

Document:-  
**A/CN.4/3240**

**Summary record of the 3240th meeting**

Topic:  
**Draft report of the Commission on the work of its sixty-sixth session**

Extract from the Yearbook of the International Law Commission:-  
**2014, vol. I**

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(<http://legal.un.org/ilc/>)*

Paragraph (11)

83. Mr. TLADI proposed, in the first sentence, inserting the phrase “ordinary meaning of the” between the words “whereas the” and “terms”.

84. Mr. MURPHY proposed, in the final sentence, replacing the word “specified” with “clarified”.

85. Mr. NOLTE (Special Rapporteur) said that the Commission had used the word “specified” on a number of occasions in the commentaries to indicate a narrowing down of meaning, whereas it used the word “clarified” to mean an expansion of it. For that reason, he preferred to retain the word “specified”.

*Paragraph (11), as amended by Mr. Tladi, was adopted.*

Paragraph (12)

*Paragraph (12) was left in abeyance.*

Paragraphs (13) and (14)

86. Sir Michael WOOD said that paragraphs (13) and (14) related to an example of the use of the Red Cross, Red Crescent or Red Lion and Sun protective emblems. They indicated that States had a margin of discretion with regard to the use of the protective emblem and were not obligated to use it in all circumstances. He was not sure that this conclusion could be drawn from the example provided, however, and he was uncertain about suggesting a relaxation of the requirement to use the protective emblem on medical personnel and transports. Perhaps the Special Rapporteur would consider deleting paragraphs (13) and (14).

87. Mr. NOLTE (Special Rapporteur) said that he had attempted to address Sir Michael’s concern, which the latter had expressed on another occasion, with the inclusion in paragraph (14) of the formulation “does not contain an obligation to use the emblem under any circumstances”. He could further propose to replace the word “any” in that phrase with “such”, which would have the effect of narrowing its meaning somewhat, but the Commission could not simply ignore those examples, since they were clearly justified in the situations cited.

88. Mr. FORTEAU said that the part of the commentary in which paragraph (13) was included concerned article 31 of the 1969 Vienna Convention and the subsequent agreement of all parties to a treaty. Yet, the third sentence of paragraph (13) referred to the fact that “States have in certain situations refrained from marking such convoys”. He was not convinced that this was an example of an agreement between all the parties to a treaty.

89. Mr. NOLTE (Special Rapporteur) said that future draft conclusions would address practice that was engaged in by some but accepted by all parties to a treaty, as well as the broad area typically corresponding to multi-lateral treaties concerning practice that was followed by some parties and not contested by the others. The question was whether such practice, at least potentially, met the criteria for being considered a subsequent agreement. He did not believe any State would dispute the fact that,

in the circumstances described in the example, it was not obligatory to use the protective emblem; he would therefore prefer to retain it.

90. Mr. MURPHY said that the issue raised by Sir Michael was extremely important. If the example was retained, he proposed that, in the first sentence of paragraph (13), the word “One” be replaced with “Another”, since paragraph (12) would be merged with paragraph (10) and the Red Cross example would become a second example.

91. Given the problematic wording of paragraph (14), he proposed it be reformulated to read: “Such apparently uncontested practice by States confirms an interpretation of article 12 according to which the general obligation to use the protective emblem under exceptional circumstances allows a margin of discretion for the parties.” That was a more cautious statement that might address Sir Michael’s concerns.

92. Mr. Forteau had raised a very good point—it was not clear from the wording of paragraphs (13) and (14) that the practice described in the Red Cross example was one that was followed by all the parties in question. If, elsewhere in the commentary, the Commission referred to article 32, the example could be placed there; failing that, the Commission might envisage including a sentence to the effect that the Red Cross example was an illustration of article 32.

93. Mr. SABOIA said that he had been inclined to support Sir Michael’s proposal to delete paragraphs (13) and (14); however, since the object of the emblems was to protect human life, there might be exceptional circumstances in which it was justified not to display them, and Mr. Murphy’s proposal, in part, addressed such cases.

94. The CHAIRPERSON suggested that paragraphs (13) and (14) be left in abeyance until the next plenary meeting of the Commission.

*It was so decided.*

*The meeting rose at 1 p.m.*

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## 3240th MEETING

*Wednesday, 6 August 2014, at 3.05 p.m.*

*Chairperson:* Mr. Kirill GEVORGIAN

*Present:* Mr. Caffisch, Mr. Candioti, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Hassouna, Mr. Hmoud, 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. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood.

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**Draft report of the Commission on the work of its sixty-sixth session (continued)**

**CHAPTER VII. Subsequent agreements and subsequent practice in relation to the interpretation of treaties (concluded) (A/CN.4/L.840 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-sixth session (concluded)**

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

*Commentary to draft conclusion 7 (Possible effects of subsequent agreements and subsequent practice in interpretation) (continued)*

1. The CHAIRPERSON invited the Commission to pursue its consideration of paragraphs (10), (12), (13) and (14) of the commentary to draft conclusion 7, which had been left in abeyance at the previous meeting, and to continue its consideration of document A/CN.4/L.840/Add.2, paragraph by paragraph.

Paragraphs (10) and (12) (concluded)

2. Mr. NOLTE (Special Rapporteur) said that, following consultation with Mr. Forteau, he proposed amending the beginning of the footnote to paragraph (12), which was being maintained, to read: "This is not to suggest that there may ultimately be different interpretations of a treaty".

*The proposed wording of paragraphs (10) and (12), which had been merged, was read out: "State practice other than in judicial or quasi-judicial contexts confirms that subsequent agreements and subsequent practice not only contribute to specifying the meaning of a term in the sense of narrowing the possible meanings of the rights and obligations under a treaty, but they may also indicate a wider range of acceptable interpretations or a certain scope for the exercise of discretion which a treaty grants to States."*

*Paragraphs (10) and (12), as amended, were adopted.*

Paragraphs (13) and (14) (concluded)

3. Mr. NOLTE (Special Rapporteur) said that, in line with the proposals made by Mr. Murphy at the previous meeting, he proposed amending the beginning of the first sentence of paragraph (13) to read: "Another possible example concerns". In the second sentence, he proposed replacing "under any circumstances" with "under all circumstances" in the English version and "States possess some discretion" with "States may possess some discretion". Paragraph (14) could also be amended to read: "Such practice by States may confirm an interpretation of article 12 according to which the obligation to use the protective emblem under exceptional circumstances allows a margin of discretion for the parties."

*Paragraphs (13) and (14), as amended, were adopted.*

Paragraph (15)

4. Mr. MURPHY proposed replacing "more mundane circumstances" with "other circumstances" in the fourth sentence.

5. Sir Michael WOOD, supported by Mr. HMOUD and Mr. SABOIA, said that article 9 of the Vienna Convention on Diplomatic Relations, which granted the State an absolute right, was perhaps not the most appropriate example.

6. Mr. TLADI endorsed Sir Michael's comments concerning the absolute nature of the right accorded to the State but said that, in the case of article 9 of the Vienna Convention on Diplomatic Relations, it was precisely because practice tallied exactly with the treaty that the example was appropriate.

7. Mr. NOLTE (Special Rapporteur) said that he would be willing to accept Mr. Murphy's proposal. He noted that, even if the State's right was absolute, it must be exercised in good faith.

8. Mr. FORTEAU said that, in order to address the concerns expressed, he proposed replacing the word "discretion" with "an apparently unconditional right" in the first sentence and reformulating the last sentence to read: "Thus, such practice confirms that article 9 provides an unconditional right."

9. Mr. NOLTE (Special Rapporteur) said that the proposal was along the right lines and he would simply add the word "apparently" before "unconditional" in the first sentence and the word "indeed" before "provides" in the last sentence.

10. Mr. MURPHY said that, in a similar vein, he would propose removing the words "for purposes unrelated to political or similarly serious concerns" in the penultimate sentence.

*Paragraph (15), as amended, was adopted, subject to minor drafting changes in the English version.*

Paragraph (16)

*After a discussion in which Mr. Nolte (Special Rapporteur), Mr. Forteau and Sir Michael Wood took part, it was decided to hold paragraph (16) in abeyance.*

Paragraph (17)

*Paragraph (17) was adopted.*

Paragraph (18)

11. Ms. JACOBSSON proposed replacing the words "of 'feasibility'" with "of 'feasible precautions'" in the last sentence.

*The proposal was adopted.*

*After a discussion in which Ms. Jacobsson, Mr. Nolte (Special Rapporteur) and Mr. Murphy took part, it was decided to replace the words "clarified in effect by article 3 (4)" with "used in effect in article 3 (4)" in the second sentence.*

*Paragraph (18), as amended, was adopted, with a minor drafting change proposed by Ms. Jacobsson.*

Paragraphs (19) and (20)

*Paragraphs (19) and (20) were adopted.*

Paragraph (21)

12. Mr. NOLTE (Special Rapporteur) proposed adding a full stop after the words “the treaty which it amends” in the second sentence and deleting the text in parentheses (“unless the latter provides otherwise”) as well as the sentence “Like an agreement under ... of its application.” while retaining the footnote to that sentence, which would then be inserted at the end of the second sentence.

*Paragraph (21), as amended, was adopted.*

Paragraph (22)

13. Mr. NOLTE (Special Rapporteur) proposed adding the phrase “other than those set forth in article 39, if applicable” after “There do not seem to be any formal criteria,” in the third sentence. The rest of the sentence would remain unchanged.

*Paragraph (22), as amended, was adopted.*

Paragraph (23)

*Paragraph (23) was adopted.*

Paragraph (24)

14. Mr. HMOUD proposed deleting the word “Most” at the beginning of the fourth sentence, which would then begin with “Writers”.

15. Mr. NOLTE (Special Rapporteur) said that, in his view, the word “Most” should be retained as it reflected the fact that, as confirmed by the many sources cited in the second footnote to the paragraph, the position was shared by more than just a few writers.

16. Sir Michael WOOD said that, nonetheless, it was perhaps an exaggeration to claim that the view was shared by “Most writers”. In order to address Mr. Hmoud’s concern, he proposed replacing “Most” with “Many”.

*Paragraph (24), as amended, was adopted.*

Paragraph (25)

17. Mr. HMOUD suggested that the last sentence could be reworded slightly by adding the words “according to a view” after “Indeed”.

18. Mr. NOLTE (Special Rapporteur) noted that the position being expressed was not simply the view of a small number, as was confirmed once again by the many sources cited in the footnote. Furthermore, the position was not categorical, as it was not saying that it was impossible to fix the dividing line between the interpretation and the amendment or modification of a treaty but that it was, in practice, often “difficult, if not impossible”.

19. Following a discussion in which Mr. PETRIČ, Mr. HMOUD, Mr. TLADI and Mr. NOLTE (Special Rapporteur) took part, the CHAIRPERSON proposed that, given the lack of consensus on Mr. Hmoud’s proposal, paragraph (25) be held in abeyance and that the Special Rapporteur would consult the members concerned in order to agree on a solution.

*Paragraph (25) was held in abeyance.*

Paragraphs (26) to (28)

*Paragraphs (26) to (28) were adopted.*

Paragraph (29)

20. Mr. HMOUD proposed replacing the words “while raising the possibility” with “while not eliminating the possibility” at the beginning of the first sentence.

21. Mr. NOLTE (Special Rapporteur) argued that the first sentence referred to the judgment of the International Court of Justice in the case concerning the *Dispute regarding Navigational and Related Rights*, mentioned in paragraph (25) of the commentary to draft conclusion 7, in which the Court had not only not eliminated the possibility that a treaty could be modified through the subsequent practice of the parties, but had expressly raised that possibility.

22. Sir Michael WOOD proposed that, in order to address Mr. Hmoud’s concern, the words “while raising the possibility” could be replaced by “while leaving open the possibility”.

*Paragraph (29), as amended, was adopted.*

Paragraph (30)

23. Mr. MURPHY said that a footnote indicating the source should be added to the citation in the second sentence.

*Paragraph (30) was adopted subject to the addition of the footnote proposed by Mr. Murphy.*

Paragraphs (31) and (32)

*Paragraphs (31) and (32) were adopted.*

Paragraph (33)

24. Mr. MURPHY proposed replacing the words “The WTO case” with “The WTO situation” in the second sentence.

*Paragraph (33), as amended, was adopted.*

Paragraph (34)

*Paragraph (34) was adopted.*

Paragraph (35)

25. Mr. HMOUD, supported by Mr. VÁZQUEZ-BERMÚDEZ, proposed deleting the word “easily” from the last sentence.

26. Mr. NOLTE (Special Rapporteur) said that he did not support that deletion, as it would be inconsistent with paragraph (29). He proposed that the paragraph be held in abeyance until he had agreed on a solution with the members concerned.

*Paragraph (35) was held in abeyance.*

Paragraph (36)

*Paragraph (36) was adopted.*

*Commentary to draft conclusion 8* (Weight of subsequent agreements and subsequent practice as a means of interpretation)

Paragraphs (1) to (3)

*Paragraphs (1) to (3) were adopted.*

Paragraph (4)

27. Sir Michael WOOD proposed deleting the words “and sometimes rough” in the first sentence.

*Paragraph (4), as amended, was adopted.*

Paragraphs (5) to (14)

*Paragraphs (5) to (14) were adopted.*

*The commentary to draft conclusion 8, as a whole, as amended, was adopted.*

28. The CHAIRPERSON proposed a short break to allow the Special Rapporteur to consult with the members who had made proposals concerning paragraphs (16), (25) and (35) of the commentary to draft conclusion 7, which had been held in abeyance.

*The meeting was suspended at 4.25 p.m. and resumed at 4.55 p.m.*

29. The CHAIRPERSON invited the Commission to resume its consideration of paragraphs (16), (25) and (35) of the commentary to draft article 7, which had been held in abeyance.

*Commentary to draft conclusion 7* (Possible effects of subsequent agreements and subsequent practice in interpretation) (*concluded*)

Paragraph (16) (*concluded*)

30. Sir Michael WOOD said that it had been agreed with the Special Rapporteur to amend the last sentence to read: “Hence, recourse may be had to other subsequent practice under article 32 not only to determine the meaning of the treaty in certain circumstances, but also and always to confirm the meaning resulting from the application of article 31.”

*Paragraph (16), as amended, was adopted.*

Paragraph (25) (*concluded*)

31. Mr. NOLTE (Special Rapporteur) said that it had been agreed with Mr. Hmoud and Mr. Vázquez-Bermúdez to replace the word “often” with “sometimes” in the last sentence.

*Paragraph (25), as amended, was adopted.*

Paragraph (35)

32. Mr. VÁZQUEZ-BERMÚDEZ proposed adding the words “that establishes the agreement” to the last sentence, which would then read: “... is not formally called into question by an amendment or modification of a treaty by subsequent practice that establishes the agreement ...”.

*Paragraph (35), as amended, was adopted.*

*The commentary to draft conclusion 7, as a whole, as amended, was adopted.*

33. The CHAIRPERSON invited the members of the Commission to continue their consideration, paragraph by paragraph, of chapter VII, as contained in document A/CN.4/L.840/Add.3.

*Draft conclusion 9* (*Agreement of the parties regarding the interpretation of a treaty*)

Paragraphs (1) to (5)

*Paragraphs (1) to (5) were adopted.*

Paragraph (6)

34. Mr. MURPHY suggested adding the words “at the European Court of Human Rights” after “interpreters” in the last sentence to indicate that the approach described was specific to that Court and did not necessarily apply to others.

35. Mr. NOLTE (Special Rapporteur) said that when the European Court of Human Rights adopted a particular position, it tended to be followed by other interpreters. If Mr. Murphy was concerned that the sentence was too prescriptive, it could be reworded to read “interpreters may possess some margin” rather than “interpreters possess some margin”.

36. Sir Michael WOOD said that, alternatively, Mr. Murphy’s concern could be addressed by keeping the word “possess” but adding the words “of the European Convention on Human Rights” after “interpreters”.

37. Mr. NOLTE (Special Rapporteur) proposed that, in order to accommodate the views expressed by Mr. Murphy and Sir Michael, the end of the last sentence should be amended to read: “... interpreters, at least under the European Convention on Human Rights, possess some margin ...”.

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

Paragraphs (7) to (10)

*Paragraphs (7) to (10) were adopted.*

Paragraph (11)

*Paragraph (11) was adopted.*

38. Mr. FORTEAU proposed the insertion of a new paragraph, a copy of which had been distributed, after paragraph (11) in order to reflect the view expressed by certain members during the plenary debate. That paragraph would read:

“Some members considered on the other hand that the term ‘agreement’ has the same meaning in all provisions of the 1969 Vienna Convention. According to those members, this term designates any understanding which is binding upon the States concerned, and the case law referred to in the present commentary does not contradict this definition. Such a definition would not prevent to take into account, for the purpose of interpretation, a legally non-binding understanding, but then under article 32.”

39. Mr. NOLTE (Special Rapporteur) said that, although he was not in favour of including a dissenting opinion in

the commentary, he would not object to the addition of the paragraph proposed by Mr. Forteau provided the English translation of the expression *faisant droit* was something other than “binding upon”.

40. Sir Michael WOOD proposed replacing “which is binding upon” with “which has legal effect between”.

*The proposal was adopted.*

41. Mr. MURPHY suggested replacing the words “prevent to take into account” with “prevent taking into account” in the last sentence and deleting the words “but then” at the end of the sentence.

*The proposals were accepted.*

42. The CHAIRPERSON said that he took it that the members of the Commission supported the inclusion of the paragraph proposed by Mr. Forteau, as amended by Sir Michael and Mr. Murphy in the English version, after paragraph (11).

*It was so decided.*

Paragraphs (12) to (16)

*Paragraphs (12) to (16) were adopted.*

Paragraph (17)

43. Mr. MURPHY suggested that, in the English version, the beginning of the sentence be amended to read: “This judgment suggests that in cases which concern treaties delimiting a boundary”.

*Paragraph (17), as amended in the English version, was adopted.*

Paragraphs (18) to (23)

*Paragraphs (18) to (23) were adopted.*

*The commentary to draft conclusion 9, as a whole, as amended, was adopted.*

*Commentary to draft conclusion 10* (Decisions adopted within the framework of a conference of States parties)

Paragraphs (1) to (3)

*Paragraphs (1) to (3) were adopted.*

Paragraph (4)

44. Mr. MURPHY proposed putting the term “Conference of States parties” in quotation marks in the third sentence, as was the Commission’s standard practice when referring to definitions.

*Paragraph (4) was adopted with that minor drafting change.*

Paragraphs (5) to (16)

*Paragraphs (5) to (16) were adopted.*

Paragraph (17)

45. Mr. MURPHY proposed deleting the first sentence and the words “For example” in the second sentence, as the Commission had already explained in paragraph (11) that the decisions adopted by the conferences of States parties, particularly the Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, could constitute subsequent agreement or practice.

46. Mr. NOLTE (Special Rapporteur) said that he would be willing to accept that proposal if the word “regularly” was added before “adopted ‘additional agreements’” in the second sentence of paragraph (11).

*Paragraph (17), as amended and with that modification to paragraph (11), was adopted.*

Paragraphs (18) to (38)

*Paragraphs (18) to (38) were adopted.*

*Section C.2, as a whole, as amended, was adopted.*

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

**CHAPTER IX. Immunity of State officials from foreign criminal jurisdiction (A/CN.4/L.842 and Add.1)**

47. The CHAIRPERSON invited the members of the Commission to consider document A/CN.4/L.842, paragraph by paragraph.

**A. Introduction**

Paragraphs 1 to 3

*Paragraphs 1 to 3 were adopted.*

*Section A was adopted.*

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

Paragraph 4

*Paragraph 4 was adopted.*

Paragraphs 5 and 6

48. Ms. ESCOBAR-HERNÁNDEZ (Special Rapporteur) read out the new version of the two paragraphs.

49. The CHAIRPERSON, having requested that copies of the new proposals be distributed so that the members could examine them, suggested that the text be considered at a later meeting.

*It was so decided.*

Paragraphs 7 to 8

*Paragraphs 7 to 8 were adopted.*

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

1. TEXT OF THE DRAFT ARTICLES

Paragraph 9

50. Mr. FORTEAU said that, as the Commission had adopted a definition of the term “official”, the footnote to paragraph 1 of article 1 should be deleted.

*Paragraph 9, as amended, was adopted.*

*Section C.1 of chapter IX of the draft report of the Commission, as amended, was adopted.*

Document A/CN.4/L.842/Add.1

2. TEXT OF THE DRAFT ARTICLES AND COMMENTARIES THERETO PROVISIONALLY ADOPTED BY THE COMMISSION AT ITS SIXTY-SIXTH SESSION

*Commentary to draft article 2 (Definitions)*

Paragraph (1)

51. The CHAIRPERSON suggested to the Special Rapporteur that, in view of the lateness of the hour, the Commission should continue its consideration of that paragraph at a later meeting.

*The meeting rose at 6 p.m.*

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**3241st MEETING**

*Thursday, 7 August 2014, at 10.05 a.m.*

*Chairperson: Mr. Kirill GEVORGIAN*

*Present: Mr. Al-Marri, Mr. Cafilisch, Mr. Candiotti, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Hassouna, Mr. Hmoud, Ms. Jacobson, 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. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood.*

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**Draft report of the Commission on the work of its sixty-sixth session (continued)**

**CHAPTER IX. Immunity of State officials from foreign criminal jurisdiction (continued) (A/CN.4/L.842 and Add.1)**

1. The CHAIRPERSON invited the Commission to resume its consideration of the portion of chapter IX of the report contained in document A/CN.4/L.842, with specific regard to paragraphs 5 and 6, whose adoption had been left in abeyance and for which the Special Rapporteur had proposed reformulations (document without a symbol and only available in English and Spanish).

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

Paragraph 5 (*concluded*)

2. Ms. ESCOBAR HERNÁNDEZ (Special Rapporteur) said that her reformulation of paragraph 5 read:

“In her third report, the Special Rapporteur commenced with an analysis of the normative elements of immunity *ratione materiae*, focusing on those aspects related to the subjective element. In this context, as was announced at the previous session of the Commission, the general concept of an ‘official’ was examined in the report, and the substantive criteria that could be used to identify such persons were considered, especially with respect to those who may enjoy immunity *ratione materiae* from foreign criminal jurisdiction. The report further considered a linguistic point concerning the choice of the most suitable term for designating persons who enjoy immunity, given the terminological difficulties posed by the term ‘official’ and its equivalents in the various languages, and suggested instead that ‘organ’ be employed. Following an analysis of relevant national and international judicial practice, treaty practice and the previous work of the Commission, the Special Rapporteur proposed two draft articles relating to the general concept of ‘an official’ for the purposes of the draft articles and the subjective scope of immunity *ratione materiae*. It was envisaged that the material and temporal scope of immunity *ratione materiae* would be the subject of consideration in the Special Rapporteur’s next report.” [“*En su tercer informe, la Relatora Especial comenzó el análisis de los elementos normativos de la inmunidad ratione materiae, centrándose en los aspectos relacionados con el elemento subjetivo. En este marco, tal como se anunció en el anterior periodo de sesiones, examinó el concepto general de ‘funcionario del Estado’ y expuso los criterios sustantivos que podrían emplearse para identificar a dichas personas, en especial respecto de los posibles beneficiarios de la inmunidad ratione materiae de jurisdicción penal extranjera. Igualmente abordó una cuestión lingüística: la elección del término más adecuado para designar a las personas que se benefician de la inmunidad, habida cuenta de los problemas terminológicos que planteaba el uso del término ‘funcionario’ y sus equivalentes en las demás versiones lingüísticas, y propuso el empleo del término ‘órgano’. Tras un análisis de la práctica judicial a escala nacional e internacional, de los tratados y de ciertos trabajos previos de la Comisión, la Relatora Especial presentó dos proyectos de artículos dedicados al concepto general de ‘funcionario’ a los efectos del proyecto de artículos y al alcance subjetivo de la inmunidad ratione materiae. Está previsto que el alcance material y temporal de la inmunidad ratione materiae se examine en el siguiente informe de la Relatora Especial.*”]

3. Mr. VÁZQUEZ-BERMÚDEZ said that, in the second sentence of the English version of the text, the words “an ‘official’” should be replaced by “a ‘State official’”, which was a more accurate translation of the Spanish original.

*Paragraph (5), as reformulated by the Special Rapporteur and with the amendment to the English text proposed by Mr. Vázquez-Bermúdez, was adopted.*