

Provisional

**For participants only**

13 June 2017

English

Original: French

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**International Law Commission**  
**Sixty-eighth session (second part)****Provisional summary record of the 3346th meeting**

Held at the Palais des Nations, Geneva, on Thursday, 11 August 2016, at 3 p.m.

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***Present:***

*Chairman:* Mr. Comissário Afonso

*Members:* Mr. Caflisch  
Mr. Candioti  
Mr. El-Murtadi  
Ms. Escobar Hernández  
Mr. Forteau  
Mr. Hassouna  
Mr. Huang  
Mr. Kamto  
Mr. Kittichaisaree  
Mr. Laraba  
Mr. McRae  
Mr. Murase  
Mr. Murphy  
Mr. Niehaus  
Mr. Nolte  
Mr. Park  
Mr. Peter  
Mr. Petrič  
Mr. Saboia  
Mr. Singh  
Mr. Šturma  
Mr. Tladi  
Mr. Valencia-Ospina  
Mr. Vázquez-Bermúdez  
Mr. Wako  
Mr. Wisnumurti  
Sir Michael Wood

***Secretariat:***

Mr. Llewellyn Secretary to the Commission

*The meeting was called to order at 3 p.m.*

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

*Chapter XI. Immunity of State officials from foreign criminal jurisdiction  
(A/CN.4/L.889 and Add.1-3)*

**The Chairman** invited the members of the Commission to continue their consideration, paragraph by paragraph, of chapter XI of the draft report and drew attention to the portion of the chapter contained in document A/CN.4/L.889/Add.2.

*Document A/CN.4/L.889/Add.2*

**Article 2 (Definitions)**

*Commentary*

*Paragraphs (8) and (9)*

**Ms. Escobar Hernández** (Special Rapporteur) proposed to merge paragraphs (8) and (9) into a single paragraph that would read: “The Commission did not consider it appropriate to include in the definition of an ‘act performed in an official capacity’ a reference to the fact that the act must be criminal in nature. In so doing, the aim was to avoid a possible interpretation that any act performed in an official capacity was, by definition, of a criminal nature. In any case, the concept of an ‘act performed in an official capacity’ must be understood in the context of the present draft articles, which is devoted to the immunity of State officials from foreign criminal jurisdiction.”

*Paragraphs (8) and (9), as amended and merged, were adopted.*

*Paragraph (10)*

*Paragraph (10) was adopted.*

*Paragraph (11)*

**Mr. Kittichaisaree** proposed that, in the first sentence, the words “a list” should be replaced with the words “an exhaustive list”.

*Paragraph (11), as amended, was adopted.*

*Paragraph (12)*

*Paragraph (12) was adopted.*

*Paragraph (13)*

**Sir Michael Wood** proposed that, in the English version, the phrase “the courts have been seized of other acts” should be replaced with the phrase “the courts have considered other acts”.

**Mr. Murphy** proposed that, in the first sentence, the words “More specifically” should be replaced with the word “Moreover” and that the words “the following conduct” should be replaced with the phrase “acts that were claimed to be in an official capacity”.

**Ms. Escobar Hernández** (Special Rapporteur) endorsed Mr. Murphy’s proposals. Indicating that a mistake had been made with regard to the case cited in footnote 19, she proposed that another case should be cited in its place. She had in mind the case *Ye v. Zemin*, United States Court of Appeals, Seventh Circuit, 383 F.3d 620 (8 September 2004).

**Mr. Huang** said that the case referred to in footnote 19 was totally unrelated to the current topic, apart from the fact that it referred to Falun Gong, which was a sect.

**Ms. Escobar Hernández** (Special Rapporteur) said that, in the case mentioned, the question had arisen as to whether or not the acts at issue could be classified as official acts

for the purposes of immunity and that it was for that reason that she had cited it. The intention had not been to say whether or not the judgment handed down by the court in that case was correct but simply to describe it.

**Mr. Forteau** said that the existing footnote should be kept, as it correctly described what the court had concluded in that case.

**Mr. Tladi** said that the Commission had, on several occasions, cited cases in which the judgment handed down had not, in its opinion, been correct, but that those cases reflected practice, and as the judgments of national courts were concerned, the Commission had decided not to determine their relevance on the basis of their correctness. That said, at the Commission's sixty-ninth session, when reference was made to the cases involving the Minister of Justice and the Southern Africa Litigation Centre in the context of the consideration of exceptions to immunity, certain caveats should be mentioned in connection with those court cases so as to reflect his particular preferences and views about the correctness or lack of correctness concerning the decisions handed down.

**Sir Michael Wood**, supported by **Mr. Murphy**, said that he agreed with previous speakers and proposed that the text in brackets should be replaced with "alleged human rights violations".

**Mr. Kittichaisaree** said that Sir Michael's proposal would not solve the problem because it would mean that the word "alleged" would have to be inserted in front of each reference to a case.

**Mr. Kamto** said that he, too, was of the view that existing judgments should be reflected whether or not they met with the Commission's approval, and he proposed to delete the text contained in brackets.

**Mr. Saboia** said that he agreed with Mr. Tladi and endorsed Sir Michael's proposal.

**Mr. Huang** said that, under the current topic, the Commission was concerned with criminal jurisdiction. Given that the case mentioned in the footnote was a civil case, he proposed that the footnote should be deleted. In several countries, in particular the United States of America, Canada and Spain, the cases brought by Falun Gong against the Chinese Government had usually been rejected, which, in his view, made the reference to that case unnecessary.

**Mr. Šturma**, stressing that what was important was the type of case that was cited, said that the reference should be retained if it related to a criminal case that illustrated what was explained in the commentary, but if it related to a civil case, that was a different matter.

**Ms. Escobar Hernández** (Special Rapporteur) acknowledged that the case in question was a civil case but pointed out that it was not the first time the Commission had referred to a civil case in its commentaries in order to determine whether a particular act had been considered by a court to fall within the scope of immunity from jurisdiction. In her opinion, the footnote should not be deleted, and she was prepared to cite other examples of case law. She stressed that the Spanish courts had not rejected cases related to Falun Gong for reasons relating to the type of acts at issue or to immunity but solely because the domestic legislation on universal jurisdiction had been amended, and all pending proceedings that did not fall within the scope of the new provisions had consequently been removed from the docket.

**Mr. Forteau** proposed that, in order to address the concern expressed by Mr. Huang, the words "In relation to civil proceedings, see" should be inserted at the beginning of footnote 19.

**Mr. Huang** said that he preferred to simply delete the reference in the footnote and to replace it with another reference.

**The Chairman** suggested that paragraph (13) should be left in abeyance so as to allow time for the Special Rapporteur to coordinate with Mr. Huang on the amendment of footnote 19.

*Paragraph (13) was left in abeyance.*

*Paragraph (14)*

**Mr. Park** (Rapporteur) said that the content of paragraph (14) prejudged the outcome of the discussion that would be held on draft article 7 regarding exceptions to immunity during the Commission's sixty-ninth session. He therefore asked whether its adoption could be postponed.

**Ms. Escobar Hernández** (Special Rapporteur) said that paragraph (14) did not indicate which acts could constitute exceptions to immunity but merely provided examples of cases in which domestic courts had concluded that immunity was not applicable because the acts at issue could not be considered as acts performed in an official capacity. She therefore saw no reason to delete the paragraph. After having reviewed information provided by Mr. Murphy concerning two cases cited in footnotes 22 and 25, she noted that the references to the cases *Jimenez v. Aristeguieta et al.* in footnote 22 and *Islamic Republic of Iran v. Pahlavi and Others* in footnote 25 would be deleted. The reference to footnote 22 that appeared in brackets in footnote 25 should be deleted and replaced with the information on the Jimenez case that had previously been included in footnote 22.

**Mr. Saboia** agreed with the Special Rapporteur that paragraph (14) was purely factual and did not at all prejudice the outcome of the discussion that would take place at the Commission's sixty-ninth session.

**Mr. Vázquez-Bermúdez** said that he, too, was in favour of retaining paragraph (14), which contained examples of case law relevant to the discussion concerning acts performed in an official capacity.

**Sir Michael Wood** said that he understood Mr. Park's reservations and was not convinced himself that the paragraph belonged in the commentary to draft article 2 (f). Moreover, he was not sure that all the cases referred to in the footnotes were actually relevant.

**Mr. Petrič** said that he, too, had some difficulty with the footnotes, but that did not mean that paragraph (14) should be deleted, even though no one had proposed to do so. Nevertheless, in view of the objections that had been made, he agreed with Mr. Park that the Commission should postpone its adoption.

**Mr. Forteau** proposed that, in order to address the concerns of members who did not wish to prejudice the future debate, a "without prejudice" clause should be added to the end of the paragraph that would read: "The factual reminder of those various examples is without prejudice to the position that the Commission may take on the subject of exceptions to immunities."

**Mr. Murphy** said that he saw no need to include such a clause in paragraph (14), which did not prejudice the future debate any more than the preceding paragraphs did.

**Mr. Forteau** said that the clause in question was, in his view, justified in the case of paragraph (14) because, unlike the preceding paragraphs, which contained examples of acts performed in an official capacity, it referred to non-official acts, namely, acts that, in principle, were excluded from the scope of application of immunity. Paragraph (14) was therefore directly related to the subject of exceptions to immunity, on which the Committee would reach a decision at its sixty-ninth session.

**The Chairman** said he took it that the Commission wished to adopt paragraph (14) with the addition proposed by Mr. Forteau and the amendments to footnotes 22 and 25 proposed by the Special Rapporteur.

*Paragraph (14), as amended, was adopted.*

*Paragraphs (15) and (16)*

*Paragraphs (15) and (16) were adopted.*

*Document A/CN.4/L.889/Add.2, as a whole, as amended, was adopted.*

**The Chairman** invited the Special Rapporteur to read out paragraph (13) of document A/CN.4/L.889/Add.1 and paragraph (5) of document A/CN.4/L.889/Add.2,

which had been left in abeyance and which had been amended in the light of comments made during the discussion, a new version of which she had asked to have circulated.

*Document A/CN.4/L.889/Add.1*

**Ms. Escobar Hernández** (Special Rapporteur) said that paragraph (13) of the commentary to draft article 6 had been revised to read:

(13) However, regarding the situation described in draft article 6, paragraph 3, some members of the Commission consider that, during their term of office, Heads of State, Heads of Government and Ministers for Foreign Affairs, enjoy both immunity *ratione personae* and immunity *ratione materiae (stricto sensu)*. Other members of the Commission emphasized that, for the purposes of these draft articles, immunity *ratione personae* is general and broader in scope and encompasses immunity *ratione materiae*, since it applies to both private and official acts. For these members, such officials enjoy only immunity *ratione personae* during their term of office, and only after their term of office has come to an end will they enjoy immunity *ratione materiae*, as provided for in draft article 4 and reflected in the commentaries to draft articles 4 and 5. While favouring one or other option might have consequences before the national courts of certain States (in particular with regard to the conditions for invoking immunity before these tribunals), such consequences would not extend to all national legal systems. During the debate, some members of the Commission expressed the view that it was not necessary to include paragraph 3 in draft article 6, and that it was sufficient to refer to the matter in the commentaries thereto.

**Sir Michael Wood** proposed deleting the words “*stricto sensu*” in brackets at the end of the first sentence.

*Paragraph (13) of the commentary to draft article 6, as amended, was adopted.*

*Document A/CN.4/L.889/Add.2*

**Ms. Escobar Hernández** (Special Rapporteur) said that paragraph (5) of the commentary to draft article 2 (f) had been revised to read:

(5) For the purpose of attributing an act to a State, it is necessary to consider, as a point of departure, the rules included in the articles on responsibility of States for internationally wrongful acts adopted by the Commission at its fifty-third session. Nonetheless, it must be borne in mind that the Commission established those rules in the context and for the purposes of State responsibility. Consequently, the application of the rules to the process of attributing an act to a State in the context of immunity of State officials from foreign criminal jurisdiction should be examined carefully. For the purposes of immunity, the criteria for attribution set out in articles 7, 8, 9, 10 and 11 of the articles on responsibility of States do not seem generally applicable. In particular, the Commission is of the view that, as a rule, acts performed by an official purely for their own benefit and in their own interests cannot be considered as acts performed in an official capacity, even though they may appear to have been performed officially. In such cases, it is not possible to identify any self-interest on the part of the State, and the recognition of immunity, whose ultimate objective is to protect the principle of the sovereign equality of States, is not justified. It does not mean, however, that an unlawful act as such cannot benefit from immunity *ratione materiae*. Several courts have concluded that unlawful acts are not exempt from immunity simply because they are unlawful, even in cases when the act is contrary to international law. The question whether or not acts *ultra vires* can be considered as official acts for the purpose of immunity from criminal jurisdiction will be addressed at a later stage, together with the limitations and exceptions to immunity.

**Mr. Kittichaisaree** proposed that, in the third sentence, the words “of an official” should be inserted after the words “attributing an act”.

**Mr. Forteau** said that, in the final sentence, the word “foreign” should be inserted before the words “criminal jurisdiction”.

*Paragraph (5) of the commentary to draft article 2 (f), as amended, was adopted.*

**The Chairman** invited the members of the Commission to consider, paragraph by paragraph, the portion of chapter XI contained in document A/CN.4/L.889/Add.3.

*Document A/CN.4/L.889/Add.3*

*Paragraphs 1 to 4*

*Paragraphs 1 to 4 were adopted.*

*Paragraph 5*

**Ms. Escobar Hernández** (Special Rapporteur) said that, in the sixth line of the Spanish text, the word “*restricciones*” should be replaced with the word “*excepciones*”.

**Mr. Saboia** said that the English text should be corrected accordingly.

*Paragraph 5 was adopted, subject to the requisite amendments to the English and Spanish texts.*

*Paragraph 6*

**Ms. Escobar Hernández** (Special Rapporteur) said that the end of the third sentence contained a mistake and should be corrected to read: “but rather to the exercise of the prerogative of the State of the official”.

*Paragraph 6, as amended, was adopted.*

*Paragraphs 7 to 13*

*Paragraphs 7 to 13 were adopted.*

*Paragraph 14*

**Mr. Candiotti** proposed that, in the first sentence, the words “was partial and preliminary” should be replaced with the phrase “was only the beginning of the discussion”.

*Paragraph 14, as amended, was adopted.*

*Paragraph 15*

**Mr. Huang** proposed that, in the penultimate sentence, the word “highly” should be inserted before the words “politically sensitive”. He further proposed that the following sentence should be added to the end of the paragraph: “It was emphasized that the Commission should focus on codification instead of development of new norms of international law in dealing with the issue of exceptions to the immunity of State officials from foreign criminal jurisdiction.”

**Mr. Candiotti**, referring to the first sentence, said that the phrase “Those members who spoke”, variants of which were found in several other paragraphs of the present document, was somewhat infelicitous because it suggested that other members had wished to take the floor but had been prevented from doing so. It would be preferable to use the expressions that were typically used to summarize the discussion, such as “members”, “most members” or “some members”, depending on the situation, or else impersonal expressions. As to the sentence proposed by Mr. Huang, it would be necessary, if it was retained, to indicate in one way or another that it reflected the position of a very small minority of Commission members who had taken part in the discussion.

**Mr. Forteau** said that he concurred with the view expressed by Mr. Candiotti. In order to correctly reflect the debate, if the sentence proposed by Mr. Huang was added to the text, another sentence should be added to indicate that other members had, conversely, expressed opinions in favour of the progressive development of the law. On the other hand,

that divergence of views was clearly reflected in paragraphs 17 and 18, and for that reason, it might not be necessary to amend paragraph 15.

**Sir Michael Wood** said that, since the discussion that was summarized in the document was only the beginning of the debate and since relatively few Commission members had taken part in it, the Commission must be very careful in deciding how to present the views expressed, a requirement that the existing wording fully met. It would be counterproductive to attempt to take stock of how many members were in favour of each position, as well as unnecessary, since the summary records could be consulted by anyone who wished to have a full account of the debate.

**Mr. Candiotti** said that he would not insist on amending the introductory phrase “Those members who spoke” and would leave it up to the Special Rapporteur and the secretariat to resolve the issue in whatever manner they deemed appropriate. He maintained, however, that the sentence that Mr. Huang proposed to add might upset the balance of the paragraph by including a minority view, when the rest of the paragraph described the generally positive reception of the Special Rapporteur’s fifth report.

**Ms. Escobar Hernández** (Special Rapporteur) said that she had no objection to the drafting change proposed by Mr. Huang in the penultimate sentence nor to the sentence he wished to add to the end of the paragraph, except that, if that sentence was included in the text, it should be reformulated in order to avoid giving the impression that it expressed the general opinion of the Commission. A sentence would also need to be added, as had been pointed out by Mr. Forteau, in order to reflect the other views that Commission members had expressed.

**The Chairman** suggested that paragraph 15 should be left in abeyance and that it should be taken up again at a later stage.

*Paragraph 15 was left in abeyance.*

*Paragraph 16*

*Paragraph 16 was adopted.*

#### ***Prior consideration by the Commission of the limitation and exceptions***

*Paragraph 17*

**Sir Michael Wood** said that, while some members had criticized the approach adopted by the previous Special Rapporteur, others had praised it. He therefore proposed that the phrase “by some members of the Commission” should be added to the end of the final sentence.

**Mr. Forteau** proposed that, in second sentence, the words “, in their view,” should be inserted after the words “given that” and before the words “the approach” in order to indicate that it was not the Commission’s position but only that of the members to whom reference was made at the beginning of paragraph 17.

**Mr. Kamto** proposed that, in the second sentence, the phrase “given that the approach taken by the former Special Rapporteur had been the subject of critical comment” should be deleted, since it did not seem to serve any purpose.

**Mr. Saboia, Mr. McRae and Mr. Candiotti** supported that proposal.

**Mr. Candiotti** said that the word “bold” in the first sentence had a certain emotional connotation and did not belong in a report of the Commission. He proposed that it should be replaced with the qualifier “lucid”.

**Mr. Saboia** endorsed Mr. Candiotti’s proposal.

*Paragraph 17, as amended, was adopted.*



*Paragraph 18*

**Mr. Candiotti** said that he was against the idea of referring to the “loss of balance” caused by the Special Rapporteur, who had allegedly “made a gradual deviation from her own approaches in the treatment of the topic”. The last sentence of the paragraph, which had an unacceptable emotional connotation, should be deleted.

**Mr. Murphy** recalled that some Commission members had, in fact, referred to a loss of balance. The sentence did nothing more than to capture what had been said in the debate. Care must be taken to avoid modifying the text on the basis of the personal positions of Commission members.

**Mr. Singh** said that he supported the retention of the last sentence and proposed that, in the first sentence, the words “with appreciation” should be inserted after the word “recalled”.

*The proposal was adopted.*

*Paragraph 18, as amended, was adopted.*

**Study of practice***Paragraphs 19 to 25*

*Paragraphs 19 to 25 were adopted.*

**Legal nature of immunity***Relationship between immunity and jurisdiction**Paragraph 26*

**Ms. Escobar Hernández** (Special Rapporteur) proposed to delete footnote 2, since it was not the Commission’s practice to place footnotes in summaries of debates.

*Paragraph 26, as amended, was adopted.*

*Paragraphs 27 and 28*

*Paragraphs 27 and 28 were adopted.*

*Relationship between immunity and responsibility**Paragraph 29*

**Ms. Escobar Hernández** (Special Rapporteur) suggested the deletion of footnote 3.

**Mr. Forteau** pointed out that the phrase “possible measures of redress” that appeared in the first sentence of the paragraph actually referred to criminal sanctions, and the word “redress” should be replaced with the words “prevention and punishment” in all language versions. He proposed that that phrase should be replaced with the phrase “other possible measures to ensure prevention and punishment”.

**Sir Michael Wood** proposed that the formulation “other ways of avoiding impunity” could be used in the English version.

**Mr. Forteau** supported Sir Michael Wood’s proposal and proposed that the phrase “*pour empêcher l’impunité*” could be used in the French version.

*Paragraph 29, as amended, was adopted.*

*Paragraph 30*

**Mr. Forteau** said that the third sentence of the English version referred to the “affected State”, while the French version referred to “*l’État de nationalité*” (State of nationality). Both expressions were approximations. It would be preferable to refer to “the State of which those persons are the agents”.

*Paragraph 30, as amended, was adopted.*

*Relationship between State immunity and immunity of a State official*

*Paragraphs 31 and 32*

*Paragraphs 31 and 32 were adopted.*

*Relationship between national and international jurisdiction*

*Paragraphs 33 to 38*

*Paragraphs 33 to 38 were adopted.*

*Paragraph 39*

**Mr. Forteau** said that it was unclear what was meant by the phrase “the issue for determination before the domestic court”.

**Ms. Escobar Hernández** (Special Rapporteur) said that she had intended to convey the idea that, in some cases, the immunity of a State official and the question of whether or not exceptions existed had to be established on the basis of domestic law and not international law.

**Mr. Forteau** said that, in his understanding, it was a matter of stating that “in some instances, the question submitted to the domestic court was not the question of immunity under international law but that of immunity under the domestic law”.

**Mr. Murphy** proposed that a full stop should be placed after the phrase “in the context of each case” and that the remainder of the sentence should be deleted. A new sentence, beginning with the words “For example,” and continuing with the wording proposed by Mr. Forteau, should then be added.

*The proposal was adopted.*

*Paragraph 39, as amended, was adopted.*

**(c) Comments on draft article 7**

*Paragraph 40*

**Mr. Kamto** said that, for the sake of clarity, the second sentence of the paragraph should be shortened.

**Ms. Escobar Hernández** (Special Rapporteur) explained that the sentence was indeed difficult to understand because it was inaccurate. She suggested that it could be reformulated so that it would read: “In this context, some members supported the methodological approaches pursued by the Special Rapporteur in viewing immunity on the basis of a view of international law as a complete normative system, in order to ensure that the regime of immunity did not produce negative effects on, or nullify, other components of the contemporary system of international law as a whole.”

**Mr. Kamto** endorsed that proposal.

*Paragraph 40, as amended, was adopted.*

*Paragraph 41*

*Paragraph 41 was adopted.*

*Paragraph 42*

**Mr. Kittichaisaree** proposed that, in the second sentence of the English text, the word “and” between the words “State” and “had” should be replaced with the words “which therefore”.

*Paragraph 42, as amended, was adopted.*

*Paragraph 43*

**Mr. Kittichaisaree** proposed that, in the final sentence, the words “foreign criminal” should be inserted between the words “from” and “jurisdiction”.

*Paragraph 43, as amended, was adopted.*

*Paragraphs 44 and 45*

*Paragraphs 44 and 45 were adopted.*

*Paragraph 46*

**Ms. Escobar Hernández** (Special Rapporteur) suggested that, in the first sentence, the words “the crime of” should be inserted between the words “of” and “aggression”.

*Paragraph 46, as amended, was adopted.*

*Paragraphs 47 to 51*

*Paragraphs 47 to 51 were adopted.*

**(d) Future work***Paragraphs 52 and 53*

*Paragraphs 52 and 53 were adopted.*

*Document A/CN.4/L.889/Add.3, as a whole, as amended, was adopted.*

**The Chairman** drew attention to paragraphs (13) and (15) of document A/CN.4/L.889/Add.2, which had been left in abeyance in order to allow the Special Rapporteur time to revise them in consultation with interested members.

*Document A/CN.4/L.889/Add.2**Paragraph (13)*

**Ms. Escobar Hernández** (Special Rapporteur) said that, following consultation with Mr. Huang, footnote 19 had been amended to read: “In re *Ye v. Zemin*, United States Court of Appeals, Seventh Circuit, 383 F.3d 620 (8 September 2004) (this case was settled before a civil court)”.

**Mr. Murphy** said that the case in question had not been “settled”.

**Mr. Forteau**, noting that all the examples of case law cited in footnote 18 were criminal cases, proposed to reformulate the portion of the Special Rapporteur’s proposal in brackets to read: “unlike the cases cited in footnote 18, this was a case before a civil court”.

**Mr. Murphy** said that footnote 20 also referred to a series of criminal cases and could therefore also be mentioned in the text proposed by Mr. Forteau.

*Paragraph (13), as amended, was adopted.*

*Paragraph (15)*

**Ms. Escobar Hernández** (Special Rapporteur) suggested that the paragraph should be retained as it stood, but that the following sentences should be added to the end of the paragraph: “Some members were of the view that the Commission should focus on codification rather than on the formulation of new rules concerning limitations and exceptions. Others members stated that, as part of addressing limitations and exceptions to immunity, the Commission should take into account both the codification and the progressive development of international law.”

*Paragraph (15), as amended, was adopted.*

*Document A/CN.4/L.889/Add.2, as a whole, as amended, was adopted.*

*Document A/CN.4/L.889*

*Document A/CN.4/L.889, as a whole, was adopted, subject to the amendments to paragraph 6 to be made by the secretariat in order to finalize it.*

*Chapter XI of the draft report of the Commission, as contained in documents A/CN.4/L.889 and Add.1-3, as a whole, as amended, was adopted, subject to the requisite adjustments.*

*Chapter I. Introduction (A/CN.4/L.879)*

**The Chairman** invited the members of the Commission to begin their consideration, paragraph by paragraph, of chapter I of the draft report, as contained in document A/CN.4/L.879.

*Paragraphs 1 to 10*

*Paragraphs 1 to 10 were adopted, subject to the completion of paragraph 7 by the secretariat.*

*Chapter I of the draft report of the Commission, as contained in document A/CN.4/L.879, as a whole, as amended, was adopted, subject to the requisite adjustments.*

*Chapter II. Summary of the work of the Commission at its sixty-eighth session (A/CN.4/L.880)*

**The Chairman** invited the members of the Commission to begin their consideration, paragraph by paragraph, of chapter II of the draft report, as contained in document A/CN.4/L.880.

*Paragraph 1*

*Paragraph 1 was adopted.*

*Paragraph 2*

*Paragraph 2 was adopted, subject to its completion by the secretariat.*

*Paragraph 3*

**Sir Michael Wood** proposed that, in the first sentence, the word “thereof” and the words “and others” should be deleted.

*Paragraph 3, as amended, was adopted.*

*Paragraphs 4 to 7*

*Paragraphs 4 to 7 were adopted.*

*Paragraph 8*

**Mr. Murphy** proposed, in the third sentence, to replace the word “subsequently” with the word “also”.

*Paragraph 8, as amended, was adopted.*

*Paragraph 9*

*Paragraph 9 was adopted.*

*Paragraph 10*

**Sir Michael Wood** proposed that, for the sake of consistency with the second sentence of paragraph 8, in the second sentence, the words “considered and” should be deleted.

*Paragraph 10, as amended, was adopted.*

*Paragraph 11*

**Sir Michael Wood** proposed that, in the first sentence, the words “of general international law” should be inserted between the word “norms” and the words “(*jus cogens*)”. In addition, he wished to know why, in the last sentence, it was specified that the report presented to the Commission by the Chairman of the Drafting Committee had been an “oral” one.

**Mr. Forteau** said that the word “oral” appeared to have been added to show that it was the oral presentation of the report that was meant and not the report itself. He proposed that the beginning of the final sentence should be amended to read: “The Chairman of the Drafting Committee presented the interim report of the Drafting Committee”.

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

*Paragraph 12*

*Paragraph 12 was adopted.*

*Paragraph 13*

**Sir Michael Wood** said that, in the final sentence, the words “at the sixty-eighth session of the Commission” should be inserted after the word “topic”, and the words “sixty-eighth session” should be replaced with the words “sixty-ninth session”.

**Mr. Kittichaisaree** proposed that, in that sentence, the word “speak” should be replaced with the word “comment”.

**Mr. Candiotti** said that it was inaccurate to say that the discussion had been “preliminary in nature”, as several members had spoken at great length on the topic.

**Mr. Murphy**, endorsing that comment, proposed replacing the words “was preliminary in nature” with the words “was commenced”. He also proposed, in the final sentence of the English version, to replace the word “and” with the word “but”.

*Paragraph 13, as amended, was adopted.*

*Paragraphs 14 to 16*

*Paragraphs 14 to 16 were adopted.*

*Paragraph 17*

**Mr. Candiotti**, noting that several unrelated subjects were mixed together haphazardly in the paragraph, proposed that it should be split into several separate paragraphs.

**Mr. Forteau** said that, in order to clearly reflect the content of the paragraph, it would be useful to insert before the first sentence, in bold characters, the words “As regards ‘Other decisions and conclusions of the Commission’ (chap. XIII)”.

*Paragraph 17, as amended, was adopted with an editorial amendment to the English text.*

*Paragraphs 18 and 19*

*Paragraphs 18 and 19 were adopted.*

*Chapter II of the draft report of the Commission, as contained in document A/CN.4/L.880, as a whole, as amended, was adopted.*

*The meeting rose at 5.55 p.m.*