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Summary record of the 3283rd meeting

Topic:
Draft report of the International Law Commission on the work of its sixty-seventh session

Extract from the Yearbook of the International Law Commission:-
2015, **vol. I**

3283rd MEETING

Monday, 3 August 2015, at 3 p.m.

Chairperson: Mr. Narinder SINGH

Present: Mr. Al-Marri, Mr. Caflisch, Mr. Candioti, Mr. Comissário Afonso, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kamto, Mr. Kittichaisaree, Mr. Kolodkin, Mr. Laraba, Mr. McRae, Mr. Murase, Mr. Murphy, Mr. Niehaus, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Sir Michael Wood.

Draft report of the International Law Commission on the work of its sixty-seventh session (*continued*)

Chapter VII. *Crimes against humanity* (*continued*) (A/CN.4/L.860 and Add.1)

1. The CHAIRPERSON invited the members of the Commission to resume their consideration of paragraphs (40) and (41) of the commentary to draft article 3, paragraph 4, which had been left in abeyance at the previous meeting.

C. Text of the draft articles on crimes against humanity provisionally adopted by the Commission at its sixty-seventh session (*continued*)

2. Text of the draft articles and commentaries thereto, as provisionally adopted by the Commission at its sixty-seventh session (*continued*)

Commentary to draft article 3 (Definition of crimes against humanity) (*concluded*)

Paragraph (40) (*concluded*)

2. Mr. NOLTE said that, after consultations with the Special Rapporteur and Mr. Forteau, it had been agreed that he would withdraw his proposal to amend the order in which the international instruments were listed in paragraph (40).

3. Mr. MURPHY (Special Rapporteur) said that during those consultations, it had been decided to insert, after the first sentence, the sentence: "'International instrument' is to be understood in the broad sense and not only in the sense of being a binding international agreement."

Paragraph (40), as amended, was adopted.

Paragraph (41)

4. Mr. NOLTE proposed that the final three sentences of the paragraph be reworded to read: "At the same time, an important objective of the draft articles is the development of comparable national laws, so that they may serve as the basis for robust inter-State cooperation. Any elements adopted in a national law, which would not fall within the scope of the present draft articles, would not benefit from the provisions set forth within them, including on extradition and mutual legal assistance." The phrase "inclusion of paragraph 4 is not intended as an invitation for States to develop broader definitions of crimes against humanity in their national laws" would therefore be deleted, since he feared that it might create the wrong impression that the Commission wished to dissuade States from adopting a broader definition of crimes against humanity in their internal law. He was not convinced that the expression "comparable national laws" adequately reflected the idea that one of the purposes of the draft articles was the adoption, in national laws, of a common basic definition of crimes against humanity which could be broadened, and he sought the Special Rapporteur's opinion on that matter.

5. Mr. MURPHY (Special Rapporteur) endorsed the reformulation of the final three sentences of paragraph (41) proposed by Mr. Nolte. The phrase "comparable national laws" seemed to be quite apt, since national laws were expected to be "comparable" in the sense that they must encompass all the elements of the definition of crimes against humanity set forth in article 7 of the Rome Statute of the International Criminal Court, although that did not rule out the possibility that they might also cover additional elements.

6. Mr. KOLODKIN said that he objected to the reformulation proposed by Mr. Nolte, because it completely ignored the idea of harmonization, although the latter's importance had been underscored on several occasions during debates in plenary meetings and in the Drafting Committee.

7. Mr. HMOUD, supported by Mr. PETRIČ, said he also considered that the reference to the harmonization of national laws as an objective of the draft articles should be retained.

8. Mr. NOLTE said that if the word "harmonization" were to be reintroduced, it would be necessary to make it clear that the reference was to minimum harmonization in order to ensure that national laws established a common basic definition of crimes against humanity. Without that clarification, the impression might well be given that wider definitions of crimes against humanity were to be barred.

9. The CHAIRPERSON said that, on the contrary, he considered that there was no ambiguity on that point, since the third sentence of paragraph (41) expressly stated that if a State wished to adopt a broader definition in its national law, the draft articles did not preclude it from doing so. He therefore suggested that part of the new text proposed by Mr. Nolte be changed to take account of the comments of Mr. Kolodkin, Mr. Hmoud and Mr. Petrič. It would therefore read: "At the same time, an important objective of the draft articles is the harmonization of national laws, so that they may serve as the basis for … ."

That proposal was adopted.

Paragraph (41), as amended, was adopted.

The commentary to draft article 3, as a whole, as amended, was adopted.

Commentary to draft article 4 (Obligation of prevention)

Paragraphs (1) and (2)

10. Mr. KAMTO proposed the deletion of the reference to genocide from the examples of the acts which constituted crimes against humanity listed in brackets in the third sentence of paragraph (1), since genocide and crimes against humanity were quite separate notions covered by different legal rules.

11. Mr. MURPHY (Special Rapporteur) said that the list of examples in brackets was not meant to be exhaustive and that the reference to genocide could be removed if the Commission deemed it necessary. The fact remained that, in some circumstances, genocide might also constitute a crime against humanity.

12. Mr. PETRIČ said that, although genocide, apartheid, enforced disappearance and torture were the subject of different conventions, in some circumstances they could unquestionably constitute crimes against humanity. He therefore saw no reason to remove genocide from the list of examples in brackets. A simpler and more coherent response to Mr. Kamto's concern would be to delete all the examples.

13. Mr. KAMTO, contending that it was essential to distinguish clearly between the crime of genocide and crimes against humanity, said that, at the beginning of paragraph (2), it should be made clear that an analogy was being drawn in order not to give the impression that, in the Commission's opinion, the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide applied to crimes against humanity as well.

14. Mr. MURPHY (Special Rapporteur) said that, while he understood that concern, he failed to see why at the beginning of paragraph (2) it was necessary to specify that the Commission was drawing an analogy, as that followed implicitly from paragraph (1).

15. Mr. KITTICHAISAREE said he agreed with Mr. Kamto that it was essential to distinguish clearly between the crime of genocide and crimes against humanity. In order to avoid any risk of confusion, he proposed the deletion of paragraph (2) and the following paragraphs which discussed the judgment in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*.

16. Mr. FORTEAU, supported by Mr. TLADI, proposed, in order to address the concerns expressed by Mr. Kamto and Mr. Kittichaisaree, the addition at the end of paragraph (1) of the sentence: "These treaties are also a useful source of inspiration when defining the obligation of prevention applicable to crimes against humanity as such" [*Ces instruments conventionnels constituent également une source d'inspiration utile pour définir l'obligation de prévention applicable aux crimes contre l'humanité en tant que tels*].

17. Mr. KAMTO said that Mr. Forteau's proposal was fine. Another possible solution would be simply to delete the words "As such" at the beginning of the final sentence of paragraph (1) and to insert "Thus" at the beginning of paragraph (2).

18. Mr. MURPHY (Special Rapporteur) said that he was unconvinced by Mr. Forteau's suggestion, because the additional sentence which he was proposing seemed to suggest that only instruments concerning acts which might constitute crimes against humanity were a source of inspiration when defining the obligation of prevention set forth in draft article 4, whereas other treaties with no direct link to crimes against humanity also deserved to be taken into consideration. On the other hand, the alternative proposed by Mr. Kamto seemed acceptable. He was categorically against the deletion of paragraph (2) proposed by Mr. Kittichaisaree, since the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which contained some very important provisions on prevention, constituted a vital reference when dealing with the subject of draft article 4, and the analysis in paragraph (2) paved the way for the subsequent discussion of the judgment of the International Court of Justice in the case involving the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*.

19. Mr. FORTEAU commented that, especially with the addition of the word "Thus" at the beginning of paragraph (2), the new linkage of paragraphs (1) and (2) proposed by Mr. Kamto and accepted by the Special Rapporteur seemed to imply that the treaties mentioned in paragraph (1) applied to crimes against humanity, which called into question the whole meaning of the commentary to draft article 4.

20. Mr. KITTICHAISAREE proposed that the beginning of paragraph (2) be amended to read: "The earliest important example of the obligation of prevention can be found in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which provides …".

21. Mr. MURPHY (Special Rapporteur) said that he was in favour of Mr. Kittichaisaree's proposal, which should meet Mr. Forteau's concern.

22. The CHAIRPERSON suggested that "the earliest example" be replaced with "an early example".

23. Mr. PETRIČ, noting that the analysis of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide was certainly pertinent to the commentary to draft article 4 and that paragraph (2) was devoted in its entirety to that Convention, insisted that the reference to genocide in paragraph (1) be retained.

24. The CHAIRPERSON suggested that paragraphs (1) and (2) be left in abeyance to allow the Special Rapporteur to consult those members who had made proposals and that the Commission return to the paragraphs later in the meeting.

It was so decided.

Paragraph (3)

25. Ms. ESCOBAR HERNÁNDEZ said that only two of the international instruments mentioned in the

paragraph concerned transnational crimes within the strict meaning of the term—the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime—while all the others were related to crimes which might be described as international or of international interest. She therefore proposed that, in the first sentence, the word "transnational" be replaced with "international" or "of international interest".

26. Mr. ŠTURMA proposed the addition of a footnote to explain that "transnational crimes" referred to crimes of international interest that did not come under the category of international core crimes.

27. Mr. MURPHY (Special Rapporteur) said that multilateral treaties on crimes were necessarily of interest to several States and that the adjective "transnational" could simply be deleted.

28. Mr. HMOUD supported that suggestion and emphasized that a distinction must be drawn between crimes of international interest and international crimes.

29. Ms. ESCOBAR HERNÁNDEZ said that, like Mr. Šturma, she did not deem the acts in question to be core crimes. She had proposed replacing the word "transnational" with "international" because in the Spanish version the term used was *delitos* (offences) and not *crímenes* (crimes). She also supported the Special Rapporteur's proposal to delete "transnational".

30. Mr. FORTEAU said that he also supported the Special Rapporteur's proposal. Some of the international human rights instruments listed in the paragraph did, however, relate to acts which could be regarded as international core crimes (apartheid, torture and enforced disappearance).

31. Mr. KITTICHAISAREE said that torture and enforced disappearance were currently deemed to be crimes against humanity. He proposed that "transnational crimes" be replaced with "crimes of serious concern to the international community".

32. Mr. MURPHY (Special Rapporteur) proposed that the Commission should still delete the adjective "transnational" since it was not essential to specify the nature of the crimes in question. The expression "multilateral treaties addressing crimes" was enough to cover all the types of instrument listed in that paragraph.

Paragraph (3), as amended, was adopted.

Paragraph (4)

33. Mr. FORTEAU, supported by Sir Michael WOOD, said that paragraph (4) should be deleted, because the instruments to which it referred were only remotely connected with the subject matter of the draft articles and the second and fourth footnotes to the paragraph did not really concern the obligation of prevention.

34. Mr. MURPHY (Special Rapporteur) said that the case law of regional human rights courts and the work of treaty bodies had been examined during meetings in plenary session and in the Drafting Committee. The debates had shown that the findings of those courts and bodies provided a better understanding of the content of the obligation of prevention. For that reason, it would be wise to retain that paragraph as it stood.

35. Ms. JACOBSSON, Ms. ESCOBAR HERNÁNDEZ and Mr. SABOIA were also in favour of keeping that paragraph.

36. Mr. FORTEAU said he considered that the comparison drawn in the paragraph with international human rights instruments was likely to mislead readers into conflating rules on crimes against humanity and human rights rules and treating them as having an equal footing. In addition, the obligation to prevent crimes against humanity and genocide was much wider in scope than the obligation to prevent human rights violations. Paragraph (16) should also be deleted, as it departed too far from the subject of preventing core international crimes. Generally speaking, he held the view that systematically drawing an analogy between the rules on international core crimes and the rules on the protection of human rights would bring a levelling down of the obligation to prevent crimes against humanity, and for that reason paragraphs (4) and (16) of the commentary should be deleted.

37. Mr. WAKO said that paragraphs (4) and (16) should be retained and that the African Charter on Human and Peoples' Rights should be added to the list of instruments in paragraph (16).

38. Mr. KAMTO said he considered that a reference to international human rights instruments might usefully strengthen the argument since, if there was an obligation to prevent human rights violations, there was *a fortiori* an obligation to prevent international core crimes, since they comprised human rights violations. He was also in favour of keeping the paragraph.

39. Mr. NOLTE said that while he quite understood Mr. Forteau's concerns, the paragraph should be retained since the phrase "even though not focused on the prevention and punishment of crimes as such" forestalled any risk of confusing the rules on core international crimes and human rights rules. However, in order to meet those concerns, he proposed the deletion of the adjective "serious" in the first sentence. Moreover, as the case law of the European Court of Human Rights had shown, the scope of the obligation to prevent human rights violations was not necessarily narrower than the scope of the obligation to prevent international crimes, for it was not always confined to a State's territory.

40. After an exchange of views in which Mr. FORTEAU, Mr. KITTICHAISAREE, Mr. MURPHY (Special Rapporteur) and Mr. KAMTO took part, the CHAIRPERSON suggested that the paragraph be amended as proposed by Mr. Nolte.

Paragraph (4) was adopted with the amendment proposed by Mr. Nolte.

Paragraphs (5) to (7)

Paragraphs (5) to (7) were adopted.

Paragraph (8)

41. Mr. NOLTE proposed the deletion of the final sentence, which was confusing and of no obvious use.

42. Mr. KITTICHAISAREE commented that the obligation of a State to adopt preventive measures was an obligation of conduct and that expressly stating that fact would be enough to solve the difficulty raised by Mr. Nolte.

43. Mr. MURPHY (Special Rapporteur) said that the final sentence had been added in order to reflect the finer points made in the debate in the Drafting Committee. He had no objection to its deletion, although Mr. Nolte's concern could also be met by replacing the word "obligated" with "able".

44. Mr. KOLODKIN said that he wished to retain the sentence, which dealt with an important point and which echoed what had been said in the first sentence of draft article 4, namely that "[e]ach State undertakes to prevent crimes against humanity, in conformity with international law". As proposed by Mr. Kittischaisaree, it could well be specified that States' obligation of prevention was an obligation of conduct.

45. Mr. KAMTO endorsed Mr. Kolodkin's proposal. The amendment proposed by the Special Rapporteur did not appear to be appropriate, because it would alter the meaning of the sentence in question if it were accepted.

46. Mr. TLADI said he considered that the final sentence should be kept as it stood.

47. Mr. FORTEAU said that the deletion of the sentence would not be bothersome, because the obligation of conduct which it set forth was already mentioned explicitly in paragraph (12).

48. Mr. NOLTE agreed with Mr. Kamto that, if the amendment proposed by the Special Rapporteur were accepted, it would considerably weaken the final sentence. At the same time, Mr. Forteau was right in saying that the obligation in question was also laid down in paragraph (12). Hence, by way of a compromise, it might be possible to keep the sentence and insert a footnote referring to that paragraph. That would remove any ambiguity as to the nature of a State's binding obligation of prevention which was, as Mr. Kittichaisaree had stated, an obligation of conduct.

49. Mr. KAMTO, supported by Mr. ŠTURMA, endorsed Mr. Nolte's proposal, which appeared to be an acceptable compromise.

50. Mr. MURPHY (Special Rapporteur) proposed that the final sentence be amended to read: "The State is only expected to take such measures as it legally can take under international law to prevent crimes against humanity."

That proposal was adopted.

Paragraph (8), as amended, was adopted.

51. The CHAIRPERSON invited Mr. Murphy (Special Rapporteur) to revert to paragraphs (1) to (2) of the commentary to draft article 4, which had been left in abeyance.

Paragraphs (1) to (2) (*concluded*)

52. Mr. MURPHY (Special Rapporteur) said that, after consulting the members concerned, he proposed that the word "genocide" be retained in paragraph (1) and that paragraph (2) be amended to read: "An early significant example of an obligation of prevention may be found in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which provides in article I … ." The adjective "transnational" could also be deleted from paragraph (3).

Those proposals were adopted.

Paragraphs (1) to (3), as amended, were adopted.

Paragraph (9)

53. Mr. FORTEAU proposed the deletion of the second footnote to the paragraph, which posed a problem because it suggested that what the International Court of Justice had said in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* would not necessarily apply to crimes against humanity and that the obligation of prevention would not imply the prohibition for a State itself to commit such wrongful acts.

That proposal was adopted.

Paragraph (9), as amended, was adopted.

Paragraph (10)

Paragraph (10) was adopted.

Paragraph (11)

54. Following a discussion in which Mr. FORTEAU, Mr. ŠTURMA, Mr. HMOUD, Mr. MURPHY (Special Rapporteur) and Mr. KITTICHAISAREE took part, the CHAIRPERSON suggested the deletion of the word "traditional" at the end of the third sentence.

Paragraph (11), as amended, was adopted.

Paragraphs (12) and (13)

Paragraphs (12) and (13) were adopted.

Paragraph (14)

55. Mr. FORTEAU proposed the deletion of the second and third sentences of the footnote to the paragraph, which referred to the decision of the Court of Justice of ECOWAS: the decision, which concerned environmental law, was hardly relevant to the topic in question.

That proposal was adopted.

Paragraph (14), as amended, was adopted.

Paragraph (15)

Paragraph (15) was adopted.

Paragraph (16)

56. Mr. KAMTO, speaking on behalf of Mr. Wako who had had to absent himself, said that the paragraph should refer to international legal instruments from all regions, including the African Charter on Human and Peoples' Rights. Speaking on his own behalf, he drew members' attention to the third footnote to the paragraph, where he considered that it was not enough to refer to the judgment of the European Court of Human Rights without indicating that, as far as crimes against humanity were concerned, the Commission did not intend to limit in any way the obligation of prevention that was incumbent on States. He suggested it be made clear that the intent of the draft article was not to introduce any limitation of that kind.

57. Mr. MURPHY (Special Rapporteur) said that this part of the commentary related to draft article 4 (*a*). The quotation in the footnote merely reflected the idea that, in theory, States could do many things but that, in practice, they could not take every possible conceivable measure. The footnote therefore expressly indicated that the obligation of prevention should not impose an excessive burden on States.

58. Mr. FORTEAU said that if it was considered that the reference to human rights treaties was relevant, it was necessary to explain what were the applicable human rights rules, without omitting any. Otherwise, paragraph (16) should be deleted. If paragraph (16) were retained, it would be better to keep the footnote under discussion *in extenso*.

59. Mr. TLADI said that he was convinced by the reasons advanced by Mr. Murphy. Concerning Mr. Wako's proposal, if the paragraph was not intended to focus only on judicial decisions, but also on legal instruments themselves, he considered that it would be useful to refer to article 1 of the African Charter on Human and Peoples' Rights, which provided for the obligation to adopt legislative or other measures.

60. Mr. MURPHY said that the purpose of the paragraph was not to list all regional charters, but rather to draw attention to the case law on which the concept of the obligation to prevent was based. That being said, he had no objection to a reference to the African Charter on Human and Peoples' Rights.

Paragraph (16) was adopted, as amended by Mr. Tladi.

Paragraph (17)

61. Ms. ESCOBAR HERNÁNDEZ said that she was not entirely comfortable with the penultimate sentence and that she wished to add a nuance, because there was a clear difference between cases where the acts listed in brackets were not committed as crimes against humanity and cases where the acts constituted a crime against humanity. For example, it was quite possible for torture to be criminalized under a given national legal system, without being defined as a crime against humanity. A "simple" act of torture—although that was an unfortunate expression—would not have the same consequences as an act of torture which constituted a crime under international law. She therefore proposed the addition of the text "notwithstanding the obligation of prevention, the wrongful acts in question should also be defined as crimes against humanity" or "notwithstanding the obligation of prevention, those wrongful acts must also be considered as crimes against humanity". It was not enough for a State to criminalize torture in order to fulfil its obligation of prevention. Furthermore, she considered that the additional text she was proposing was fully in line with one of the purposes of the draft articles, namely to achieve some harmonization of national legislation on the prevention of crimes against humanity.

62. Mr. MURPHY (Special Rapporteur) said that there seemed to be confusion about several different issues. Paragraph (17) concerned preventive measures (such as training programmes and national policies) and not the adoption of criminal laws by States, which would be taken up in another draft article in the second report. As the penultimate sentence stated, it was highly likely that States already had in place policies and programmes to prevent the commission of wrongful acts by their agents and that there was thus no need to adopt new measures to prevent the commission of systematic wrongful acts. He would prefer to retain the text as it stood until a draft article on the obligation of States to adopt criminal laws was prepared.

63. Ms. ESCOBAR HERNÁNDEZ said that the main point made in the sentence, where it said that the acts in question (such as murder and torture) were already proscribed in most national legal systems, might be understood as meaning that the prohibition of those acts was enough in itself to comply with the obligation of prevention. Although she considered that it would indeed be more appropriate to address the matter of the adoption of national criminal laws in a separate draft article, she proposed that the sentence be made more neutral by amending it to read: "Such measures, of course, already may be in place for most States, in the form of programmes relating to wrongful acts associated with crimes against humanity (such as murder, torture or rape)."

64. Mr. MURPHY (Special Rapporteur) said that the phrase "are already proscribed in most national legal systems" referred to the wrongful acts mentioned in brackets and not to crimes against humanity. In response to the concern of Ms. Escobar Hernández, he proposed that "Such measures" be replaced with "Certain measures".

65. Mr. FORTEAU said that, in the French version, the expression "to minimize the likelihood of the proscribed act being committed" [*de façon à réduire au minimum la probabilité que l'acte prohibé soit commis*] suggested that there was an acceptable minimum standard in such matters, and proposed that the expression be replaced with wording based on that used by the International Court of Justice in its 2007 judgment in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro),* namely "so as to prevent as far as possible the commission of crimes against humanity".

66. Mr. NOLTE proposed that in the same sentence the words "are already proscribed in most national legal systems" be replaced with "are surely already proscribed in all national legal systems" or "are already proscribed in

national legal systems". As far as he knew, murder was defined as a crime in all countries, thus the current wording might seem a little condescending.

67. Ms. ESCOBAR HERNÁNDEZ said that although replacing the expression "Such measures" with "Certain measures" would go some way to meeting her concern, she remained sceptical about the final part of the sentence which seemed to contradict point (1) of the paragraph, according to which the obligation would usually oblige the State at least to adopt national laws and policies as necessary. She would prefer simpler wording to be used, such as "It is possible that some such measures are already in place in most States", and for the final part of the sentence to be deleted so as to avoid any ambiguity.

68. Mr. NOLTE proposed that the adoption of the paragraph be deferred until the next meeting and that the Commission continue its consideration of the rest of the text.

That proposal was adopted.

Paragraph (18)

Paragraph (18) was adopted.

Paragraph (19)

69. Mr. PARK, supported by Ms. ESCOBAR HERNÁNDEZ, stressed that it was important to distinguish between intergovernmental and non-governmental organizations, and proposed that, in the first sentence, the adjective "intergovernmental" be added after the word "organizations", and that the words "International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies" be transposed to paragraph (20), which dealt with NGOs.

70. Ms. JACOBSSON recalled that ICRC was not an NGO and that the Commission had already discussed the question of its status and had been careful not to label it as such in its previous work. States had an obligation to cooperate with ICRC under international humanitarian law. The situation was different with regard to the International Federation of Red Cross and Red Crescent Societies, which was a different entity.

71. The CHAIRPERSON suggested the following wording: "such as the United Nations and other entities like the International Committee of the Red Cross".

72. Mr. MURPHY (Special Rapporteur) said that he thought he had avoided reopening the debate on the status of ICRC by using the general term "organizations" and by referring later, in paragraph (20), to the three levels of existing cooperation: cooperation with other States, cooperation with intergovernmental organizations and cooperation with NGOs.

73. Mr. CAFLISCH said that he shared Ms. Jacobsson's view and saw no reason to change the wording of the paragraph.

The meeting rose at 6.05 p.m.

3284th MEETING

Tuesday, 4 August 2015, at 10.05 a.m.

Chairperson: Mr. Narinder SINGH

Present: Mr. Al-Marri, Mr. Caflisch, Mr. Candioti, Mr. Comissário Afonso, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kamto, Mr. Kittichaisaree, Mr. Kolodkin, Mr. Laraba, Mr. McRae, Mr. Murase, Mr. Murphy, Mr. Niehaus, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Sir Michael Wood.

Immunity of State officials from foreign criminal jurisdiction (*concluded*)* (A/CN.4/678, Part II, sect. D, A/CN.4/686, A/CN.4/L.865)

[Agenda item 3]

REPORT OF THE DRAFTING COMMITTEE

1. Mr. FORTEAU (Chairperson of the Drafting Committee) introduced the titles and texts of the draft articles on immunity of State officials from foreign criminal jurisdiction, as adopted by the Drafting Committee, and as contained in document A/CN.4/L.865, which read:

IMMUNITY OF STATE OFFICIALS FROM FOREIGN CRIMINAL JURISDICTION

Draft article 2. Definitions

For the purposes of the present draft articles:

…

(*f*) An "act performed in an official capacity" means any act performed by a State official in the exercise of State authority.

Draft article 6. Scope of immunity ratione materiae

1. State officials enjoy immunity *ratione materiae* only with respect to acts performed in an official capacity.

2. Immunity *ratione materiae* with respect to acts performed in an official capacity continues to subsist after the individuals concerned have ceased to be State officials.

3. Individuals who enjoyed immunity *ratione personae* in accordance with draft article 4, whose term of office has come to an end, continue to enjoy immunity with respect to acts performed in an official capacity during such term of office.

2. The Drafting Committee had devoted three meetings to its consideration of the draft articles on the topic of immunity of State officials from foreign criminal jurisdiction. It had examined the two draft articles initially proposed by the Special Rapporteur in her fourth report (A/CN.4/686), together with a number of suggested reformulations presented to the Drafting Committee by the Special Rapporteur in response to suggestions made or concerns raised during the debate in plenary session.

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* Resumed from the 3278th meeting.