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Summary record of the 3128th meeting

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INTERNATIONAL LAW COMMISSION

SUMMARY RECORDS OF THE FIRST PART OF THE SIXTY-FOURTH SESSION

Held at Geneva from 7 May to 1 June 2012

3128th MEETING

Monday, 7 May 2012, at 3.05 p.m.

Outgoing Chairperson: Mr. Maurice KAMTO

Chairperson: Mr. Lucius CAFLISCH

Present: Mr. Adoke, Mr. Al-Marri, Mr. Candioti, Mr. Comissário Afonso, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Gevorgian, Mr. Gómez Robledo, Mr. Hassouna, Mr. Hmoud, Mr. Huang, Ms. Jacobsson, Mr. Kittichaisaree, Mr. Laraba, Mr. McRae, Mr. Murase, Mr. Murphy, Mr. Niehaus, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Wako, Mr. Wisnumurti, Sir Michael Wood.

Opening of the session

1. The OUTGOING CHAIRPERSON declared open the sixty-fourth session of the International Law Commission, the first session of the new quinquennium.

Tribute to the memory of Mr. Carlos Calero Rodrigues, former member of the Commission

2. The OUTGOING CHAIRPERSON said that the session was beginning on a sad note owing to the recent death of Mr. Carlos Calero Rodrigues, who had been a member of the Commission from 1982 to 1996. During that period, he had contributed greatly to the Commission's work, particularly in the areas of human rights, the law of the sea and international humanitarian law.

At the invitation of the Outgoing Chairperson, the members of the Commission observed a minute of silence.

Statement by the Outgoing Chairperson

3. The OUTGOING CHAIRPERSON provided a brief overview of the discussion in the Sixth Committee of the General Assembly during its consideration of the Commission's report on the work of its sixty-third session. A topical summary of that discussion was contained in documents A/CN.4/650 and A/CN.4/650/Add.1.

Strengthening the lines of communication with the Commission remained a key concern of delegations in the Sixth Committee, who had continued their practice, in line with paragraph 12 of General Assembly resolution 59/313 of 12 September 2005, of holding an interactive debate to supplement their formal discussions with the members of the Commission and the Special Rapporteurs who were present in New York. The debate, which had been pursued at meetings with legal advisers, had focused on the topics "Expulsion of aliens" and "Protection of persons in the event of disasters" and on the new topics that were being added to the Commission's long-term programme of work.¹

4. Based on the Sixth Committee's consideration of the Commission's report, the General Assembly had adopted resolution 66/98 of 9 December 2011, paragraph 4 of which commended the Commission for the completion of its work on the responsibility of international organizations, effects of armed conflicts on treaties and reservations to treaties. In paragraph 7 of that resolution, the General Assembly had taken note of the inclusion of five new topics in the Commission's long-term programme of work, and in paragraph 8 it had invited the Commission to continue to give priority to the topics "Immunity of State officials from foreign criminal jurisdiction" and "The obligation to extradite or prosecute (*aut dedere aut judicare*)" and to work towards their conclusion. The General Assembly had also adopted, on 9 December 2011, resolutions 66/99 and 66/100, in which it had taken note of the draft articles on the effects of armed conflict on treaties² and on the responsibility of international organizations,³ respectively, and had decided to examine at its sixty-ninth session the form that might be given to those texts.

Election of officers

Mr. Caflisch was elected Chairperson by acclamation.

Mr. Caflisch took the Chair.

5. The CHAIRPERSON expressed his sincere gratitude to the members of the Commission for the honour they

¹ *Yearbook ... 2011*, vol. II (Part Two), paras. 365–367 and annexes I to V.

² *Ibid.*, paras. 100–101.

³ *Ibid.*, paras. 87–88.

had conferred on him and paid a tribute to Mr. Kamto, Chairperson of the sixty-third session, and to the other officers of that session for their outstanding work. As it was the start of the new quinquennium, he wished to welcome back the members of the Commission who had been re-elected and expressed confidence that the new members would quickly adapt to the Commission's pace and methods of work.

Mr. Niehaus was elected first Vice-Chairperson by acclamation.

Mr. Hassouna was elected second Vice-Chairperson by acclamation.

Mr. Hmoud was elected Chairperson of the Drafting Committee by acclamation.

Mr. Šturma was elected Rapporteur by acclamation.

Adoption of the agenda (A/CN.4/649)

The agenda was adopted.

The meeting was suspended at 3.40 p.m. and resumed at 4.35 p.m.

Organization of the work of the session

[Agenda item 1]

6. The CHAIRPERSON drew attention to the programme of work for the first week of the Commission's session. The Commission would begin by hearing the introduction of the eighth report on the expulsion of aliens by the Special Rapporteur on that topic (A/CN.4/651). The Drafting Committee would be working on the topic throughout the week, during which the Study Group on treaties over time would also be meeting. Lastly, the Bureau proposed that the next plenary meeting should be dedicated to the memory of Mr. Carlos Calero Rodrigues.

The programme of work for the first week of the session was adopted.

7. Mr. CANDIOTI pointed out that with the start of the new quinquennium, one third of the Commission's members were new to its work. The General Assembly had given the Commission a clear mandate to make progress on two topics: "The obligation to extradite or prosecute (*aut dedere aut judicare*)" and "Immunity of State officials from foreign criminal jurisdiction". In addition, new topics would have to be chosen now that work on three major topics had just been completed. For all those reasons, it might be beneficial to hold an open exchange of views on how best to organize the Commission's work for the current session and beyond, throughout the new quinquennium.

8. The CHAIRPERSON said that the Commission, owing to its new composition, needed to appoint new special rapporteurs for two topics: "Immunity of State officials from foreign criminal jurisdiction" and "The obligation to extradite or prosecute (*aut dedere aut judicare*)". He invited members to hold consultations

to that end. He also suggested that members give some consideration to the overall approach to be taken to its work: he would be holding informal consultations on that subject. He would be consulting informally, with members of the Enlarged Bureau, on the new items to be included in the programme of work.

9. Mr. HASSOUNA said he hoped that the Commission would continue to improve its methods of work during the current session, in line with decisions taken at the previous session. He looked forward to a productive start to the new quinquennium.

The meeting rose at 4.50 p.m.

3129th MEETING

Tuesday, 8 May 2012, at 10.05 a.m.

Chairperson: Mr. Lucius CAFLISCH

Present: Mr. Adoke, Mr. Al-Marri, Mr. Candioti, Mr. Comissário Afonso, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Gevorgian, Mr. Gómez Robledo, Mr. Hassouna, Mr. Hmoud, Mr. Huang, Ms. Jacobsson, Mr. Kamto, Mr. Kittichaisaree, Mr. Laraba, Mr. Murase, Mr. Murphy, Mr. Niehaus, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Wako, Mr. Wisnumurti, Sir Michael Wood.

Tribute to the memory of Mr. Carlos Calero Rodrigues, former member of the Commission (*concluded*)

1. The CHAIRPERSON said that, as had been announced at the previous meeting, the current meeting was dedicated to the memory of Mr. Carlos Calero Rodrigues, who had been a member of the Commission from 1982 to 1996. With his vast experience of diplomacy and the drafting of international legal instruments, he had made a significant contribution to the work of the Commission and, more generally, to the development of international law in such areas as the law of the sea, human rights, international humanitarian law and State immunity.

2. Mr. SABOIA commended the Commission for paying tribute to the memory of Mr. Carlos Calero Rodrigues, with whom he had worked at the Commission on Human Rights during the 1980s but also during the time when the latter had been Secretary General of the Brazilian Ministry of Foreign Affairs, during the 1990s. In addition to his contribution to the development of international law in the areas mentioned by the Chairperson, Mr. Calero Rodrigues had been a member of the Commission on Human Rights at a difficult time for Brazil and had participated in the drafting of the Convention against torture and other cruel, inhuman or degrading treatment or punishment. Even though his country had experienced problems in the area of human rights, he had believed that it was possible to take a positive approach and