1. REPORT ON MATTERS RELATING TO THE WORK OF THE INTERNATIONAL LAW COMMISSION AT ITS SIXTIETH SESSION

I. INTRODUCTION

1. The International Law Commission (hereinafter referred to as “ILC” or the “Commission”) established by the United Nations General Assembly Resolution 174 (III) of 21st September 1947 is the principal organ under the United Nations system for the promotion of progressive development and codification of international law. The Commission held its Sixtieth session from 5 May to 6 June and 7 July to 8 August 2008 at Geneva.¹

2. The Commission's membership for the 2007-2011 quinquennium is as follows: Mr. Ali Mohsen Fetais Al-Marri (Qatar), Mr. Lucius Caflisch (Switzerland), Mr. Enrique Candioti (Argentina), Mr. Pedro Comissário Afonso (Mozambique), Mr. Christopher John Robert Dugard (South Africa), Ms. Paula Escarameia (Portugal), Mr. Salifou Fomba (Mali), Mr. Giorgio Gaja (Italy), Mr. Zdzislaw Galicki (Poland), Mr. Hussein A. Hassouna (Egypt), Mr. Mahmoud D. Hmoud (Jordan), Ms. Marie G. Jacobsson (Sweden), Mr. Maurice Kamto (Cameroon), Mr. Fathi Kemitza (Tunisia), Mr. Roman Anatolyevitch Kolodkin (Russian Federation), Mr. Donald M. McRae (Canada), Mr. Teodor Viorel Melescanu (Romania), Mr. Bernd H. Niehaus (Costa Rica), Mr. Georg Nolte (Germany), Mr. Bayo Ojo (Nigeria), Mr. Alain Pellet (France), Mr. A. Rohan Perera (Sri Lanka), Mr. Ernest Petriè (Slovenia), Mr. Gilberto Vergne Saboia (Brazil), Mr. Narinder Singh (India), Mr. Eduardo Valencia-Ospina (Colombia), Mr. Edmundo Vargas Carreño (Chile), Mr. Stephen C. Vasciannie (Jamaica), Mr. Marcelo Vázquez-Bermúdez (Ecuador), Mr. Amos S. Wako (Kenya), Mr. Nugroho Wisnumurti (Indonesia), Ms. Hanqin Xue (China), and Mr. Chusei Yamada (Japan).² The Commission elected Sir Michael Wood (United Kingdom) to fill the casual vacancy arising from the resignation of Mr. Ian Brownlie.

3. The Commission elected Mr. Edmundo Vargas Carreño (Chile) as its Chairman, Mr. Roman Anatolyevitch Kolodkin (Russian Federation) as the First Vice Chair, Mr. Mahmoud D. Hmoud (Jordan) as Second Vice-Chair, Mr. Pedro Comissario Afonso (Mozambique) as the Chairman of the Drafting Committee and Ms. Paula Escarameia (Portugal) as Rapporteur. The President of AALCO, Mr. Narinder Singh represented the AALCO at the Session and addressed the Commission on 31 July 2008.

4. There were as eight topics on the agenda of the aforementioned session of the ILC. These were:

   i. Reservations to treaties.
   ii. Responsibility of international organizations.
   iii. Shared natural resources.
   iv. Effects of armed conflicts on treaties.
   v. Expulsion of aliens.
   vi. The obligation to extradite or prosecute (aut dedere aut judicare).
   vii. Protection of persons in the event of disasters.
   viii. Immunity of State officials from foreign criminal jurisdiction.

¹ This Report is prepared on the basis of the Report on the Work of the International Law Commission at its Sixtheth Session. See also ILC website http://www.un.org/law/ilc/index.htm.
² The names of ILC Members from AALCO Member States are indicated in bold, comprising 12 out of 34 Members.
5. Concerning the topic “Reservations to treaties”, the Commission adopted 23 draft guidelines dealing with formulation and withdrawal of acceptances and objections, as well as the procedure for acceptance of reservations, together with commentaries thereto. In the present session, the Commission proceeded on the basis of the Note by the Special Rapporteur on a new draft guideline 2.1.9 on statement of reasons of reservations and draft guidelines contained in the eleventh and twelfth reports of the Special Rapporteur which were referred to the Drafting Committee in 2007. The Commission also considered the thirteenth report of the Special Rapporteur on reactions to interpretative declarations and referred to the Drafting Committee 10 draft guidelines on reactions to interpretative declarations.

6. On the topic, Responsibility of International Organizations, the Commission provisionally adopted eight draft articles, together with commentaries thereto, dealing with the invocation of the international responsibility of an international organization. It also took note of seven draft articles provisionally adopted by the Drafting Committee, focusing on countermeasures. These draft articles, together with commentaries thereto, will be considered by the Commission next year. In the present session, the Commission had before it the sixth report of the Special Rapporteur3, which focused on issues relating to the implementation of the responsibility of international organizations. Following its debate on the report, the Commission referred six draft articles on the invocation of responsibility to the Drafting Committee. The Commission also established a Working Group for the purpose of considering the question of countermeasures, as well as the advisability of including in the draft articles a provision relating to admissibility of claims. Upon receipt of reports of the Working Group, the Commission referred to the Drafting Committee, an additional draft article on admissibility of claims; and six draft articles on countermeasures, on the basis of the draft articles submitted by the Special Rapporteur, together with recommendations of the Working Group).

7. On the topic of “Shared natural resources”, the Commission adopted, in the present session, the Commission had before it the Fifth report of the Special Rapporteur, containing a set of 20 draft articles on the law of transboundary aquifers, together with comments and observations received from Governments on the draft articles adopted on first reading. Having adopted a two-step approach, it was considered premature to address issues relating to relationship with other agreements and dispute settlement.

8. On the Topic of Effects of armed conflicts on treaties, the Commission considered the fourth report of the Special Rapporteur dealing with the procedure for the suspension or termination of treaties as a consequence of an armed conflict. The Commission provisionally adopted, on first reading, a set of 18 draft articles and an annex (containing a list of categories of treaties the subject matter of which involves the implication that they continue in operation, in whole or in part, during armed conflict), together with commentaries thereto, on the effects of armed conflicts on treaties.

9. As regards the topic “Expulsion of aliens”, the Commission considered the fourth report of the Special Rapporteur4, dealing with questions relating to the expulsion of dual or multiple nationals, as well as loss of nationality or denationalization in relation to expulsion, prepared in the light of the debate in 2007. Following the debate on the report, the Commission established a Working Group to consider the issues raised by the Special Rapporteur in his report and it determined that there was no need to have separate draft articles on the matter; the necessary clarifications will be made in the commentaries to the

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3 A/CN.4/597.
4 A/CN.4/594.
relevant draft articles. The seven draft articles referred to the Drafting Committee in 2007 remain in the Drafting Committee until all the draft articles are provisionally adopted.

10. As regards the topic **The Obligation to Extradite or Prosecute** (*aut dedere aut judicare*), the Commission considered the third report\(^5\) of the Special Rapporteur containing three draft articles on the Scope of Application, Use of Terms and Treaty as a Source of Obligation. The report contained proposed plan for further development. The Commission also had received comments and information from member States.

11. On the topic of “**Protection of persons in the event of disasters**” the Commission held a debate on the basis of the preliminary report of the Special Rapporteur\(^6\). It also had before it a memorandum of the Secretariat, focusing primarily on natural disasters.\(^7\) Among the many issues discussed were the main legal questions to be covered by the topic, including questions concerning the approach to the topic, as well as its scope in terms of the subject matter, personal scope, space and time.

12. On the topic of “**Immunity of State officials from foreign criminal jurisdiction**” the Commission held a debate on the basis of the preliminary report of the Special Rapporteur. It also had before it a memorandum of the Secretariat.\(^8\) Among the many issues discussed were the main legal questions to be considered when defining the scope of the topic, including the officials to be covered, the nature of the acts to be covered, as well as whether there are possible exceptions.

13. The Commission decided that its sixty-first session be held in Geneva from 4 May to 5 June and 6 July to 7 August 2009.

\(^5\) A/CN. 4/603.
\(^6\) A/CN.4/598
\(^7\) A/CN.4/590 and Add.1 to 3.
\(^8\) A/CN.4/596.