

Provisional

**For participants only**

10 November 2011

English

Original: French

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## **International Law Commission**

### **Sixty-second session (second part)**

#### **Provisional summary record of the 3064th meeting**

Held at the Palais des Nations, Geneva, on Wednesday, 14 July 2010, at 10 a.m.

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***Present:***

*Chairman:* Mr. Wisnumurti  
*Members:* Mr. Caflisch  
Mr. Candiotti  
Mr. Comissário Afonso  
Mr. Dugard  
Mr. Fomba  
Mr. Gaja  
Mr. Galicki  
Mr. Hassouna  
Mr. Hmoud  
Ms. Jacobsson  
Mr. Kamto  
Mr. Kemicha  
Mr. McRae  
Mr. Melescanu  
Mr. Murase  
Mr. Niehaus  
Mr. Nolte  
Mr. Pellet  
Mr. Perera  
Mr. Saboia  
Mr. Valencia-Ospina  
Mr. Vargas Carreño  
Mr. Vasciannie  
Mr. Vázquez-Bermúdez  
Sir Michael Wood

***Secretariat:***

Mr. Mikulka Secretary to the Commission

**Cooperation with other bodies** (agenda item 13)

**The Chairman** welcomed Mr. Mohamad, Secretary-General of the Asian-African Legal Consultative Organization (AALCO), and invited him to address the Commission.

**Mr. Mohamad** (Secretary-General of the Asian-African Legal Consultative Organization (AALCO)) said that the Commission and AALCO had enjoyed a mutually beneficial relationship for more than 50 years: AALCO continued to attach great importance to that relationship. It was a statutory obligation for AALCO to consider the topics dealt with by the Commission and to forward the views of its member States to the Commission. Over the years, that had helped to foster closer ties between the two bodies, which were also customarily represented at each other's annual sessions. He invited all the

members of the Commission to participate as observers in the work of the forty-ninth annual session of AALCO, to be held in Dar es Salaam from 5 to 8 August 2010. During the session, a thematic debate, entitled “Making AALCO’s participation in the work of the International Law Commission more effective and meaningful”, would be held on 6 August. He hoped that members of the Commission would participate in order to enrich the debate. The initiative for the debate had emerged after concerns had been expressed by AALCO member States that the current procedure for the consideration of the topics on the Commission’s agenda was not the best means of consolidating and, where possible, presenting the views of member States as one voice to the United Nations and the Commission. Some member States had also proposed constituting a body akin to the Commission under the auspices of AALCO to consider the topics the Commission was dealing with in depth at intersessional meetings of experts prior to and after the Commission’s annual sessions and to assist AALCO member States in responding to the questionnaire prepared by the Commission on the topics under its consideration.

At its forty-eighth annual session, held at Putrajaya, Malaysia, from 17 to 20 August 2009, AALCO had adopted the Putrajaya Declaration on Revitalizing and Strengthening the Asian-African Legal Consultative Organization, in which it had recognized the Organization’s significant contribution towards strengthening Afro-Asian solidarity, particularly in the progressive development and codification of international law, and the important role played by international law as an indispensable instrument for shaping a just and equitable world order.

At the Organization’s forty-seventh annual session, some of the items on the agenda of the sixtieth session of the Commission had been discussed and delegates, while appreciating the meticulous work of the special rapporteurs, had made comments and suggestions on the future work of the Commission. Concerning the protection of persons in the event of disasters, one delegate had emphasized that there was a need to put in place a detailed legal framework to provide expeditious relief to victims. Only a rights-based approach could guarantee the physical security and basic necessities of persons affected by disasters. As to reservations to treaties, it had been pointed out that the Commission should be cautious when discussing the competence of the treaty monitoring bodies to assess the validity of reservations and the consequences of such assessment, as the recommendations of those bodies did not have any binding force on States. On the topic of the immunity of State officials from foreign criminal jurisdiction, one delegate had observed that while applying the “act of State” and “non-justiciability” doctrines, the Commission might also consider dealing with the question of limitations on immunity. In addition, since all the immunities enjoyed by State officials were derived from the immunity of the State, it was necessary to approach the question of recognition with prudence, stressing the criteria that State officials must meet to be eligible for immunity.

As far as the expulsion of aliens was concerned, it had been underlined that the main problem was to reconcile the right to expel with the rules of international law, in particular international human rights law. It was also necessary to define clearly the term “alien” and to draw a distinction between loss of nationality and denationalization. With regard to shared natural resources, one delegate considered that it was premature to envisage the adoption of a convention in that area, since the draft articles dealt with a mechanism for international cooperation for the joint protection and utilization of transboundary aquifers, something which was not based on international practice.

As to the responsibility of international organizations, one delegate had observed that the countermeasures taken by international organizations might run counter to the functions for which the international community had constituted the organizations in question. In relation to the effects of armed conflicts on treaties, it had been stated that the Commission’s mandate was to supplement and not to modify existing law relating to the

effects of armed conflicts. Since such instruments created *erga omnes* obligations, on its second reading of the draft articles, the Commission should take into consideration the principle of the inviolability of treaties establishing boundaries and thereby contributing to international peace and security.

In his opening remarks during a meeting held on 28 October 2009 at United Nations Headquarters on the theme of how AALCO could contribute to the work of the International Court of Justice and the Sixth Committee, he had laid emphasis on the importance that AALCO attached to the work of the International Law Commission and other United Nations bodies. Speaking on that occasion, Mr. Valencia-Ospina, member of the Commission and Special Rapporteur on the topic "Protection of persons in the event of disasters," had addressed the relationship between AALCO and the International Court of Justice in the context of the draft articles that he had submitted to the General Assembly. He had remarked that AALCO should consider preparing a study on strengthening the compulsory jurisdiction of the International Court of Justice which, in his opinion, would be extremely helpful in dealing with the peaceful settlement of disputes clauses in the articles.

The participation of the Asian and African States in the development and codification of international law must be strengthened, and he called upon the Commission to take note of the mechanisms, practices and principles applied by those States in implementing the work programme. It was encouraging to note that of the 34 elected members of the Commission, 12 were from AALCO member States. Praise was also due for the work done by the special rapporteurs of the Commission.

In 2011, AALCO would hold its fiftieth annual session, most likely in an Asian State. It would be an historic opportunity to rekindle the Bandung spirit of Afro-Asian solidarity, particularly in the progressive development and codification of international law. The essence of the Bandung spirit lay in understanding that it was incumbent not only on third world countries, but also on peoples and social movements across the world, to establish a just and equitable world order.

**Mr. Hassouna** noted that important events had taken place in Africa and Asia in the field of international law in recent years, including the establishment of bodies such as the African Union Commission on International Law. He asked how AALCO envisaged its relations with such bodies. He also wished to know what topics AALCO member States would like the Commission to consider.

**Mr. Mohamad** (Secretary-General of the Asian-African Legal Consultative Organization) said that AALCO kept abreast of the legal activities of the African Union, which was invited to its annual session, but that it had not yet envisaged the modalities of future cooperation between the two organizations.

**Mr. Perera** asked whether it would be possible to organize AALCO intersessional meetings on topics considered by the Commission. The time at which AALCO held its annual session did not always allow for the full participation of African and Asian States. Perhaps it should be held after the Commission's annual session and before the United Nations General Assembly.

**Mr. Nolte** enquired whether any views had been expressed in AALCO on whether the draft articles on the responsibility of States for internationally wrongful acts should take the form of a draft convention or whether they should be retained in their current form and continue to exercise their influence through international, arbitral and judicial case law.

**Sir Michael Wood** asked whether AALCO documentation on topics considered by the Commission was available in one form or another. Like Mr. Hassouna, he wondered what topics AALCO would like to see the Commission consider. As to the time at which

the AALCO annual session was held, he said that the corresponding committee in the Council of Europe always held its sessions during the first or second week of September, before the United Nations General Assembly, something that had many advantages. While the establishment of regional legal organizations was welcome, it was nonetheless important to preserve the unity of international law.

**Mr. Mohamad**, replying to Mr. Perera, said that he had taken note of his two comments and that he intended to discuss with AALCO member States the possibility of holding intersessional meetings. The timing of the annual session was indeed a problem for many members.

Turning to Mr. Nolte's question, he said that it was for member States and not the secretariat to decide on such matters. He informed Sir Michael Wood that AALCO documentation could be downloaded from the Organization's website.

**Mr. Vasciannie**, referring to the establishment of the African Union Commission on International Law, asked the Secretary-General of AALCO whether he believed that it could serve as a model for the establishment of a similar body by Asian countries, or whether the establishment of such a regional commission might undermine the unity of international law.

**Mr. Mohamad** said that it was for the Asian States to decide whether to establish such a body.

**Mr. Hmoud** asked whether there were any specific questions that AALCO wished the Commission to address and what AALCO would like its member States to do to assist it.

**Mr. Mohamad** replied that he intended to request AALCO member States to come up with priority topics and questions that it would like the Commission to consider.

*The meeting rose at 12.50 p.m.*