He would pass on the comments made by the members of the Commission to the rapporteurs on the topic.

22. One of the objectives of the work of the IAJC on cultural diversity was to take account of the indigenous groups in the Americas and how their human rights, including those related to their languages, beliefs, customs and traditions, should be protected. The draft guide to principles had been proposed to the OAS General Assembly but would not be publicized until a decision on it had been taken.

23. The IAJC had had no difficulty in reaching consensus on its preliminary report on sexual orientation, gender identity and expression.

24. Regarding situations of internal violence that did not qualify as armed conflict, it was true that the ICRC had also dealt with the issue, but given the sensitivity of the topic, it had not yet adopted a final proposal. Cases of such violence arose frequently in the Americas, and the IAJC had been of the view that it, too, should make recommendations. Its guide was intended to encourage States to create domestic norms to ensure that situations of internal violence were resolved in line with certain established principles.

25. Ms. ESCOBAR HERNÁNDEZ, referring to the work of the IAJC on the immunity of States and international organizations, asked whether it had considered carrying out a parallel exercise on the immunity of State officials from foreign criminal jurisdiction. The Commission would certainly welcome information on the situation in the Americas in that regard. She asked at what stage the IAJC was in its work on asylum and requested clarification of whether the intention was to emphasize diplomatic asylum, which was the speciality of the inter-American system, or rather to establish the links between that system and the general system of territorial asylum. Had the issue of asylum been considered in connection with the phenomenon of refugees? Noting that many of the issues dealt with by the IAJC were also being addressed by other legal bodies and international organizations, she asked whether any cooperation mechanisms had been established.

26. Sir Michael WOOD joined others in emphasizing the importance of the United Nations Convention on

Jurisdictional Immunities of States and Their Property and expressed the hope that the Committee would urge States to consider ratifying that instrument. In his view, the immunity of international organizations was a separate, but perhaps related, issue. At a recent conference at the University of Leiden, the general theme had been the need, not to change the existing regime for immunity of international organizations, but to improve their internal mechanisms for ensuring accountability. He would be interested to know the prospects for consideration of that subject by the IAJC. He asked whether it systematically included an item on the work of the Commission as part of its agenda.

27. Mr. CANDIOTI said that he would also be interested to know the position of the IAJC on the principle of universal jurisdiction under discussion by the Sixth Committee. He encouraged the IAJC to give its opinion on the activities of the Commission; the Commission would also welcome proposals on new topics to be included on its agenda.

28. Mr. VÁZQUEZ-BERMÚDEZ, referring to the work of the IAJC on the protection of cultural property in the event of armed conflict, said that he would be interested to know more about the format for cooperation with the ICRC. Did the IAJC receive contributions from other organizations, including NGOs, on that and other issues?

29. Mr. PICHARDO OLIVIER (Inter-American Juridical Committee) said that there were currently no plans to address the issue of immunity of State officials from foreign criminal jurisdiction. The IAJC made a distinction between asylum and refugee status. In the region, the Cartagena Declaration on Refugees¹⁰⁰ had been adopted to clarify the situation, but it had not been signed by all countries and, in any case, was not binding on States. In working on the issue of asylum, the IAJC cooperated closely with the Office of the United Nations High Commissioner for Refugees.

30. The IAJC operated on the basis of consensus. Its method of work was to assign topics to rapporteurs, and if consultation with OAS member States was required, a questionnaire was sent to them in order to collect the relevant information. However, the response to such questionnaires was not always as prompt or satisfactory as the Committee would like. In general, the IAJC endeavoured to maintain regular interaction with member States through their missions in Washington, D.C.

31. He agreed that the United Nations Convention on Jurisdictional Immunities of States and Their Property was a major achievement and should ideally be ratified by States. In fact, one of the objectives of the IAJC project on the immunity of States and international organizations was to understand the reasons for non-ratification. Some States in the region were calling for modification of the immunity regime for international organizations, but he

would pass on Sir Michael's suggestion about instead improving internal accountability mechanisms.

32. The annual visit of the IAJC to the Commission was intended to inform the Commission of the issues being dealt with, to forge closer ties between the two bodies and to avoid duplication of effort. Unfortunately, the IAJC did not have a great deal of information on the Commission's work. He invited members of the Commission to participate in the sessions of the IAJC, to make suggestions and to report on their own work.

33. With regard to the discussions in the Sixth Committee on the principle of universal jurisdiction, he said that States determined their own positions and expressed them at the State level, not through the IAJC.

34. The model law on cultural property in the event of armed conflict had been drafted taking into account the Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Protocols and in close cooperation with the ICRC.

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 (*concluded*)

35. Mr. VALENCIA-OSPINA (Special Rapporteur), summing up the discussion on his sixth report on the protection of persons in the event of disasters (A/CN.4/662), recalled that, based on proposals made in his second to fifth reports, the Commission had been able so far to adopt 16 draft articles, numbered 1 to 15 and 5 *ter*.¹⁰¹ His conception of the topic, outlined in his preliminary report in 2008,¹⁰² had been endorsed by the Commission, an endorsement repeatedly echoed in the Sixth Committee. In all of his reports, he had seen his task as to lay before the Commission all the elements of legal significance that he could identify, in order to facilitate an informed outcome. That was particularly important in the present case when the subject matter was truly novel, and work on it was handicapped by a paucity of legal precedent.

36. The sixth report highlighted the wide spectrum of legal elements that needed to be reviewed by the Commission in order to be incorporated in draft articles. Although the views expressed during the debate had ranged from one extreme of that spectrum to the other, all speakers had unanimously advocated referral of the new texts proposed in his sixth report, namely draft articles 16 and 5 *ter*, to the Drafting Committee. He therefore formally requested their referral for the Drafting Committee's consideration, based on the comments made in plenary.

¹⁰⁰ Adopted at the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama: Legal and Humanitarian Problems, held in Cartagena, Colombia, 19–22 November 1984; the text of the conclusions of the declaration appears in the annual report of the Inter-American Commission on Human Rights (OEA/Ser.L/V/II.66 doc. 10, rev. 1), chap. V, and is also available from www.acnur.org/cartagena30/, "Documents".

¹⁰¹ *Yearbook ... 2009*, vol. II (Part One), document A/CN.4/615 (second report); *Yearbook ... 2010*, vol. II (Part One), document A/CN.4/629 (third report); *Yearbook ... 2011*, vol. II (Part One), document A/CN.4/643 (fourth report); and *Yearbook ... 2012*, vol. II (Part One), document A/CN.4/652 (fifth report).

¹⁰² *Yearbook ... 2008*, vol. II (Part One), document A/CN.4/598.

37. Several drafting suggestions had been made in respect of draft article 16, paragraph 1, including a change in its title. Regarding paragraph 2, the question of whether to add other examples of “measures” to the three already given had been raised. Most members had been in favour of his suggestion to incorporate draft article 5 *ter* in either draft article 5 or draft article 5 *bis*. He was receptive to many of the other drafting suggestions made.

38. In renaming the topic “Protection of persons” in 2008,¹⁰³ the Commission had clearly intended to give its treatment a markedly human rights perspective. However, as he had pointed out in his preliminary report, a protection regime often extended to the protection of property and the environment.¹⁰⁴ The Commission’s response to his request for guidance on the extent to which property and the environment ought to be covered was found in the definition of disaster in draft article 3: a disaster was an event that caused harm not only to individuals, but also to property and the environment. In adopting that definition, the Commission had been fully aware of the distinctions between natural and human-made disasters and sudden-onset and creeping disasters, for example. However, in its definition of disaster, no distinction was drawn between various kinds of disasters, or their diverse causes. In not proposing separate legal regimes for different types of disaster, therefore, he had strictly followed the path traced by the Commission.

39. International human rights law and international humanitarian law had from the outset been identified as sources of inspiration for the development of legal rules relating to the protection of persons in the event of disasters. In discussing human rights law in the context of protecting persons during the pre-disaster phase, he had done nothing more than maintain consistency. In draft article 16, the term “appropriate measures” reflected the principle of due diligence, drawn as much from human rights law as from international environmental law. The adoption of such measures by a State had been identified by the European Court of Human Rights, in the *Budayeva and Others v. Russia* judgment, as a means of complying with the duty to prevent and mitigate disasters. Paragraphs 128 and 129 of that judgment had been usefully cited during the Commission’s debate. The phrase “to ensure that responsibilities and accountability mechanisms be defined and institutional arrangements be established”, in draft article 16, paragraph 1, was intended to reflect a State’s primary duty, as outlined in *Budayeva and Others v. Russia*, to put in place a legislative and administrative framework to facilitate the taking of “appropriate measures”. The purpose of using the words “responsibilities” in the plural and “accountability” in the singular was to indicate that they referred to procedures and arrangements within the domestic jurisdiction of the State and were unrelated to the State’s responsibility under international law. He agreed, however, that such nuances would be better placed in the commentary and that the text would gain from the introduction in paragraph 1 of an express reference to “legislation and regulations”, in conformity with the *Budayeva and Others v. Russia* judgment.

¹⁰³ *Ibid.*, vol. II (Part Two), p. 129, para. 218.

¹⁰⁴ *Ibid.*, vol. II (Part One), document A/CN.4/598, p. 153, para. 53.

40. Citing paragraphs 133 and 135 of that judgment, he said they provided additional evidence of the relevance of principles derived from environmental law to the legal regulation of protection at the pre-disaster phase. Environmental principles were also relevant on account of the definition of “disaster” in draft article 3: since a disaster comprised the harmful effects that such an event could have on the environment, the legal regulation of protection in the pre-disaster phase could scarcely be predicated on any branch of international law other than international environmental law. International environmental law was a much wider concept than the prevention of transboundary harm, which was simply a concrete manifestation of the larger field of the law. It was situated, in fact, on the horizontal axis of the dual axis he had proposed in 2008, whose validity he now reaffirmed.

41. In his sixth report he had dealt with the precautionary “principle”, because authoritative individuals and institutions characterized it as such. The Commission, too, had done so: for example, in paragraph (14) of the commentary to draft article 3 on prevention of transboundary harm from hazardous activities,¹⁰⁵ and in paragraphs (5), (6) and (7) of the commentary to draft article 10 of the same text.¹⁰⁶ In paragraph (5) of the commentary to draft article 12 of the final text on the law of transboundary aquifers, however, the Commission had referred to a precautionary “approach”.¹⁰⁷ Hence, while the Commission had accepted the applicability of the precautionary principle in the context of transboundary harm, it had referred indiscriminately not only to a principle but also to an approach. In discussing the precautionary “principle”, his sixth report had merely reminded the Commission of one of its own precedents.

42. If there was one principle that unquestionably informed the Commission’s entire project, it was the principle of sovereignty. That principle needed no restating in each of the individual provisions that would ultimately constitute an integrated set of draft articles. It was explicitly enshrined in draft articles 9 and 11, which were of general applicability.

43. As previous reports had shown, cooperation was imperative for effective and timely disaster relief. When providing such assistance, the sovereignty of the affected State had to be respected and safeguarded. Draft articles 5 and 9, read together, made that clear. The purpose of draft article 5 *ter* was to extend the general duty to cooperate to the pre-disaster phase. The principles of sovereignty and cooperation were general principles of law, but the effect given to them in different branches of international law might vary according to specific circumstances. That was also true of the basic principles of international humanitarian law underpinning the current draft articles and of the general principle of prevention which, as the Commission had noted, did not pertain exclusively to the realm of transboundary harm. In its memorandum,¹⁰⁸ the Secretariat had placed the principle of protection at the same level as a number of other humanitarian principles. The

¹⁰⁵ *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, p. 155.

¹⁰⁶ *Ibid.*, pp. 162–163.

¹⁰⁷ *Yearbook ... 2008*, vol. II (Part Two), p. 35.

¹⁰⁸ A/CN.4/590 and Add.1–3 (mimeographed; available from the Commission’s website, documents of the sixtieth session), para. 26.

Commission and the Secretariat had thus both recognized the existence of a legal principle of protection.

44. The terms “prevent”, “mitigate” and “prepare”, used in draft article 16, paragraph 1, had been drawn from the 2009 version of *Terminology on Disaster Risk Reduction* produced by UNISDR.¹⁰⁹ The terms were not mutually exclusive, and in some cases their meanings overlapped. The expression “appropriate measures”, in draft article 16, paragraph 2, referred to the innumerable practical measures that could be adopted, depending on the social, environmental, financial or cultural circumstances. They included, in addition to those mentioned in the sixth report, ecosystem management, drainage systems, contingency planning and the establishment of monitoring mechanisms. The three consecutive measures singled out in draft article 16, paragraph 2, were instrumental to the development and applicability of many, if not all, other measures. First, risk assessment concerned the generation of knowledge about hazards and vulnerability, without which no effective measures could be enacted. Next, the collection and dissemination of loss and risk information allowed all stakeholders to assume responsibility for their action and to determine priorities, while at the same time enhancing transparency and public security. Finally, early warning systems were vital in triggering the implementation of contingency plans and limiting exposure to hazards. The word “include” indicated that the list of possible measures could be widened. Examples of such measures would be provided in the commentary to draft article 16. The commentaries to all the texts adopted by the Drafting Committee would give a balanced account of the Commission’s reasoning in developing the draft articles.

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

[Agenda item 1]

45. Mr. TLADI (Chairperson of the Drafting Committee) announced the composition of the Drafting Committee on protection of persons in the event of disasters.

The meeting rose at 1 p.m.

3181st MEETING

Wednesday, 17 July 2013, at 10 a.m.

Chairperson: Mr. Bernd H. NIEHAUS

Present: Mr. Cafilisch, Mr. Candiotti, Mr. Comissário Afonso, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Gevorgian, Mr. Gómez Robledo, 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.

Tribute to the memory of Sir Ian Sinclair, former member of the Commission (*concluded*)*

1. The CHAIRPERSON said that Sir Ian Sinclair had been a prolific author, a great scholar and a true pillar of the Foreign and Commonwealth Office, where he had spent much of his career. His in-depth knowledge of the legal bodies of the United Nations and of the complex workings of international conferences had hugely enriched the work of the Commission, of which he had been a member from 1982 to 1986.

2. Sir Michael WOOD said that he had worked alongside Sir Ian for many of the years when he had been principal Legal Adviser to the Foreign and Commonwealth Office. He was perhaps best remembered today for his writings, notably his book on the Vienna Convention on the law of treaties,¹¹⁰ which had become a classic, cited before international courts and tribunals. Sir Ian had been particularly interested in State immunity: he had been much involved in the development of the European Convention on State Immunity and had given a masterly series of lectures on the law of sovereign immunity at The Hague Academy of International Law. In his book on the International Law Commission,¹¹¹ he had been quite critical of the working methods in use in the mid-1980s, but what shone through in all his writings and his career was his attachment to the Commission. Although he had spent 34 years at the Foreign and Commonwealth Office, he had also had great knowledge of the United Nations, particularly its legal bodies, as well as the law of the European Economic Community, having been a member of the delegation that had negotiated the treaty of accession to the European Communities of the United Kingdom. He had also pleaded in a number of cases before the International Court of Justice and had been an active participant in the Institute of International Law. He himself had learned a great deal from working alongside Sir Ian, as, he was sure, was the case for all those who had known him.

3. Mr. KITTICHAISAREE, speaking on behalf of the members of the Commission from Asia, expressed condolences to the family and friends of Sir Ian Sinclair, who would be sorely missed. International lawyers in Asia, like their counterparts in other regions, had benefited from his seminal work on the 1969 Vienna Convention. Sir Ian’s field of interests had also included the law of sovereign immunity, human rights law, international legal cooperation, diplomatic relations law and maritime boundary law, a field in which he had served as agent and legal counsel for the United Kingdom in the *English Channel* case. The world of international law was indebted to distinguished British lawyers like Sir Ian Sinclair, whose illustrious predecessors had included Hersch Lauterpacht, Gerald Fitzmaurice and Humphrey Waldock. He had discharged his responsibilities in the Commission with distinction, something emulated by his successors: Derek Bowett, Ian Brownlie and, of course, Sir Michael Wood.

* Resumed from the 3179th meeting.

¹¹⁰ *The Vienna Convention on the Law of Treaties*, 2nd ed. (Manchester, Manchester University Press, 1984).

¹¹¹ *The International Law Commission* (Cambridge, Grotius, 1987).

¹⁰⁹ Available from www.unisdr.org/we/inform/terminology/.

* Resumed from the 3175th meeting.