

Provisional

**For participants only**

9 July 2019

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## **International Law Commission**

### **Seventy-first session (first part)**

#### **Provisional summary record of the 3474th meeting**

Held at the Palais des Nations, Geneva, on Friday, 7 June 2019, at 10 a.m.

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\* Reissued for technical reasons on 11 July 2019.


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***Present:***

*Chair:* Mr. Šturma

*Members:* Mr. Cissé  
Ms. Escobar Hernández  
Ms. Galvão Teles  
Mr. Grossman Guiloff  
Mr. Hassouna  
Mr. Huang  
Mr. Laraba  
Ms. Lehto  
Mr. Murase  
Mr. Nguyen  
Mr. Nolte  
Ms. Oral  
Mr. Park  
Mr. Rajput  
Mr. Reinisch  
Mr. Ruda Santolaria  
Mr. Saboia  
Mr. Tladi  
Mr. Valencia-Ospina  
Mr. Vázquez-Bermúdez  
Sir Michael Wood

***Secretariat:***

Mr. Llewellyn Secretary to the Commission

*The meeting was called to order at 10.10 a.m.*

**Organization of the work of the session** (agenda item 1) (*continued*)

**The Chair** invited members of the Commission to comment on the programme of work proposed by the enlarged Bureau for the second part of the session, which had been distributed.

**Sir Michael Wood** said that the quality of the Commission's work would suffer if it held as many meetings on Monday mornings and Friday afternoons as had been proposed. Members of the Commission used those times of the week for preparation. In addition, the number of meetings scheduled for the consideration of the two reports of the Special Rapporteur on the topic of immunity of State officials from foreign criminal jurisdiction seemed excessive.

The meeting scheduled for the afternoon of Friday, 19 July posed a particular problem, as it coincided with the first conference of the International Law Seminar Alumni Network, at which two Commission members would speak as panellists. The Commission risked sending the wrong signal if it scheduled its meetings in such a way that its members were prevented from attending that event.

**The Chair** said that, although the scheduling of meetings on Monday mornings and Friday afternoons was not ideal, the Commission had a great deal of work to complete during the second part of the session, and the Special Rapporteur on immunity of State officials from foreign criminal jurisdiction had requested additional time for the plenary debate on her topic.

The three activities scheduled for the afternoon of Friday, 19 July had been placed in square brackets on the proposed programme of work, as they were not yet confirmed. Indeed, it was possible that the first of those activities, the proposed informal meeting with the African Union Commission on International Law, would not in fact go ahead, and that either the Working Group on the long-term programme of work or the Working Group on methods of work would not need the additional time. For that reason, he proposed that those two Working Groups should plan to meet on the afternoon of Friday, 12 July instead.

**Ms. Escobar Hernández** said that, unless the Commission cancelled some of the meetings of the working groups and the Drafting Committee, the Commission had no option, owing to its heavy workload, other than to meet on some Monday mornings and Friday afternoons. The seven and a half meetings allocated to the plenary debate on the topic of immunity of State officials from foreign criminal jurisdiction were the minimum required, as the Commission would be considering two reports: her sixth, the discussion of which had not been completed at the previous session, and her seventh, which would soon be released in all the official languages.

**Mr. Park** asked when the English and French versions of the seventh report of the Special Rapporteur on immunity of State officials from foreign criminal jurisdiction would be released.

**Mr. Llewellyn** (Secretary to the Commission) said that the English and French versions were expected to be released the following week.

**Mr. Rajput** said that he would appreciate more information on the report of the Study Group on sea level rise, which was due to be considered at the meeting scheduled for the afternoon of Monday, 15 July.

**The Chair** said he expected that the Study Group on sea level rise would present a short report on procedural matters and its future programme of work.

**Mr. Tladi**, expressing his full support for the proposed programme of work, said that, although the Commission did not usually schedule meetings for Monday mornings and Friday afternoons, it would be unable to clear its workload for the second part of the session unless it did. During the first part, six and a half meetings had been devoted to the plenary debate on his fourth report as Special Rapporteur on the topic of peremptory norms of general international law (*jus cogens*), in which only one draft conclusion had been proposed, and none of those meetings had risen early for want of speakers. Unless the

Commission limited the time allocated to each member who wished to comment on the reports of the Special Rapporteur on immunity of State officials from foreign criminal jurisdiction, it should expect that more time would be required for their consideration, as they were both long and concerned a topic that had previously given rise to extensive debate.

**Mr. Nolte** said that, when the programme of work had been discussed in the enlarged Bureau, he had strongly supported the proposal to allocate additional meeting time to the plenary debate on immunity of State officials from foreign criminal jurisdiction. However, it did seem excessive to allocate eight meetings to that debate. The Commission might wish to consider cancelling the proposed plenary on the morning of Monday, 22 July.

**Mr. Huang** asked why no meetings had been scheduled for matters to be considered under agenda item 11, "Other business", and whether it was really necessary to allocate so many meetings to the adoption of the Commission's report to the General Assembly on its work at the current session.

**Mr. Rajput** said that, at the previous session, he and other members of the Commission had not made statements on the sixth report of the Special Rapporteur on immunity of State officials from foreign criminal jurisdiction on the understanding that they would be given an opportunity to do so at the current session. He wondered whether members would be expected to address both the sixth and seventh reports of the Special Rapporteur in a single statement or whether the two reports would be dealt with separately.

He, too, wished to place on record his concern regarding the proposal to schedule meetings on Monday mornings or Friday afternoons, as it would result in members having less time in which to prepare. Those were often the only parts of the week in which members had the opportunity to access the resources of the library of the United Nations Office at Geneva.

**Mr. Tladi** said that, unless the Commission scheduled meetings on some Monday mornings and Friday afternoons or did away with its coffee breaks, it might not be possible for some members to comment in plenary on the two reports of the Special Rapporteur on immunity of State officials from foreign criminal jurisdiction.

**The Chair** said that no meeting had been specifically scheduled for the consideration of matters under agenda item 11, but any member of the Commission could propose a matter for consideration thereunder. The large number of meetings allocated to the adoption of the Commission's report on its work at the current session was due to the large quantity of text and commentaries that was expected to be contained therein. In that connection, he recalled that, at the current session, the Commission had adopted one set of draft provisions on second reading and another two on first reading.

He agreed that the Commission should not do away with its coffee breaks, as it was difficult to maintain concentration continuously for three hours. The scheduling of meetings on Monday mornings and Friday afternoons had been necessitated by the Commission's exceptionally heavy workload for the second part. He would reiterate his request that members should aim to comment on the reports under consideration as concisely as possible.

Members would be invited to address both the sixth and seventh reports of the Special Rapporteur on immunity of State officials from foreign criminal jurisdiction in a single statement.

He, too, was not overly enthusiastic about the prospect of a meeting on the morning of Monday, 22 July. One solution might be to place the meeting in square brackets on the programme of work, as it should have become clear by the end of the second week whether that meeting would need to go ahead.

**Mr. Saboia**, expressing support for the Chair's proposal, said that the scheduling of meetings would have been less problematic if the second part of the session had been programmed to last for six weeks instead of five. The topic of immunity of State officials from foreign criminal jurisdiction should not be singled out for a reduction in meeting time, as a similar number of meetings had been set aside for other topics. He hoped that

Commission members who spoke in the plenary debate would make efficient use of the time allocated to them.

**The Chair** said that more meeting time had been allocated to the consideration of the sixth and seventh reports of the Special Rapporteur on immunity of State officials from foreign criminal jurisdiction than had been allocated to the other two topics for which reports would be considered during the second part of the session. If it became apparent, as the second part progressed, that more plenary time was needed, some of the Commission's other activities, such as the meetings of the Drafting Committee, could be rescheduled.

**Mr. Vázquez-Bermúdez** said that the plenary time set aside for the consideration of his first report as Special Rapporteur on the topic of general principles of law might not be sufficient. If, for any reason, he was unable to introduce his report on the morning of Tuesday, 23 July, as had been proposed, he requested that he should be permitted to introduce the report that afternoon, so that the remaining plenary time could be given over to the debate. In addition, he would also ask that, if insufficient progress was made over the course of that week, the Commission should reconsider the decision to schedule a meeting of the Planning Group on the morning of Friday, 26 July.

**The Chair** said he recognized that the Special Rapporteur's first report needed to be introduced on Tuesday, 23 July. If the Commission was unable to complete its consideration of the Special Rapporteur's first report within the allocated time, the proposed meeting of the Planning Group on Friday, 26 July could be rescheduled.

**Ms. Escobar Hernández** said that she had no objection to the proposal to place the meeting scheduled for Monday, 22 July in square brackets on the programme of work, provided that no firm decision was taken regarding its cancellation without her being consulted first.

**The Chair** said he took it that the Commission wished to approve the programme of work proposed by the enlarged Bureau, as amended.

*It was so decided.*

*The meeting was suspended at 10.40 a.m. and resumed at 11.35 a.m.*

#### **Chair's concluding remarks**

**The Chair** said that the first part of the session had been fruitful. The Commission had considered three important topics – crimes against humanity, peremptory norms of general international law (*jus cogens*) and the protection of the environment in relation to armed conflicts. Much work remained to be done in the second part of the session, however. He wished to thank the Secretariat for its support and to extend his gratitude to the précis-writers, interpreters, editors, conference officers and other members of the conference services for their assistance.

After the customary exchange of courtesies, **the Chair** declared the first part of the seventy-first session closed.

*The meeting rose at 11.40 a.m.*