

Document:-  
**A/CN.4/3196**

**Summary record of the 3196th meeting**

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

Extract from the Yearbook of the International Law Commission:-  
**2013, vol. I**

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Paragraph (12)

42. After an exchange of views in which Sir Michael WOOD, Mr. NOLTE, Mr. HMOUD, Ms. JACOBSSON and she herself had taken part, Ms. ESCOBAR HERNÁNDEZ (Special Rapporteur) proposed adding the words “for the purposes of the present draft articles” after “*ratione personae*”.

*Paragraph (12), as amended, was adopted.*

Paragraph (13)

*Paragraph (13) was adopted.*

Paragraph (14)

43. Ms. ESCOBAR HERNÁNDEZ (Special Rapporteur) proposed the deletion of paragraph (14) in view of the fact that the Commission had decided not to reflect individual reservations expressed by Commission members in its draft commentaries.

*Paragraph (14) was deleted.*

44. The CHAIRPERSON invited the Commission to consider, paragraph by paragraph, document A/CN.4/L.820/Add.1, which contained the text of draft article 4 and the commentary thereto.

*Commentary to draft article 4 (Scope of immunity ratione personae)*

Paragraph (1)

*Paragraph (1) was adopted.*

Paragraph (2)

45. Mr. MURPHY proposed, in the second sentence, deleting the words “in fact”. He also proposed deleting the footnote at the end of the first indentation and, after the sixth sentence, adding a new sentence that would read: “The strict temporal scope of immunity is confirmed by a variety of national court decisions.” In addition, he proposed the insertion of a footnote that would refer to the relevant decisions listed in the memorandum by the Secretariat on immunity of State officials from foreign criminal jurisdiction.<sup>192</sup>

46. Mr. TLADI proposed, in the sixth sentence, deleting the word “solution”.

47. Sir Michael WOOD, endorsing Mr. Murphy’s proposal, said that, if the Commission referred to national court decisions, it should delete the seventh sentence, which would be rendered superfluous. In the final sentence, the words “to a great extent” should also be deleted.

*The amendments proposed by Mr. Murphy, Mr. Tladi and Sir Michael Wood were adopted.*

*The meeting rose at 1.05 p.m.*

## 3196th MEETING

*Wednesday, 7 August 2013, at 3 p.m.*

*Chairperson: Mr. Bernd H. NIEHAUS*

*Present: Mr. Cafilisch, Mr. Candiotti, Ms. Escobar Hernández, Mr. Forteau, Mr. Gevorgian, Mr. Hassouna, Mr. Hmoud, Mr. Huang, Ms. Jacobsson, Mr. Kittichaisaree, Mr. Laraba, Mr. Murase, Mr. Murphy, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood.*

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

CHAPTER V. *Immunity of State officials from foreign criminal jurisdiction (concluded)* (A/CN.4/L.820 and Add.1–3)

C. *Text of the draft articles on immunity of State officials from foreign criminal jurisdiction provisionally adopted so far by the Commission (concluded)*

2. TEXT OF THE DRAFT ARTICLES AND COMMENTARIES THERETO PROVISIONALLY ADOPTED BY THE COMMISSION AT ITS SIXTY-FIFTH SESSION (*concluded*)

1. The CHAIRPERSON invited the Commission to resume its consideration of the part of chapter V of the draft report contained in document A/CN.4/L.820/Add.1.

*Commentary to draft article 4 (Scope of immunity ratione personae) (concluded)*

Paragraph (2) (*concluded*)

2. Mr. NOLTE proposed rewording the fifth sentence to read: “The same applies, *a fortiori*, to the Head of State and the Head of Government, since no practice to the contrary is evident”, to be followed by the footnote proposed by Mr. Murphy at the previous meeting.

*Paragraph (2), as amended, was adopted.*

Paragraph (3)

3. Sir Michael WOOD suggested that the second footnote to the paragraph should simply list the names of the cases rather than describe them. He also proposed that the word “precedents” in the second sentence of the footnote should be replaced by “cases”.

4. Mr. FORTEAU, also referring to that footnote, suggested that the first sentence of the analysis of the judgment by the Paris *Cour d’appel* dated 13 June 2013 should be retained.

5. Mr. MURPHY proposed that the first sentence of the footnote in question should be replaced with a list of the cases mentioned in paragraphs 137 to 140 of the memorandum by the Secretariat.<sup>193</sup>

*That proposal was adopted.*

<sup>192</sup> A/CN.4/596 and Corr.1 (mimeographed; available from the Commission’s website, documents of the sixtieth session).

<sup>193</sup> A/CN.4/596 and Corr.1 (mimeographed; available from the Commission’s website, documents of the sixtieth session).

6. Mr. PARK suggested that at the end of the English text of the footnote, the words “cannot be derived” should be deleted.

7. Ms. ESCOBAR HERNÁNDEZ agreed with Sir Michael that simply citing the names of the relevant cases would make the footnote more succinct. However, she also agreed with Mr. Forteau that it was worth maintaining the first sentence of the description of the recent Paris *Cour d’appel* case, which read: “On the other hand, a recent judgment by the Paris *Cour d’appel*, dated 13 June 2013, appears to limit the immunity enjoyed by a sitting Head of State to immunity *ratione materiae*.”

8. Sir Michael WOOD said that he found the judgment by the Paris *Cour d’appel* obscure. The case was a very recent one; the Commission should not go on record as taking a position on it until all members had had time to study it carefully.

9. Mr. FORTEAU said that, as the case had been discussed in the plenary, there was no reason for the judgment not to be mentioned. A reading of the judgment supported the conclusion outlined in the footnote.

10. Sir Michael WOOD said that to say, as in the footnote, that the judgment appeared to limit the immunity enjoyed by a sitting Head of State to immunity *ratione materiae* was a misreading of the decision. He was opposed to maintaining that sentence.

11. Ms. ESCOBAR HERNÁNDEZ said that she agreed with Mr. Forteau’s interpretation of the judgment and would support retaining the sentence.

12. Mr. PETRIČ said that it would be sufficient simply to mention the judgment, as interested parties could read and interpret it for themselves.

13. Mr. MURPHY said that it would be misleading to simply mention the Paris *Cour d’appel* judgment without further comment. Given that the case was so recent and had not been included in the Special Rapporteur’s report or discussed in the Drafting Committee, he suggested that it could be omitted now, on the understanding that its relevance to the Commission’s commentary would be discussed later.

14. Mr. TLADI supported that proposal.

15. Sir Michael WOOD agreed that the Commission could discuss the case further and include it in its commentary if it concluded that it was of relevance.

16. Mr. FORTEAU said that he could go along with Mr. Murphy’s proposal but he did not believe the Commission was being objective by deleting the reference.

17. Ms. ESCOBAR HERNÁNDEZ said that she would support deleting the reference on the understanding that the Commission would reconsider the case the following year when dealing with immunity *ratione materiae*.

18. Mr. MURPHY, referring to paragraph (3), suggested replacing the words “this is explained by the need to” in

the fourth sentence with “extension of the immunity to acts performed in both a private and official capacity is necessary to”.

*Paragraph (3), as amended, was adopted.*

Paragraph (4)

19. Mr. PETRIČ suggested that the last sentence of paragraph (4) should be deleted. If the sentence was maintained, the word “possible”, before “exceptions” should be deleted. It had been clear from the Commission’s discussions that there were exceptions: it was simply a matter of agreeing on which ones.

20. Mr. MURPHY said that while he understood Mr. Petrič’s concern with regard to the word “possible”, it made it clear that it could not be concluded unequivocally that there were or were not exceptions.

21. Mr. CANDIOTI, supported by Sir Michael WOOD, said that he agreed with maintaining the word “possible” before “exceptions”. Referring to the “issue” of exceptions indicated that it presented a problem on which the Commission members were not in agreement. While he agreed with Mr. Petrič on the substance of the matter, in his view it would be more neutral to leave the sentence as currently drafted.

22. Ms. ESCOBAR HERNÁNDEZ, responding to a comment by Mr. Murphy, said that the footnote at the end of the paragraph should refer to paragraph 55 of her report (A/CN.4/661) rather than paragraph 53.

*With that amendment, paragraph (4) was adopted.*

Paragraph (5)

23. Mr. NOLTE said that, as currently drafted, the penultimate sentence suggested a contradiction that did not exist. He therefore suggested replacing the words “but nevertheless” with “and also”.

24. Ms. ESCOBAR HERNÁNDEZ agreed and said that in the Spanish text, the word “*aunque*” should be deleted and the words “*y que*” inserted between “*Estados*” and “*definen conductas*”.

*Paragraph (5), as amended, was adopted.*

Paragraph (6)

25. Sir Michael WOOD suggested that in the eighth sentence of the English text, the words “or expunging” should be deleted, since the preceding word, “exonerating”, was sufficiently broad to convey what was meant.

26. Mr. KITTICHAISAREE pointed out that the term “beneficiaries” would have to be replaced throughout the text to ensure consistency.

*Paragraph (6) was adopted with those changes to the English text.*

Paragraph (7)

27. Mr. MURPHY proposed that, in order to improve its readability, the first sentence should be redrafted to read: “Paragraph 3 of the draft article addresses what happens with respect to acts carried out in an official capacity while in office by the Head of State, Head of Government or Minister for Foreign Affairs after their term of office ends.” In the sixth sentence, he proposed replacing the phrase “The Commission has answered this question by including in the present draft article” with “Thus, paragraph 3 sets forth”.

28. Mr. NOLTE, referring to the third sentence, said that the phrase “not even in the form of ‘residual immunity’” seemed to be contradicted by the quote in the footnote at the end of the first indentation from the Vienna Convention on Diplomatic Relations. He therefore proposed to delete that phrase.

29. Sir Michael WOOD said that the Special Rapporteur had, no doubt, used the expression “residual immunity” to refer to immunity *ratione personae*. However, that expression was commonly understood as referring to immunity *ratione materiae*, which did in fact continue to apply in respect of acts carried out in an official capacity after the term of office ended. Hence, the phrase referred to by Mr. Nolte was confusing, and he supported its deletion. In the footnote in question, he proposed deleting the second sentence because the quote it contained was oddly worded and was not particularly helpful or relevant.

30. Mr. NOLTE said that retention of the phrase “not even in the form of ‘residual immunity’” might create the misunderstanding that not even immunity *ratione materiae* subsisted after the term of office of the State official had ended.

31. Ms. ESCOBAR HERNÁNDEZ (Special Rapporteur) endorsed Mr. Murphy’s proposals, which reflected different stylistic preferences. As to the third sentence, she admitted that the reference to residual immunity could be misleading, since it might not be clear which type of immunity was meant. She suggested redrafting the third sentence to read: “Consequently, such immunity *ratione personae* no longer exists after their term of office ends.” [*“Por tanto, la citada inmunidad ratione personae no subsiste tras la terminación del mandato de aquellos.”*]

*With those amendments, paragraph (7) was adopted.*

*The commentary to draft article 4, as a whole, as amended, was adopted.*

32. The CHAIRPERSON invited the Commission to resume its consideration of the portion of chapter V contained in document A/CN.4/L.820/Add.2.

*Commentary to draft article 1 (Scope of the present draft articles) (concluded)*

Paragraph (5) (concluded)\*

33. Ms. ESCOBAR HERNÁNDEZ (Special Rapporteur) said that, in order to meet the concerns expressed by Mr. Gevorgian, and in response to comments made in plenary meetings with reference to the judgments

of the International Court of Justice, she had recast paragraph (5) to read as follows:

“(5) Secondly, the Commission has decided to confine the scope of the draft articles to immunity from criminal jurisdiction.

“The present draft article is not intended to define the concept of criminal jurisdiction, which is being considered by the Commission in relation to another draft article.<sup>[footnote]</sup> Nevertheless, the Commission has debated the scope of ‘criminal jurisdiction’ in relation to the acts that would be covered by the concept, particularly with reference to the extension of immunity to certain acts that are closely linked with the concept of personal inviolability, such as the arrest or detention of an individual. With this in mind, and subject to later developments in the Commission’s treatment of this issue, for the purposes of determining the scope of the present draft articles, the reference to foreign criminal jurisdiction should be understood as meaning the set of acts linked to judicial processes whose purpose is to determine the criminal responsibility of an individual, including coercive acts that can be carried out against persons who enjoy immunity in this context.”

<sup>[footnote]</sup> It must be kept in mind that the Special Rapporteur formulated a draft definition of criminal jurisdiction in her second report in the context of a draft article on definitions (A/CN.4/661, draft article 3. See also paragraphs 36 to 41 of the same report). This draft article has been referred to the Drafting Committee which, after extensive discussion, decided to take it up gradually throughout the quinquennium, and not to take a decision on it now. Nevertheless the concept of criminal jurisdiction has been discussed in both the plenary of the Commission and in the Drafting Committee.”

34. Sir Michael WOOD proposed the deletion of the last sentence in the footnote, as it merely repeated something that was already said in the third sentence of the commentary.

*Paragraph (5) was adopted with that amendment to the footnote.*

Paragraph (6) (continued)\*\*

35. Ms. ESCOBAR HERNÁNDEZ (Special Rapporteur) said that, in response to the amendments suggested by Sir Michael and Mr. Cafilisch, she had simplified the wording of paragraph (6) to read as follows:

“(6) Thirdly, the Commission decided to confine the scope of the draft articles to immunity from ‘foreign’ criminal jurisdiction, that which reflects the horizontal relations between States. This means that the draft articles will be applied solely with respect to the immunity from criminal jurisdiction ‘of another State’. Consequently, the immunities enjoyed before international criminal tribunals, which are subject to their own legal regime, will remain outside the scope of the draft articles.

“Nevertheless, the need to consider the special problem presented by so-called mixed or international criminal tribunals has been raised. Similarly, a question has been raised regarding the effect that existing

\* Resumed from the 3194th meeting.

\*\* Resumed from the 3194th meeting.

international obligations imposed on States to cooperate with international criminal tribunals would have on the present draft articles. Although diverse opinions were expressed with regard to both subjects, it is not possible at this stage to identify a definitive answer on either question. In any event, the Commission considers that the exclusion of international criminal tribunals from the scope of the present draft articles must be understood to mean that none of the rules that govern immunity before such tribunals are to be affected by the content of the present draft articles.”

36. Mr. MURPHY said that he was still puzzled by the final sentence and proposed that it should be deleted or transposed elsewhere.

37. Sir Michael WOOD, supported by Mr. SABOIA and Ms. ESCOBAR HERNÁNDEZ (Special Rapporteur), proposed that the sentence should be transposed to follow the third sentence and shortened to read: “This exclusion must be understood to mean that none of the rules that govern immunity before such tribunals are to be affected by the content of the present draft articles.”

*Paragraph (6), as amended, was adopted.*

*The commentary to draft article 1, as a whole, as amended, was adopted.*

38. The CHAIRPERSON invited the Commission to resume its consideration of the portion of chapter V contained in document A/CN.4/L.820/Add.3.

*Commentary to draft article 3 (Persons enjoying immunity ratione personae) (concluded)*

*Paragraph (2) (concluded)*

39. Ms. ESCOBAR HERNÁNDEZ (Special Rapporteur) said that the new text she was proposing greatly simplified the original wording of paragraph (2). The new version basically rested on a proposal made by Sir Michael. It would read as follows:

“(2) The Commission considers that there are two reasons for granting immunity *ratione personae* to Heads of State, Heads of Government and Ministers for Foreign Affairs, representational and functional. First, under the rules of international law, these three office holders represent the State in its international relations simply by virtue of their office, directly and with no need for specific powers to be granted by the State.<sup>[footnote 1]</sup> Second, they must be able to discharge their functions unhindered.<sup>[footnote 2]</sup> It is irrelevant whether those officials are nationals of the State in which they hold the office of Head of State, Head of Government or Minister for Foreign Affairs.”

<sup>[footnote 1]</sup> The International Court of Justice has stated that ‘it is a well-established rule of international law that the Head of State, the Head of Government and the Minister for Foreign Affairs are deemed to represent the State merely by virtue of exercising their functions’ (*Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006, p. 6, at p. 27, para. 46*).

<sup>[footnote 2]</sup> See *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), Judgment, I.C.J. Reports 2002,*

p. 3, at pp. 21–22, paras. 53–54, in which the International Court of Justice particularly emphasizes the second element with respect to the Minister for Foreign Affairs.”

40. Sir Michael WOOD said that the meaning would be clearer if the words “representational and functional”, in the first sentence, were transposed to follow the words “two reasons”.

*Paragraph (2), as amended, was adopted.*

*Paragraph (4) (concluded)*

41. Ms. ESCOBAR HERNÁNDEZ (Special Rapporteur) said that the amended version of the first sentence would read: “The recognition of immunity *ratione personae* in favour of the Head of Government and the Minister for Foreign Affairs is the result of the fact that, under international law, their international representative functions of the State have been gradually recognized as coming close to those of the Head of State.”

42. The third sentence had been deleted, and the fourth to sixth sentences combined and simplified to read: “The immunity from criminal jurisdiction of the Head of State, Head of Government and Minister for Foreign Affairs has been referred to in the Convention on special missions, the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, and the United Nations Convention on Jurisdictional Immunities of States and Their Property.”

43. The seventh sentence had been deleted. As a result of those changes, the way in which the immunity of the troika was reflected in each of the Conventions was now described in a footnote instead of in the third to seventh sentences.

44. The ninth sentence had been deleted, and the tenth had been reformulated, as requested, in more neutral terms. It now read: “In this connection, there was particular consideration of the individualized treatment given to the Head of State in selecting the special regimes to be covered by the saving clause in article 3 of the United Nations Convention on Jurisdictional Immunities of States and Their Property while excluding any reference to the Head of Government and Minister for Foreign Affairs.”

45. Sir Michael WOOD said that the tenth sentence should be simplified to read “In this connection, there was noted the specific mention of the Head of State in article 3 of the United Nations Convention on the Jurisdictional Immunities of States and Their Property without any reference to the Head of Government and Minister for Foreign Affairs.” In the first and second sentences, the word “international”, before “representational functions” and “representation”, respectively, should be deleted. In the second sentence, the word “phenomenon” should also be deleted.

46. Mr. NOLTE, supported by Mr. TLADI, said that the phrase “gradually recognized as coming close” in the revised version of the first sentence was rather obscure. He proposed the deletion of the word “gradual” and the replacement of “coming close to” with “approximate to”.

*Paragraph (4), as revised by the Special Rapporteur and amended by Mr. Nolte and Sir Michael Wood, was adopted.*

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

*Chapter V of the report of the Commission, as a whole, as amended, was adopted.*

**CHAPTER IX. Protection of the environment in relation to armed conflicts (A/CN.4/L.824)**

**A. Introduction**

Paragraph 1

47. Mr. FORTEAU said that, in the first sentence, the French version of the title of the topic was incorrect and should be amended to read: “*Protection de l’environnement en rapport avec les conflits armés*”. The same correction should be made in several other paragraphs in the chapter, as well as in its title.

48. The CHAIRPERSON said that the Secretariat would ensure that the correct version of the title of the topic in French was accurately reproduced throughout the report.

*Paragraph 1 was adopted, subject to amendment of the French text.*

**B. Consideration of the topic at the present session**

Paragraphs 2 and 3

*Paragraphs 2 and 3 were adopted.*

**REPORT OF THE SPECIAL RAPporteur ON THE INFORMAL CONSULTATIONS HELD ON THE TOPIC**

Paragraphs 4 to 15

*Paragraphs 4 to 15 were adopted.*

*Chapter IX of the report of the Commission, as a whole, was adopted, subject to amendment of the French text.*

**CHAPTER VII. Formation and evidence of customary international law (A/CN.4/L.822 and Add.1)**

Document A/CN.4/L.822

**A. Introduction**

Paragraph 1

*Paragraph 1 was adopted.*

**B. Consideration of the topic at the present session**

Paragraph 2

*Paragraph 2 was adopted.*

**1. INTRODUCTION BY THE SPECIAL RAPporteur OF THE FIRST REPORT**

Paragraph 3

49. Sir Michael WOOD (Special Rapporteur), referring to the last sentence, said that the expression “going forward” was superfluous, and he proposed deleting it.

*Paragraph 3, as amended, was adopted.*

Paragraph 4

50. Sir Michael WOOD (Special Rapporteur) proposed deleting the expression “going forward” in the penultimate sentence.

*Paragraph 4, as amended, was adopted.*

Paragraph 5

*Paragraph 5 was adopted.*

Paragraph 6

51. Mr. FORTEAU suggested that in the first sentence, the adjective “systemic” should be deleted.

52. Mr. VÁZQUEZ-BERMÚDEZ said that, in the first sentence of the Spanish text, the word “*determinación*” should be replaced by “*identificación*”, as the latter was the word that had been agreed for the new title of the topic.

*Paragraph 6, as amended, was adopted.*

Paragraphs 7 to 9

*Paragraphs 7 to 9 were adopted.*

**2. SUMMARY OF THE DEBATE**

Paragraph 10

*Paragraph 10 was adopted.*

Paragraph 11

*Paragraph 11 was adopted with a minor editorial amendment to the English text.*

Paragraph 12

*Paragraph 12 was adopted.*

Paragraph 13

53. Ms. ESCOBAR HERNÁNDEZ said that in the reference to the new title of the topic in the second sentence of the Spanish text, the word “*determinación*” should be replaced with “*identificación*”. The same correction should be made throughout the text.

54. The CHAIRPERSON said that the Secretariat would ensure that the correct version in Spanish of the new title of the topic was accurately reproduced throughout the report.

55. Mr. CANDIOTI asked whether the change to the title of the topic that had been agreed in the debate should be reflected in the title of chapter VII of the Commission’s report.

56. Mr. KORONTZIS (Secretariat) said that, in keeping with past practice, the title of chapter VII would remain the same as that which appeared in the agenda for the Commission’s sixty-fifth session. The new title would be used beginning with the agenda and documents pertaining to the sixty-sixth session.

*Paragraph 13 was adopted, subject to amendment of the Spanish text.*

Paragraph 14

57. Sir Michael WOOD (Special Rapporteur) proposed that, in the first sentence, the phrase “formative and evidentiary elements” should be replaced with “formation and evidence” and that in the third sentence, the words “formative elements” should be replaced with “formation”.

*Paragraph 14, as amended, was adopted.*

Paragraph 15

58. Sir Michael WOOD (Special Rapporteur) said that, in the first sentence, the word “detailed” should be deleted because the Commission was not going to undertake any study, detailed or otherwise.

59. Mr. FORTEAU, referring to the third sentence, said that the word “materially” was ambiguous and should be deleted, since the difference referred to could also be formal in nature.

60. Mr. MURPHY, referring to the fourth sentence, said that it was inappropriate to indicate that a separate topic on *jus cogens* was under consideration in the Working Group on the long-term programme of work, since the Commission’s usual practice was to disclose the Working Group’s deliberations only after it had reached a decision on the inclusion of a particular topic. He therefore proposed deleting the sentence.

61. Sir Michael WOOD (Special Rapporteur) said that the fourth sentence should be retained because it reflected statements made in the plenary as well as in the Working Group. Moreover, there was a connection between how the Commission had decided to handle *jus cogens* under the current topic and the fact that the addition of an item on *jus cogens* was under consideration in the Working Group.

62. Mr. HMOUD said that the fourth sentence should be retained so as to indicate to the Sixth Committee that the inclusion of an item on *jus cogens* had been discussed in the Working Group.

63. Mr. NOLTE said that by retaining the fourth sentence, the Commission was setting a precedent for revealing which topics for potential inclusion in the agenda were under consideration in the Working Group. Such a precedent risked putting the Commission under pressure to justify why it had decided not to include a particular topic.

64. Mr. TLADI recalled that the purpose of the Commission’s report was to accurately reflect what happened in its plenary meetings.

65. Mr. FORTEAU, supported by Mr. CANDIOTI, Mr. PARK and Mr. WISNUMURTI, said that, if the Commission decided to keep the fourth sentence, it should be worded more prudently.

66. Mr. PETRIČ, referring to the final sentence, proposed to delete the words “for the Commission”.

67. Sir Michael WOOD (Special Rapporteur) suggested that, in order to allay members’ concerns about the inclusion of a specific reference to the Working Group’s deliberations, the fourth sentence should be reformulated to read: “It was also noted that a proposal had been made for a possible new topic concerning *jus cogens*.” He endorsed the proposals made by Mr. Forteau and Mr. Petrič with regard to the third and final sentences, respectively.

*With those amendments, paragraph 15 was adopted.*

Paragraph 16

*Paragraph 16 was adopted.*

Paragraph 17

68. Mr. VÁZQUEZ-BERMÚDEZ proposed replacing the words “generate or disprove the existence” with “or generate rules”.

*Paragraph 17, as amended, was adopted.*

Paragraphs 18 to 27

*Paragraphs 18 to 27 were adopted.*

Paragraph 28

69. Sir Michael WOOD (Special Rapporteur) suggested that, in the fourth sentence, the words “and declarations” should be deleted.

*Paragraph 28, as amended, was adopted.*

Paragraphs 29 to 32

*Paragraphs 29 to 32 were adopted.*

Paragraph 33

70. Mr. FORTEAU, referring to the second sentence, proposed deleting the word “integral”, which was confusing and superfluous.

*Paragraph 33, as amended, was adopted.*

Paragraphs 34 to 37

*Paragraphs 34 to 37 were adopted.*

71. The CHAIRPERSON invited the Commission to consider the portion of chapter VII of the draft report contained in document A/CN.4/L.822/Add.1.

3. CONCLUDING REMARKS OF THE SPECIAL RAPPORTEUR

Paragraphs 1 to 7

*Paragraphs 1 to 7 were adopted with an editorial amendment to the Spanish text.*

*Chapter VII of the report of the Commission, as a whole, as amended, was adopted.*

CHAPTER IV. *Subsequent agreements and subsequent practice in relation to the interpretation of treaties (concluded)\** (A/CN.4/L.819 and Add.1–3)

C. **Text of the draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, as provisionally adopted by the Commission at its sixty-fifth session (concluded)\***

2. TEXT OF THE DRAFT CONCLUSIONS AND COMMENTARIES THERETO PROVISIONALLY ADOPTED BY THE COMMISSION AT ITS SIXTY-FIFTH SESSION (concluded)\*

Document A/CN.4/L.819/Add.2

*Commentary to draft conclusion 4* (Definition of subsequent agreement and subsequent practice) (concluded)\*

Paragraph (3) (concluded)\*

72. Mr. NOLTE (Special Rapporteur) said that, in order to reconcile the views expressed by Sir Michael and Mr. Murphy, he had recast the second sentence of paragraph (3) of the commentary to read: “The term ‘in connection with the conclusion of the treaty’ should be understood as including agreements and instruments which are made in a close temporal and contextual relation with the conclusion of the treaty.”

*Paragraph (3), as amended, was adopted.*

*The commentary to draft conclusion 4, as a whole, as amended, was adopted.*

*Chapter IV of the report of the Commission, as amended, was adopted.*

*The meeting rose at 6.05 p.m.*

## 3197th MEETING

*Friday, 9 August 2013, at 10.05 a.m.*

*Chairperson: Mr. Bernd H. NIEHAUS*

*Present: Mr. Caffisch, Mr. Candioti, Ms. Escobar Hernández, Mr. Forteau, Mr. Gevorgian, Mr. Hassouna, Mr. Hmoud, Mr. Huang, Mr. Kittichaisaree, Mr. Laraba, Mr. Murase, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood.*

### **Draft report of the International Law Commission on the work of its sixty-fifth session (concluded)**

CHAPTER VIII. *Provisional application of treaties* (A/CN.4/L.823)

1. The CHAIRPERSON invited the Commission to consider, paragraph by paragraph, chapter VIII of the draft report, as contained in document A/CN.4/L.823.

\* Resumed from the 3193rd meeting.

### A. Introduction

Paragraph 1

*Paragraph 1 was adopted.*

### B. Consideration of the topic at the present session

Paragraphs 2 and 3

*Paragraphs 2 and 3 were adopted.*

#### 1. INTRODUCTION BY THE SPECIAL RAPPORTEUR OF THE FIRST REPORT

Paragraph 4

*Paragraph 4 was adopted subject to minor editorial amendments.*

Paragraphs 5 and 6

*Paragraphs 5 and 6 were adopted.*

Paragraph 7

2. Mr. FORTEAU (Rapporteur) proposed, in the first sentence of the French text, to add the words “*sur ce sujet*” after “*les deux rapporteurs spéciaux*”.

*Paragraph 7, as amended in the French version, was adopted.*

Paragraphs 8 and 9

*Paragraphs 8 and 9 were adopted.*

#### 2. SUMMARY OF THE DEBATE

Paragraph 10

*Paragraph 10 was adopted.*

Paragraph 11

3. Mr. NOLTE proposed, at the end of the final sentence, replacing the phrase “to join treaty regimes” with “to begin cooperation in accordance with a treaty”.

*Paragraph 11, as amended, was adopted.*

Paragraph 12

4. Sir Michael WOOD proposed replacing the phrase “the entry into force of” with “participation in”.

5. Mr. FORTEAU (Rapporteur) proposed, at the beginning of the final sentence, to replace the word “This” with “This clarification”.

*Paragraph 12, as amended, was adopted.*

Paragraph 13

*Paragraph 13 was adopted, subject to a minor editorial amendment.*

Paragraph 14

*Paragraph 14 was adopted.*