

Provisional

For participants only

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International Law Commission
Seventy-first session (second part)

Provisional summary record of the 3477th meeting

Held at the Palais des Nations, Geneva, on Wednesday, 10 July 2019, at 10 a.m.

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Present:

Chair: Mr. Hmoud (First Vice-Chair)

later: Mr. Šturma (Chair)

Members: Mr. Al-Marri
Mr. Argüello Gómez
Mr. Aurescu
Mr. Cissé
Ms. Galvão Teles
Mr. Gómez-Robledo
Mr. Grossman Guiloff
Mr. Hassouna
Mr. Huang
Mr. Jalloh
Mr. Laraba
Ms. Lehto
Mr. Murphy
Mr. Nguyen
Mr. Nolte
Ms. Oral
Mr. Park
Mr. Reinisch
Mr. Ruda Santolaria
Mr. Saboia
Mr. Tladi
Mr. Valencia-Ospina
Mr. Vázquez-Bermúdez
Mr. Wako
Mr. Zagaynov

Secretariat:

Mr. Llewellyn Secretary to the Commission

Mr. Hmoud, First Vice-Chair, took the Chair.

The meeting was called to order at 10.05 a.m.

Succession of States in respect of State responsibility (agenda item 6) (*continued*)
(A/CN.4/731)

Ms. Oral said that she wished to commend the Special Rapporteur on his logically structured, well-documented and concise third report (A/CN.4/731) and on his succinct and informative introductory statement. The memorandum by the Secretariat on the topic (A/CN.4/730) showed that most of the practice relating to succession of States took the form of international agreements relating either to succession in respect of treaties to which the predecessor State had been a party or succession in respect of property rights, archives and debts. Those two broad categories of succession were dealt with in the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1983 Vienna Convention on Succession of States in Respect of State Property, Archives and Debts, both of which had been drafted by the Commission.

She largely agreed with the Special Rapporteur's general approach, as set out in the seven-point description in paragraphs 17 to 23 of the report.

A number of delegations in the Sixth Committee had made suggestions regarding the final form of the Commission's work on the topic. Among the suggestions made were that the Commission should produce a set of draft conclusions, a set of draft guidelines, an analytical report or a set of model clauses to be used by States in agreements on succession.

In that connection, it should be noted that State practice on the topic was limited and was in any event probably not accompanied by *opinio juris*. Indeed, it was unlikely that the States that had made the reparations cited as examples in the report had done so because they had considered themselves bound by a legal obligation in that regard. As Mr. Reinisch had noted, it was more likely that those reparations had been made as a result of a political bargain or as *ex gratia* payments based on other non-legal considerations. As the proposed provisions could hardly be said to represent a codification of customary international law, she, like Mr. Aurescu, wondered whether they should take the form of draft articles.

The Special Rapporteur had provided a very thorough and detailed overview of various judicial decisions and examples of State practice in support of each of the draft articles, but had been forced to make leaps of logic in order to make some of those examples fit his argument. For instance, although the International Court of Justice had not delivered a final judgment in *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, which had been settled without any admission of responsibility by Australia, the Special Rapporteur cited that case as an example of an "implicit" recognition by the Court of the right of a new State to submit a claim. In her view, the Special Rapporteur had overstated the Court's position.

With regard to chapter III of the report, on claims for reparation in different categories of State succession, she broadly agreed with the Special Rapporteur's decision to divide the draft articles into two groups, one covering cases of State succession where the predecessor State continued to exist and the other covering cases where the predecessor State ceased to exist. That format was acceptable, as the general rule of non-succession in respect of State responsibility, subject to any agreement to the contrary between the parties, was the point of departure in all cases. However, in practice, significant differences could be observed even within the same category of State succession.

Draft article 12, which addressed three specific situations in which the predecessor State continued to exist, was applicable only when two conditions were met, as set out in draft article Y: when the predecessor State had not received full reparation for the internationally wrongful act committed by the responsible State, and when the act had occurred before the date of succession. Although draft article 12 set out a general rule that seemed fairly uncontroversial, and the Special Rapporteur had provided examples in support of that rule, the provision was confusing in its current form. One solution might be to begin paragraph 1 with a statement of the general rule of non-succession in respect of rights and obligations and to place the three subparagraphs setting out the specific cases of

State succession after that opening sentence. However, the matter might be better left to the Drafting Committee.

She agreed with other Commission members that the expression “may request” in paragraph 1 was rather weak and did not adequately articulate a general rule or clear exception. That was all the more problematic in view of the fact that paragraph 2 mirrored the structure of paragraph 1 and provided that the successor State “may request” reparation. Overall, the general rule of non-succession and the exceptions to that rule could be set out more clearly.

Draft article 12 (2) introduced the concept of “special circumstances”. However, reference was made in paragraph 22 of the report to “particular circumstances”, an expression that also appeared in draft articles 7 to 9. The use of those expressions should be standardized or, if applicable, the difference between them should be clarified.

The Special Rapporteur explained that such “particular circumstances” included the existence of a territorial or personal nexus or other considerations, such as unjust enrichment resulting from an internationally wrongful act or the determination of an equitable proportion for the purpose of distributing losses and reparation among several States. In its work on State succession in matters of State responsibility, the Institute of International Law used the term “special circumstances” in connection with the sharing of the consequences of an internationally wrongful act by both the predecessor and the successor State or States. The Institute referred to the sharing of consequences as an “exceptional solution”. Although, as Mr. Hassouna had noted, the Institute’s work was not binding on the Commission, she agreed with Mr. Park that it could serve as guidance. Her concern was that the Commission’s use of the expression “special circumstances” might give rise to confusion.

In his second report ([A/CN.4/719](#)), and in proposed draft articles 7 to 9, the Special Rapporteur emphasized the importance of the “direct link” between an act or its consequences and the territory of the successor State or States. However, that expression did not appear in the draft articles proposed in the third report. In proposed draft article 12 (2), for example, reference was made instead to situations in which the injury related to the part of the territory or the nationals of the predecessor State that had become the territory or the nationals of the successor State. Draft article 14 (2) provided that, in the event of the dissolution of a State, claims and agreements “should take into consideration a nexus between the consequences of an internationally wrongful act and the territory or nationals of the successor State, an equitable proportion and other relevant factors”.

The Special Rapporteur might wish to clarify the reasons for his decision to use the term “nexus”, which seemed broader in scope than “direct link”. In its work on State succession in matters of State responsibility, the Institute of International Law had included the requirement of an “intrinsic direct link” between the consequences of the wrongful act and the territory or the population of the successor State. In addition, the expression “other relevant factors” should be elaborated upon, at least in the commentary, for the sake of clarity. On a related point, it was stated in draft article 14 (2) that “equitable proportion” was one of the factors that should be taken into consideration. While she fully supported the Special Rapporteur’s objective of bringing considerations of equity into the area of State succession and State responsibility, she was not sure that draft article 14, and particularly its paragraph 2, provided adequate guidance to States in that regard. Once again, the work of the Institute of International Law could serve as a source of inspiration: in article 7 (2) of its resolution on State succession in matters of State responsibility, which concerned cases in which there was a plurality of successor States, the Institute provided a list of specific criteria that could be taken into account in order “to determine an equitable apportionment of the rights or obligations of the successor States”. Although she was not suggesting that the Commission should adopt those criteria, they offered a useful example, and she recommended that the Commission should take a similar approach.

The Special Rapporteur’s third report included a detailed and thoughtful discussion of the principles of diplomatic protection and continuous nationality. She was very sympathetic to the view that the rigid application of the principle of continuous nationality might give rise to inequitable outcomes. While the Commission had decided to retain the

rule of continuous nationality in the articles on diplomatic protection, as noted in paragraphs 115 and 116 of the report, it had not adopted a rigid approach. Indeed, in the commentaries to those articles, the Commission set out the reasons for its decision not to adopt a blanket rule. While acknowledging that the principle of continuous nationality served to prevent “nationality shopping” for the purpose of diplomatic protection, the Commission also noted, in the commentary to article 5, that exceptions should be allowed in order to accommodate cases in which unfairness might otherwise result. That would include cases involving changes of nationality in the event of State succession.

The text of draft article 15 was based on articles 5 (2) and 10 of the articles on diplomatic protection. Mr. Murphy’s concern that the draft article did not fully reflect the safeguards contained in article 5 (3) and (4) of the articles on diplomatic protection could be discussed in the Drafting Committee.

With regard to part three of the report, on the scheme of the draft articles, she agreed that the draft articles should be organized in a logical manner, and she had no objection to the order proposed by the Special Rapporteur.

Concerning future work, she looked forward to receiving the Special Rapporteur’s fourth report and hoped that the first reading could be completed by 2020. However, although the Special Rapporteur had not, in his first and second reports, addressed the forms that reparation could take, he had mentioned that he would at some stage address procedural and miscellaneous issues, including the plurality of successor States and the issue of shared responsibility, as well as issues concerning injured international organizations and injured individuals. She would appreciate clarification of the Special Rapporteur’s intentions in that regard, particularly in the light of his assertion, in paragraph 23 of the report, that it was “appropriate to consider the question of reparation without entering into specific forms of reparation”.

She recommended that draft articles 12 to 15 should be referred to the Drafting Committee.

Mr. Nolte, thanking the Special Rapporteur for his rich and thoughtful third report, said that he welcomed the Special Rapporteur’s intention to revert to the Commission’s usual method of preparing and adopting commentaries as soon as possible after the adoption of draft provisions, to ensure that States could follow and influence the Commission’s work.

With regard to the general approach taken in the report, he welcomed the Special Rapporteur’s responsiveness to the methodological concerns raised in previous debates, particularly the Special Rapporteur’s reaffirmation, in paragraph 19, that relevant State practice was diverse, context-specific and sensitive. However, like other members of the Commission, he believed that a substantial part of the State practice cited in the report did not support the Special Rapporteur’s interpretations. For the most part, he agreed with other members’ assessments of the cases cited by the Special Rapporteur. Most of those cases did not evidence an *opinio juris* in favour of a general rule relating to State succession, but instead constituted context-specific arrangements.

In paragraph 56 of the report, for example, the Special Rapporteur discussed the return by the Soviet Union to the German Democratic Republic of works of art and cultural property that had been “transferred by the Red Army in 1945 from Germany to the Soviet Union”. The case was described in the report as an example of “reparation (in the form of restitution) in connection with the end of the Second World War” during the existence of “the German Democratic Republic, a new State, created by secession from Germany”. Like other members of the Commission, he did not consider that to be an accurate description of the case. First, the Soviet Union had not regarded the return of the objects in question as an act of reparation in response to an internationally wrongful act because it had not regarded their transfer in 1945 as having been illegal. The German Democratic Republic had also not regarded the return of the objects as a form of reparation for an internationally wrongful act. Second, in the 1950s and 1960s, a large majority of States had not recognized the German Democratic Republic as a new State that had come into existence by an act of secession from Germany. For the purposes of the topic, it was not necessary to determine whether the transfer of works of art and cultural property by the Red Army in 1945 had indeed been an

internationally wrongful act, as Mr. Nguyen had said, or whether the German Democratic Republic had indeed been a new State in the 1950s and 1960s. The point that he wished to stress was that the States concerned had not regarded the matter as one that involved succession of States in respect of State responsibility. He therefore doubted that the case could be said to constitute a meaningful precedent in the context of the topic.

The Special Rapporteur also referred, in paragraph 131 of the report, to the 1952 Agreement between the State of Israel and the Federal Republic of Germany, whereby the Federal Republic of Germany had agreed, in the terms of the preamble, to “make good the material damage” which had resulted from the “unspeakable criminal acts” perpetrated against the Jewish people. According to the Special Rapporteur, some authors took the view that the Agreement confirmed the argument that the right to claim reparation for indirect damage suffered by a State could be subject to succession. However, he wondered whether the Special Rapporteur’s description of the Agreement was satisfactory for the purposes of the topic. After all, it was not a case of “succession of States” in the sense of draft article 2 (a), as provisionally adopted by the Drafting Committee, which defined that term as the replacement of one State by another in the responsibility for the international relations of territory. In addition, the nationality of the victims had played no role in the Agreement. The preamble to the Agreement explained that the State of Israel had “assumed the heavy burden of resettling so great a number of uprooted and destitute Jewish refugees from Germany and from territories formerly under German rule” and had on that basis “advanced a claim against the Federal Republic of Germany for global recompense” for the costs of the integration of those refugees. The Agreement thus represented a very important, but also very specific form of global compensation in a special case that could not easily, in his view, be seen as supporting a general principle relating to succession of States.

In paragraph 132 of the report, the Special Rapporteur noted that “the Federal Republic of Germany adopted in 2000 the Law on the Creation of a Foundation ‘Remembrance, Responsibility and Future’ and signed a joint statement with Belarus, the Czech Republic, Israel, Poland, the Russian Federation, Ukraine, the United States of America, the Foundation Initiative of German Enterprises and the Claims Conference, which is a Jewish organization”. That law and the joint statement were the basis for the payment by the Federal Republic of Germany and by German companies of approximately €5 billion, through a difficult mechanism of distribution, to victims of forced and slave labour imposed upon them by the Nazi regime. The Special Rapporteur noted that, “in this statement, Germany ‘accepted that these States could negotiate a reparation agreement on behalf of individuals which did not have their nationality at the time the damage occurred’”.

That assessment of the Special Rapporteur gave rise to two comments. First, the sentence in the report according to which Germany “accepted that these States could negotiate a reparation agreement” was placed within quotation marks, which might give the impression that it was a quotation from the joint statement. However, it was in fact a quotation from a book by Patrick Dumberry and thus reflected that author’s interpretation of the joint statement. Second, and more importantly, in the joint statement the participants acknowledged “the intention of both the Government of the Federal Republic of Germany and German companies to accept moral and historical responsibility arising from the use of slave and forced labourers, from property damage suffered as a consequence of racial persecution and from other injustices of the National Socialist era and World War II”, and recognized “that the establishment of the Foundation does not create a basis for claims against the Federal Republic of Germany or its nationals”. The joint statement also provided that payments were to be made irrespective of the nationality of the applicants.

It was thus not clear that the signatories to the statement had conceived of the payment of compensation for forced and slave labour during the National Socialist era as a matter of State succession in respect of State responsibility. Rather, they seemed to have made a context-specific special arrangement that transcended the confines of State succession and nationality. It was true that the case had involved the participation by territorial successor States in a claim for a form of compensation for their nationals. However, he doubted that it evidenced an *opinio juris* that affected traditional general rules relating to the nationality of claims.

His intention in focusing on those three cases was not to downplay or revisit important issues relating to the horrific and shameful National Socialist past of Germany, which had been addressed in various and mostly very complicated agreements. In his view, those three cases confirmed the Special Rapporteur's statement that relevant State practice was diverse, context-specific and sensitive. The Commission should use such cases as examples only if their significance for the solutions being proposed was clear.

With regard to the general propositions contained in the report, he wished to express his agreement with the points made variously by Mr. Aurescu, Mr. Murphy and Mr. Reinisch and to make a few additional comments.

First, the Special Rapporteur noted in paragraph 19 of the report that the inconclusiveness of State practice did not allow the existence of the "clean slate" principle to be asserted as a legal basis governing the relations between States in terms of the topic at hand. However, that very inconclusiveness was a reason for the Commission to be particularly careful when proposing draft articles. One way in which it could do so was to state clearly that it was engaged in an exercise of progressive development. Indeed, in that same paragraph of the report, the Special Rapporteur stated that the Commission's approach clearly met the criteria for such an exercise.

Second, the Special Rapporteur explained in paragraph 34 of the report that he was not asserting any "automatic succession to rights and obligations arising from internationally wrongful acts", as would result from "an automatic operation of rules of international law". Instead, the Special Rapporteur was proposing that a successor State should have the possibility of raising, with the wrongdoing State, the issue of reparation of injury caused to the predecessor State. That distinction between a substantive legal claim of succession to rights or obligations and the procedural possibility to "seek reparation" was indeed important.

Like Mr. Murphy, Ms. Oral and Mr. Reinisch, however, he wondered whether that distinction was useful in the context of the topic, and he doubted that the Special Rapporteur had actually upheld it. Although the Special Rapporteur wished to nuance the sharp line traditionally drawn between an automatic rule of non-succession and an automatic rule of succession, asking whether a successor State had the possibility "to raise the issue of reparation of injury caused to the predecessor State" did not do away with the original question of which State actually had a right to reparation in a particular case. The fact that a successor State might have the possibility to "raise the issue of reparation" did not mean that the predecessor State no longer had that possibility. The question of which State took precedence with regard to a substantive claim could be resolved only if the States concerned arrived at an agreement. But was there a rule that determined, in the event that a court was competent to adjudicate the matter, whether the successor State or the predecessor State was entitled to reparation from the responsible State? There was a risk that that question would be overlooked as a result of the shift of focus from a substantive rule of succession to the procedural possibility of seeking reparation. In addition, the recognition that a successor State might have the possibility to claim reparation did not establish that it was entitled to reparation in cases where the predecessor State no longer existed.

It was unclear what purpose was served by recognizing a procedural position of successor States instead of identifying a general rule or specific rules of succession in respect of the substance of the claims in question. If there was no connection between the procedural position and the substance of the claim, different claimants would be able to seek reparation and the difficulty of determining entitlement would remain. However, if there was a connection between them, it should be clearly set out, particularly for the purpose of determining which State among several was entitled to reparation. The Special Rapporteur referred at times to the "possibility" of raising a claim and, at other times, as in paragraph 60, to States' being "entitled to reparation". Mr. Murphy had rightly noted that the report's use of the phrase "may request reparation" was ambiguous and inconsistent. Instead of evading the question of who was entitled to reparation in a case of State succession by recognizing only procedural "possibilities to claim", the Commission should, in his view, more openly make proposals aimed at progressively developing the law on

succession of States in respect of State responsibility, as had been suggested by Mr. Aureescu.

Lastly, he sympathized with the general policy position that, in cases of State succession, the rules of international law should, as far as possible, not be applied in such a way that “no State would be entitled to seek redress against the State responsible” and that the internationally wrongful act would remain unrepaired. However, in some situations, there were good reasons why a successor State could not claim reparation from a State that was responsible for an internationally wrongful act. As in other legal systems, formal conditions such as legal personality and continuity might be relevant. The Commission should not ignore the purpose of such conditions by framing them as “positivist” and claiming that they represented a “traditional” rather than a “modern” approach. In his view, relevant State practice was diverse, context-specific and sensitive. That practice was thus more apt as a basis for formulating recommendations that took best practices into account than for proving the existence of a new general approach or generally applicable rules. The Commission should seek to make recommendations of that kind with a view to progressively developing the law.

He supported the referral of all the proposed draft articles to the Drafting Committee, on the understanding that it would have the freedom to modify them substantially, as had been the case in the previous two years. He would then make more detailed comments on the various draft articles proposed.

The meeting was suspended at 10.45 a.m. and resumed at 12.15 p.m.

Mr. Šturma took the Chair.

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

Visit by the representative of the Inter-American Juridical Committee

Ms. Correa Palacio (Chair of the Inter-American Juridical Committee) said that the Inter-American Juridical Committee, as one of the principal organs of the Organization of American States (OAS), served as an advisory body to OAS on juridical matters, promoted the progressive development and the codification of international law, studied juridical problems related to integration and sought to harmonize the legislation of the different member States, bearing in mind their various legal systems and traditions. It was composed of 11 jurists who were nationals of OAS member States and had been elected by the OAS General Assembly.

The Committee had held two regular sessions in 2018 and had adopted two important guides. The first, on the jurisdictional immunities of international organizations, offered 10 guidelines on matters such as the objective, scope and limits of jurisdictional immunities, dispute resolution mechanisms, immunity from enforcement and the waiving of jurisdictional immunity. It took account of the best practices of States, international organizations and national and international courts, and was intended to facilitate the Committee’s work with those actors in the negotiation of future headquarters agreements and the settlement of disputes.

The second guide, on the law applicable to international commercial contracts in the Americas, focused on substantive issues and included specific recommendations addressed to legislators, judicial bodies and contracting parties. The recommendations were based largely on existing global and regional instruments and took into account the differences between the countries of the region in terms of contract law. Aimed at promoting legal harmonization and economic integration, growth and development in the hemisphere, it had been favourably received by academics and legal experts in the international community and in organizations such as the Hague Conference on Private International Law, the American Association of Private International Law and the American Bar Association Section of International Law.

The Committee’s agenda currently consisted of nine topics, three of which were based on mandates from the OAS General Assembly to update previous outputs. The update of the Committee’s 2016 report on principles for electronic warehouse receipts for agricultural products in light of new developments in connection with access to credit in the

agricultural sector would focus on developing medium-neutral language that would accommodate both paper-based and electronic formats, and on identifying principles that would bridge differences in approach under the civil and common law systems. To avoid duplication, the Committee would coordinate its approach with that of the United Nations Commission on International Trade Law (UNCITRAL) and the International Institute for the Unification of Private Law (UNIDROIT).

The Committee was also working on an update of the 2015 principles on the protection of personal data, including aspects such as the protection of personal data of children and adolescents, the right to portability of personal data and the right to be forgotten. The update would take both the common law and the civil law systems into account, in order to ensure that it could be used by all OAS member States.

The third area in which the Committee had been mandated to update its previous work concerned access to public information. In particular, the Committee would be updating the 2010 Inter-American Model Law on Access to Public Information, with a focus on six thematic areas that had been identified with the help of public entities, civil society organizations and experts in the region. Those areas were proactive transparency, rules governing exceptions, document (file) management, public information within the judiciary, persons required to provide information (political parties and trade unions), and oversight bodies.

The other six items on the Committee's agenda had been taken up at the Committee's own initiative. On the application of the principle of conventionality, the primary aim was to produce a guide that would reflect State practice in complying with decisions of the Inter-American Court of Human Rights, both in matters to which such States had been parties and in matters to which they had not been parties, with a view to assisting States in implementing the parameters set out by that Court with respect to the principle of conventionality. A survey was being carried out on the incorporation of the American Convention on Human Rights into the domestic legislation of States parties to the Convention and on their practical application of the Convention.

On binding and non-binding agreements, the Committee was developing guidelines for identifying and distinguishing between three categories of commitments: treaties, political agreements and contracts. Such commitments would be examined in terms of four elements: criteria for differentiation, capacity of States and subnational agencies to undertake commitments, legal effects, and negotiating procedures. The aim was to offer States a set of best practices for determining the nature of agreements, particularly where there was ambiguity or when opinions differed.

The work being done under the agenda item on the validity of foreign judicial decisions in light of the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards (Montevideo Convention) was aimed at the development of mechanisms and procedures to facilitate the recognition of such judgments in domestic law and the authentication of foreign documents. The issue was still problematic despite the existence of the regional Montevideo Convention and the global Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention); it was also being explored in the context of the Hague Conference on Private International Law. The expected output, which would consist of either a guide or a model law, would facilitate the recognition of foreign judgments and thus help to guarantee access to justice.

On cybersecurity, a report was being prepared on the basis of the results of a questionnaire circulated to member States and would serve as a regional input for the discussions of the United Nations Group of Governmental Experts on the subject, given that not all OAS member States were represented in that Group. In addition, a project on foreign interference in States' electoral processes was being carried out with a view to presenting best practices and effective legal mechanisms that States could use in order to protect themselves.

The final item on the Committee's agenda was the dissolution and liquidation of simplified corporations. A model law would be developed on the subject, taking inspiration from the Model Law on the Simplified Stock Corporation that had been adopted by the OAS General Assembly in 2017.

The Committee had held two major events in relation to its other main objective, the dissemination of international law, during the period under review. The seventh joint meeting with the legal advisers of OAS member States to identify issues of interest for the region in the area of the codification and progressive development of public and private law had been attended by advisers from 10 member States and a delegation from the African Union Commission on International Law. The Committee had also held a meeting with representatives of the Hague Conference on Private International Law, at which the participants had examined the two bodies' respective working methods with a view to coordinating them in order to avoid overlap and had assessed the added value that the region could bring to the codification and dissemination of private international law in the world. Both discussions had produced useful conclusions for the Committee's future work, which would be included in its annual report. As in previous years, a course on international law had been held in Rio de Janeiro, Brazil, in July and August 2018; members of the International Law Commission had attended the course in both 2017 and 2018.

Close cooperation between the Committee and the Commission was extremely important, given that both bodies played a key role in the progressive development of international law. The Committee's next regular session would take place in Rio de Janeiro from 31 July to 9 August 2019; all related information could be found on its website.

Mr. Vázquez-Bermúdez said that he would be interested in hearing about the progress made on the topic of binding and non-binding agreements. He would also like more details on the expected output in that regard; for example, would it consist of guidelines covering specific circumstances and differentiating between international treaties, on the one hand, and agreements that were purely political or inter-institutional agreements between government entities in different countries, on the other? He would also like to know whether the Committee was taking account of State practice in other regions of the world and international jurisprudence on the matter.

Mr. Grossman Guiloff said that the distinguishing features of the Committee included the broad range of actors, including academics and representatives of civil society, who were involved in its consultations; the breadth of its objectives, which included economic development and integration, the harmonization of legal systems and public and private international law; and its emphasis on serving the member States by responding promptly to new developments in the modern world, such as the need to protect personal data. At the same time, all of its work was anchored in the idea that legal norms were the optimal basis for decision-making and for guiding human conduct in general. He would like to hear the Committee's views on what issues would be of particular importance for the Americas in the future. He also wondered whether the Committee took account of the Commission's reports in its work. He welcomed the idea of more extensive cooperation between the two bodies.

Mr. Ruda Santolaria said that he particularly appreciated the flexibility of the Committee's system of regular consultations with legal advisers from OAS member States, through which new items were sometimes suggested for inclusion in the Committee's agenda; the item on binding and non-binding agreements was an example of such a topic. The presence of the legal advisers at the end of the 2018 course on international law had led to very rich exchanges with the course participants, as he had seen for himself.

Mr. Al-Marri, noting the importance of the Committee's contribution to the progressive development and codification of international law, said that he would like to know whether the Committee had addressed the very sensitive and serious issue of the use of diplomatic privileges, in particular by dictators, in order to escape justice. Had the Committee dealt with the topic of immunity of State officials and institutions?

Ms. Correa Palacio (Chair of the Inter-American Juridical Committee) said that, on the topic of binding and non-binding agreements, the legal advisers of OAS member States had expressed concern about the proliferation of instruments, beyond treaties *stricto sensu*, that dealt with relations among States. The Committee was therefore endeavouring to ascertain State practice in order to provide clear guidance as to which instruments were binding, including in contractual matters. It had reviewed international case law on the

subject, but had not yet looked at State practice outside the region; it would be able to broaden the scope of its analysis when the member States' responses to the questionnaire were received.

Regarding the importance of canvassing the opinions of various sectors of society, she noted that, when the Committee had met in Mexico City in 2018, it had held discussions with legal experts from the National Autonomous University of Mexico. She agreed with Mr. Grossman Guiloff on the importance of law as the foundation for the Committee's approach to all the items on its agenda. While the need for in-depth analysis limited the speed with which the Committee could deal with those topics, its rapporteurs made every effort to conduct their studies both thoroughly and expeditiously.

As to future topics, the Committee would be expanding its work on access to justice, notably with respect to the validity of foreign judgments. In addition, a proposal had been made for a single code of general procedure, which could have a significant impact on the fundamental right of access to justice, as recognized in the American Convention on Human Rights. The Committee would certainly be interested in increased cooperation with the Commission and, to that end, Commission members were welcome to attend the Committee's regular sessions, as some of them had already done. The Committee regularly took account of the Commission's reports in its work.

Lastly, on the topic of immunity, the Committee's work had thus far focused on international organizations and the possible abuse of their jurisdictional immunity to deprive individuals of access to justice.

The meeting rose at 1 p.m.