

Provisional

For participants only

31 October 2019

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International Law Commission
Seventy-first session (second part)**Provisional summary record of the 3507th meeting**

Held at the Palais des Nations, Geneva, on Friday, 9 August 2019, at 10 a.m.

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Commission*Programme, procedures and working methods of the Commission and its documentation
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Chair's concluding remarks

Closure of the session

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Present:

Chairman: Mr. Šturma
later: Ms. Oral (Second Vice-Chair)
later: Mr. Šturma (Chair)
Members: Mr. Argüello Gómez
Mr. Cissé
Ms. Escobar Hernández
Ms. Galvão Teles
Mr. Gómez-Robledo
Mr. Grossman Guiloff
Mr. Hassouna
Mr. Huang
Mr. Jalloh
Mr. Laraba
Mr. Murase
Mr. Murphy
Mr. Nguyen
Mr. Nolte
Mr. Ouazzani Chahdi
Mr. Park
Mr. Petrič
Mr. Rajput
Mr. Ruda Santolaria
Mr. Tladi
Mr. Valencia-Ospina
Mr. Vázquez-Bermúdez
Sir Michael Wood
Mr. Zagaynov

Secretariat:

Mr. Llewellyn Secretary to the Commission

The meeting was called to order at 10.05 a.m.

Draft report of the Commission on the work of its seventy-first session *(continued)*

*Chapter VIII. Immunity of State officials from foreign criminal jurisdiction
(continued)* (A/CN.4/L.932)

The Chair invited the Commission to resume its consideration of chapter VIII of its draft report, as contained in document A/CN.4/L.932, beginning with paragraph 33, which had been left in abeyance at a previous meeting.

B. Consideration of the topic at the present session (continued)

2. Summary of the debate (continued)

(a) General comments (continued)

Paragraph 33 (continued)

Ms. Escobar Hernández (Special Rapporteur) said that, following consultations with Mr. Nolte and Mr. Tladi, it had been agreed that the paragraph should be adopted as originally proposed.

Paragraph 33 was adopted.

The Chair invited the Commission to consider the subsection entitled “Specific comments”.

(b) Specific comments

Draft articles 8 and 9 (Consideration and determination of immunity)

Paragraph 38

Mr. Nguyen proposed that the words “domestic and international law” in the last sentence should be replaced with “national and international law”.

Paragraph 38, as amended, was adopted.

Paragraphs 39 to 44

Paragraphs 39 to 44 were adopted.

Draft articles 10 and 11 (Invocation and waiver of immunity)

Paragraphs 45 to 51

Paragraphs 45 to 51 were adopted.

Paragraph 52

Mr. Nolte proposed that, in the second sentence, the words “presumed as irrevocable” should be replaced with “presumed to be irrevocable”.

Paragraph 52, as amended, was adopted with a minor editorial amendment.

Draft articles 12 to 15 (Procedural safeguards between the forum State and the State of the official)

Paragraphs 53 to 58

Paragraphs 53 to 58 were adopted.

Draft article 16 (Procedural rights and safeguards pertaining to the official)

Paragraphs 59 to 61

Paragraphs 59 to 61 were adopted.

(c) *Future programme of work*

Paragraph 62

Sir Michael Wood proposed that the word “works” in the third sentence should be replaced with “work”.

Paragraph 62, as amended, was adopted.

Paragraphs 63 and 64

Mr. Tladi proposed that a new sentence should be inserted into paragraph 63, after the current first sentence, to read: “It was noted that the Jordan appeal was, in any event, not the final word on the matter since African States were considering proposing that the General Assembly request an advisory opinion from the International Court of Justice on the consequences of legal obligations of States under different sources of international law with respect to immunities of Heads of States and Government and other senior officials.” He also proposed that the third sentence of paragraph 64 should be deleted.

Mr. Murphy said that, in the sentence proposed for insertion into paragraph 63, the words “the Jordan appeal” could be replaced with “the Appeals Chamber judgment”.

Mr. Ruda Santolaria said that he would be in favour of somehow retaining the first part of the third sentence of paragraph 64.

The Chair said he took it that the Commission wished to insert into paragraph 63 the sentence proposed by Mr. Tladi, as amended orally by Mr. Murphy, and to delete the portion of the third sentence of paragraph 64 that began with the words “as well as”.

Paragraphs 63 and 64, as amended, were adopted.

Paragraph 65

Paragraph 65 was adopted.

Paragraph 66

Mr. Nolte proposed the insertion of the word “should” after the words “that the Commission”.

Paragraph 66, as amended, was adopted.

3. *Concluding remarks of the Special Rapporteur*

Paragraphs 67 and 68

Paragraphs 67 and 68 were adopted.

Paragraph 69

Mr. Nolte proposed that the words “situations addressed in” should be inserted after the words “were not applicable to” in the first sentence and also after the words “fair treatment applied to” in the second sentence.

Paragraph 69, as amended, was adopted.

Paragraphs 70 to 72

Paragraphs 70 to 72 were adopted.

Paragraph 73

Mr. Nolte said that the word “draft” should be inserted before “article 9” in the first sentence.

Paragraph 73, as amended, was adopted.

Paragraph 74

Paragraph 74 was adopted.

Paragraph 75

Mr. Nolte proposed that the words “or offer to itself prosecute” should be inserted after “waive immunity” in the last sentence.

Paragraph 75, as amended, was adopted.

Paragraphs 76 and 77

Paragraphs 76 and 77 were adopted.

Paragraph 78

Ms. Escobar Hernández (Special Rapporteur) said that, in the first sentence, the words “in particular immunity *ratione personae*” should be replaced with “in particular in the case of immunity *ratione materiae*”.

Paragraph 78, as amended, was adopted.

Paragraphs 79 to 81

Paragraphs 79 to 81 were adopted.

Paragraph 82

Ms. Escobar Hernández (Special Rapporteur) proposed that, for greater clarity, the words “of the present topic” should be inserted after the words “on the relationship” in the first sentence.

Paragraph 82, as amended, was adopted with a minor editorial amendment.

Paragraph 83

Paragraph 83 was adopted.

Chapter VIII of the draft report as a whole, as amended, was adopted.

Chapter XI. Other decisions and conclusions of the Commission (A/CN.4/L.934 and A/CN.4/L.934/Add.1)*

The Chair invited the Commission to consider chapter XI of its draft report, beginning with the portion of the chapter contained in document [A/CN.4/L.934](#).

*A. Provisional application of treaties**Paragraph 1*

Paragraph 1 was adopted, subject to its completion by the Secretariat.

Paragraphs 2 to 4

Paragraphs 2 to 4 were adopted.

Paragraph 5

Mr. Murphy proposed that the word “thus” should be deleted from subparagraph (b).

Paragraph 5, as amended, was adopted.

Paragraph 6

Mr. Murphy proposed that the words “cover” in the chapeau should be replaced with “provide for” and that the words “they should provide for” should be deleted from subparagraphs (a) to (d).

Paragraph 6, as amended, was adopted.

Paragraphs 7 and 8

Paragraphs 7 and 8 were adopted.

Paragraph 9

Mr. Nolte said that the statement of the purpose of the Commission’s work on the topic “Provisional application of treaties” in the sixth sentence was overly narrow in scope. He thus proposed that the words “necessary procedures for the resort to” in that sentence should be replaced with “legal framework for the”.

Paragraph 9, as amended, was adopted.

Paragraph 10

Paragraph 10 was adopted.

Paragraph 11

Paragraph 11 was adopted, subject to its completion by the Secretariat.

B. Sea-level rise in relation to international law

Paragraph 12

Paragraph 12 was adopted.

C. Programme, procedures and working methods of the Commission and its documentation

Paragraphs 13 and 14

Paragraphs 13 and 14 were adopted.

1. Working Group on the long-term programme of work

Paragraphs 15 to 17

Paragraphs 15 to 17 were adopted.

2. Working Group on methods of work of the Commission

Paragraph 18

Paragraph 18 was adopted.

3. Consideration of General Assembly resolution 73/207 of 20 December 2018 on the rule of law at the national and international levels

Paragraphs 19 to 27

Paragraphs 19 to 27 were adopted with a minor editorial amendment to paragraph 26.

4. *Honoraria*

Paragraph 28

Paragraph 28 was adopted.

5. *Documentation and publications*

Paragraphs 29 to 33

Paragraphs 29 to 33 were adopted.

6. *Yearbook of the International Law Commission*

Paragraphs 34 and 35

Paragraphs 34 and 35 were adopted.

7. *Assistance of the Codification Division*

Paragraph 36

Paragraph 36 was adopted.

8. *Websites*

Paragraph 37

Paragraph 37 was adopted.

9. *United Nations Audiovisual Library of International Law*

Paragraph 38

Paragraph 38 was adopted.

D. *Date and place of the seventy-second session of the Commission*

Paragraph 39

Paragraph 39 was adopted.

E. *Cooperation with other bodies*

Paragraphs 41 to 45

Paragraphs 41 to 45 were adopted.

Paragraph 46

Mr. Vázquez-Bermúdez said that the word “general” should be added to the reference to the topic “Peremptory norms of general international law (*jus cogens*)”.

Paragraph 46, as amended, was adopted with minor editorial amendments.

F. *Representation at the seventy-fourth session of the General Assembly*

Paragraph 47

Paragraph 47 was adopted.

G. *International Law Seminar*

Paragraphs 48 to 59

Paragraphs 48 to 59 were adopted.

The portion of chapter XI contained in document [A/CN.4/L.934](#) as a whole, as amended, was adopted.

The Chair invited the Commission to consider the portion of chapter XI of its draft report contained in document [A/CN.4/L.934/Add.1*](#).

Annex A

Draft model clauses on provisional application of treaties

Mr. Murphy proposed that a sentence should be inserted between the heading “Draft model clauses on provisional application of treaties” and the subheading “Commencement and termination” in order to make clear that the draft model clauses had not yet been adopted by the Commission. That new sentence should be enclosed within brackets and read: “The following draft model clauses have been proposed by the Special Rapporteur for consideration by the Commission at its seventy-second session.”

Mr. Gómez-Robledo said that, although he would not object to Mr. Murphy’s proposal, it was made clear in chapters II and III of the draft report that he, as Special Rapporteur for the topic “Provisional application of treaties”, was proposing the draft model clauses and that they had not been adopted or endorsed by the Commission.

Mr. Park said that the sentence that Mr. Murphy had proposed risked causing confusion. The draft model clauses had originally been proposed in 2018, but they had been modified during informal consultations at the current session.

The Chair said that, as the draft model clauses had been modified by the Special Rapporteur during informal consultations rather than by the Drafting Committee or by the Commission, it could still be said that the draft model clauses were being proposed by the Special Rapporteur.

Mr. Gómez-Robledo said that he had introduced his fifth report, in which the draft model clauses were proposed, at the Commission’s seventieth session in 2018. However, in his view, it could be said that the draft model clauses had been proposed at the current session, as they had been informally circulated in a revised form. That did not mean that the Commission had yet taken any action in that regard.

The Chair said he took it that the Commission agreed to the insertion of the new sentence proposed by Mr. Murphy.

It was so decided.

Mr. Murphy said that, in footnote 9, the abbreviation “IOs” should be spelled out.

The Chair said he took it that the Commission agreed to that amendment.

It was so decided.

The portion of chapter XI contained in document [A/CN.4/L.934/Add.1](#) as a whole, as amended, was adopted.*

Chapter XI of the draft report as a whole, as amended, was adopted.

Ms. Oral, Vice-Chair, took the Chair.

Chapter VII. Succession of States in respect of State responsibility ([A/CN.4/L.931](#) and [A/CN.4/L.931/Add.1](#))

The Chair invited the Commission to consider the portion of chapter VII of its draft report contained in document [A/CN.4/L.931](#).

A. *Introduction*

Paragraph 1

Paragraph 1 was adopted.

Paragraph 2

Mr. Murphy suggested that, in the first sentence, the words “sought to” should be deleted.

Paragraph 2, as amended, was adopted.

Paragraph 3

Paragraph 3 was adopted.

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

Paragraphs 4 to 9

Paragraphs 4 to 9 were adopted.

1. *Introduction by the Special Rapporteur of the third report*

Paragraphs 10 to 16

Paragraphs 10 to 16 were adopted.

2. *Summary of the debate*

(a) *General comments*

Paragraphs 17 to 19

Paragraphs 17 to 19 were adopted.

Paragraph 20

Mr. Nolte said that it was not clear from the opening of the second sentence whether support for the Special Rapporteur’s “flexible and realistic approach” should be attributed to the Commission as a whole or only to some members. He suggested that the words “and realistic” should be deleted. In the fourth sentence, the words “taking into account” should be altered to “including considering”, so as to avoid repetition. For the sake of clarity, in the fifth sentence, the words “should apply to general situations” should be changed to “should be of general application”.

Sir Michael Wood said that he agreed with the point made by Mr. Nolte concerning the second sentence and had no objection to his other suggestions. In the first sentence, the phrase “leading to the automatic extinction of responsibility in cases of succession of States” might be technically accurate, but the expression “the automatic extinction of responsibility in cases of succession of States” was very brutal; the entire phrase should perhaps be deleted.

Mr. Murphy said that he supported the deletion of the words “and realistic”; however, the word “flexible” should be retained as it provided a contrast with the rest of the sentence.

Mr. Zagaynov asked whether the change to the last sentence suggested by Mr. Nolte would be inconsistent with the fact that the Commission had previously characterized the draft articles as subsidiary rules.

Mr. Park suggested that quotation marks could be placed round the words “flexible and realistic approach” to avoid the view being attributed to the Commission as a whole.

Mr. Šturma (Special Rapporteur) said that he would prefer not to take the approach suggested by Mr. Park as it would change the sense of the sentence and could lead to misunderstandings; otherwise, he had no strong views on the matter. He supported the amendments to the fourth and fifth sentences suggested by Mr. Nolte: in his view, there was no inherent contradiction in describing the draft principles as being both subsidiary in nature and of general application, as any existing special agreement between States would in any case take precedence. He also agreed with Sir Michael Wood's suggestion to delete part of the first sentence.

The Chair said she took it that the Commission agreed to amend paragraph 20 as proposed by Mr. Nolte and Sir Michael Wood.

Paragraph 20, as amended, was adopted.

Paragraphs 21 and 22

Paragraphs 21 and 22 were adopted.

(b) *Scheme of the draft articles*

Paragraphs 23 and 24

Paragraphs 23 and 24 were adopted.

(c) *Draft article 2 (f)*

Paragraph 25

Paragraph 25 was adopted.

(d) *Draft articles 12 to 14*

Paragraphs 26 and 27

Paragraphs 26 and 27 were adopted.

Paragraph 28

Mr. Murphy suggested that, in the eighth sentence, the words "further to" should be altered to "as a result of".

Paragraph 28, as amended, was adopted.

Paragraphs 29 and 30

Paragraphs 29 and 30 were adopted.

(e) *Draft article 15*

Paragraphs 31 to 33

Paragraphs 31 to 33 were adopted.

(f) *Final form*

Paragraph 34

Paragraph 34 was adopted.

(g) *Future programme of work*

Paragraph 35

Paragraph 35 was adopted.

3. *Concluding remarks of the Special Rapporteur*

Paragraphs 36 to 45

Paragraphs 36 to 45 were adopted.

The portion of chapter VII of the draft report contained in document [A/CN.4/L.931](#) as a whole, as amended, was adopted.

The Chair invited the Commission to consider the portion of chapter VII of its draft report contained in document [A/CN.4/L.931/Add.1](#).

C. *Text of the draft articles on succession of States in respect of State responsibility adopted so far by the Commission*

1. *Text of the draft articles*

Paragraph 1

Paragraph 1 was adopted.

2. *Text of the draft articles and commentaries thereto provisionally adopted by the Commission at its seventy-first session*

Paragraph 2

Paragraph 2 was adopted.

Commentary to draft article 1 (Scope)

Paragraph (1)

Mr. Murphy suggested that the words “is to determine” should be changed to “sets forth” and the word “draft” inserted before “articles”.

Paragraph (1), as amended, was adopted.

Paragraph (2)

Mr. Murphy suggested that the first sentence should be changed to read: “Paragraph 1 identifies the material scope of the present draft articles as limited to matters of succession of States in respect of responsibility of States.”

Paragraph (2), as amended, was adopted.

Paragraph (3)

Mr. Park suggested that, at the end of the second sentence, the words “and vice versa, if relevant and necessary” should be added to clarify the mutual nature of the relations between State succession and the responsibility of States for internationally wrongful acts.

Mr. Murphy said that if Mr. Park’s aim was to give added emphasis to the mutual relations between the two fields, the second part of the sentence, beginning at “in particular”, could be deleted. However, if the objective of the sentence was to say that the Commission was particularly interested in the way in which the law of State succession related to State responsibility, then the sentence was fine as currently drafted.

Sir Michael Wood said that the sentence was clear as it stood. In considering the relationship between the two areas of law in question, the Commission was dealing in particular with the effects of State succession on State responsibility, not the effects of State responsibility on State succession. He saw no need for the addition of the words “and vice versa”.

Mr. Šturma (Special Rapporteur) said that he could accept Mr. Park’s proposal; however, he would equally be content to leave the paragraph as drafted.

Mr. Park said that, in the light of the explanations given, he would not insist on amending the paragraph.

Paragraph (3) was adopted.

Paragraph (4)

Paragraph (4) was adopted.

Paragraph (5)

Mr. Murphy said that, in the second sentence, the words “the articles on State responsibility” should be altered to “those articles”.

Paragraph (5), as amended, was adopted.

Paragraph (6)

Mr. Murphy suggested that, in the first sentence, the word “present” should be inserted before “draft articles”.

Paragraph (6), as amended, was adopted.

Paragraph (7)

Mr. Nolte, noting that it was the Commission’s practice to describe the result of its deliberations, rather than the process, in its commentaries, suggested that the words “as mentioned in the first report of the Special Rapporteur” should be deleted from the first sentence, while retaining footnote 4, which contained the reference to the first report; that the second sentence, including footnotes 5 and 6, should be deleted; and that the words “in response to this request, the Special Rapporteur suggested and”, “consequently” and “a new” should be deleted from the third sentence.

Mr. Murphy said that he supported Mr. Nolte’s proposed amendments to the first two sentences. He suggested that the third sentence should be curtailed further, to read: “It provides that ‘the present draft articles apply in the absence of any different solution agreed upon by the States concerned’.”

Mr. Šturma (Special Rapporteur) said that he favoured Mr. Nolte’s suggestion.

Sir Michael Wood said that, in either case, footnote 4 should be deleted, as the text to which it referred would no longer be included.

The Chair said she took it that the Commission agreed to amend the paragraph as proposed by Mr. Nolte, with the deletion of footnote 4.

Paragraph (7), as amended, was adopted.

Paragraph (8)

Paragraph (8) was adopted.

Commentary to draft article 2 (Use of terms)

Paragraph (1)

Mr. Murphy suggested that, in the second sentence, the words “in its work” should be altered to “across its work”.

Paragraph (1), as amended, was adopted.

Paragraph (2)

Mr. Murphy suggested that, in the first sentence, the words “as the Commission already explained at its twenty-sixth session in its commentary to this definition” should be deleted.

Paragraph (2), as amended, was adopted.

Paragraph (3)

Paragraph (3) was adopted.

Paragraph (4)

Sir Michael Wood, supported by **Mr. Murphy**, suggested that the paragraph should be deleted, as it was couched in negative terms.

Mr. Šturma (Special Rapporteur) said that the paragraph had been included to reflect the fact that various members, during the plenary debate and in the Drafting Committee, had requested a definition of the term “international responsibility”. The paragraph provided useful background to draft article 2, which might yet be expanded to include additional definitions as work on the topic continued; however, he would not oppose its deletion.

Paragraph (4) was deleted.

*Commentary to draft article 5 (Cases of succession of States covered by the present draft articles)**Paragraph (1)*

Paragraph (1) was adopted with a minor editorial amendment to the English text.

Paragraph (2)

Paragraph (2) was adopted.

Paragraph (3)

Mr. Murphy suggested that the paragraph should be amended to read: “Draft article 5 does not provide any advantage to a State violating international law. To the contrary, it does not give any legal effect to unlawful territorial situations. Issues arising in such situations under general rules of international law on State responsibility, including the obligation of non-recognition, continue to apply to such situations.”

Sir Michael Wood said that Mr. Murphy’s proposal improved the general readability of the paragraph. However, in the proposed final sentence, it was not accurate to say that “issues ... continue to apply”: it was the general rules of international law that continued to apply.

Mr. Murphy said that he agreed with Sir Michael Wood’s point. He suggested that the last sentence of his proposed text should read: “General rules of international law on State responsibility including the obligation of non-recognition, continue to apply to such situations.”

Mr. Šturma (Special Rapporteur) said that he could go along with Mr. Murphy’s proposed rewording of the paragraph, which did not appear to substantively alter the text.

Paragraph (3), as amended, was adopted.

The portion of chapter VII of the draft report contained in document [A/CN.4/L.931/Add.1](#), as a whole, as amended, was adopted.

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

Mr. Šturma resumed the Chair.

Chapter IX. General principles of law

The Chair invited the Commission to consider chapter IX of the report, contained in document [A/CN.4/L.933](#).

A. Introduction

Paragraph 1

Paragraph 1 was adopted.

B. Consideration of the topic at present session.

Paragraph 2

Paragraph 2 was adopted.

Paragraph 3

Mr. Vázquez-Bermúdez (Special Rapporteur) proposed deleting the word “respectively” at the end of the sentence. He would pass any further such minor drafting amendments directly to the Secretariat.

Paragraph 3, as amended, was adopted.

Paragraph 4

Paragraph 4 was adopted.

Paragraph 5

Paragraph 5 was adopted subject to its completion by the Secretariat.

Paragraph 6

Mr. Vázquez-Bermúdez (Special Rapporteur) said that, as had been suggested by some members during the debate, he had consulted with the Secretariat on research it could carry out on the topic.

Mr. Llewellyn (Secretary to the Commission) said that the agreed wording for insertion into paragraph 6 had been circulated in writing and read: “At its ... session, on 9 August 2019, the Commission requested the Secretariat to prepare a memorandum surveying the case law of inter-State arbitral tribunals and international criminal courts and tribunals of a universal character, as well as treaties, which would be particularly relevant for its future work on the topic ‘General principles of law’.”

With that addition, paragraph 6 was adopted.

1. Introduction by the Special Rapporteur of the first report

Paragraphs 7 and 8

Paragraphs 7 and 8 were adopted.

Paragraph 9

Mr. Vázquez-Bermúdez (Special Rapporteur) said that, in the first sentence, the phrase “only one Member State raising a doubt on the topic on the basis that there was insufficient State practice...” could be replaced with “only one Member State expressing concern that there was insufficient State practice...”.

Paragraph 9, as amended, was adopted.

Paragraphs 10 to 23

Paragraphs 10 to 23 were adopted.

2. *Summary of the debate*

(a) *General comments*

Paragraphs 24 to 26

Paragraphs 24 to 26 were adopted.

(i) *Scope and outcome of the topic*

Paragraphs 27 to 29

Paragraphs 27 to 29 were adopted.

Paragraph 30

Mr. Vázquez-Bermúdez (Special Rapporteur) proposed adding the words “in this sense, which is moreover” after “authoritative statement” in the first sentence. In the fourth sentence, the words “stressed that in their application” should be replaced with “stressed that, in practice,”.

Paragraph 30, as amended, was adopted subject to a minor editorial amendment.

Paragraph 31

Mr. Park said that, in his view, the words “or creation” in reference to the determination of international law at the end of the second sentence might be problematic and should be deleted.

Paragraph 31, as amended, was adopted.

Paragraph 32

Mr. Vázquez-Bermúdez (Special Rapporteur) proposed that, in the first sentence, the words “would be central to the topic” should be replaced with “would be important for the topic”. In the fourth sentence, the phrase “it may not be possible to differentiate” should be replaced with “it may sometimes be difficult to differentiate”.

Paragraph 32, as amended, was adopted.

Paragraph 33

Paragraph 33 was adopted.

(ii) *Methodology*

Paragraphs 34 and 35

Paragraphs 34 and 35 were adopted.

(b) *Previous work of the Commission and development of general principles of law over time*

Paragraphs 36 and 37

Paragraphs 36 and 37 were adopted.

(c) *Elements of general principles of law*

Paragraphs 38 to 40

Paragraphs 38 to 40 were adopted.

Paragraph 41

Mr. Vázquez-Bermúdez (Special Rapporteur) proposed replacing the words “this issue” with “this matter” in the third sentence. The words “and to what extent was State consent needed” could be deleted at the end of the last sentence.

Paragraph 41, as amended, was adopted.

Paragraph 42

Mr. Grossman Guiloff said that, in order to more accurately reflect the views expressed during the debate, the first sentence should be amended to read: “Members generally agreed that the term ‘civilized nations’ was inappropriate, outdated and should be deleted altogether or revised.” If that amendment was not supported, he would suggest adding a sentence to read: “The view was expressed that the term ‘civilized nations’ was inappropriate”. In addition, he proposed adding the words “including international organizations” after “may not encompass all actors involved in the formation of general principles of law” in the second sentence.

Mr. Nolte said that, while all members agreed that the term “civilized nations” was outdated, his concern was that the Commission should not be seen to be attempting to change the Statute of the International Court of Justice. The formulation “deleted altogether” at the end of the first sentence seemed to imply an attempt to do just that. He would therefore propose amending the first sentence to read: “Members generally agreed that the term ‘civilized nations’ was outdated and should be avoided or revised.” He shared Mr. Grossman Guiloff’s view that the term was inappropriate, but did not believe that the Commission should express such a view with respect to the text of the Statute. He would therefore prefer Mr. Grossman Guiloff’s alternative proposal to indicate that the view had been expressed that the term was inappropriate.

Sir Michael Wood said that he saw no problem in stating that the term was “inappropriate and outdated”; he would rather do that than add a sentence that suggested that the Commission was divided on the issue. The addition of the word “inappropriate” would cast no more doubt on the language of the Statute than existed already. He agreed with Mr. Nolte that the phrase “deleted altogether” was not suitable; he proposed replacing it, and the words “or revised”, with the phrase “should not be used in the context of this topic”. As for the proposed inclusion of a reference to international organizations in the second sentence, he did not consider it necessary to add such specific emphasis, as international organizations were obviously included in the expression “all actors”.

Mr. Murphy said that he agreed overall with the sentiments expressed by Mr. Nolte and Sir Michael Wood. He also understood Mr. Grossman Guiloff’s concern, but, if possible, would prefer not add language referring to a separate view. He proposed that the first sentence should be amended to read: “Members generally agreed that the term ‘civilized nations’ was outdated not appropriate for use in the present draft conclusions”. That would send the message intended by Mr. Grossman Guiloff without impugning the Statute of the International Court of Justice.

Mr. Jalloh said that he shared the underlying concern expressed by Mr. Nolte but he had no difficulty with adding the word “inappropriate”, as proposed by Mr. Grossman Guiloff. It would be preferable to avoid inserting a separate sentence, particularly as no dissenting view had been expressed during the debate in the Commission. That the term “civilized nations” was inappropriate was beyond any dispute and the Commission should take a clear position on that point.

Ms. Oral said that she supported the proposal to include the word “inappropriate”. In doing so the Commission would not be impugning the Statute; she doubted whether any State would argue that making a distinction between “civilized” and “uncivilized” nations would be appropriate today.

Mr. Grossman Guiloff said that he would support Sir Michael Wood’s proposed formulation, which could hardly be seen as an attack on the Statute.

Mr. Ruda Santolaria, agreeing with the points made by with Mr. Grossman Guiloff and Sir Michael Wood, said that the term should be described as “inappropriate and obsolete”.

Mr. Ouazzani Chahdi said that, while he understood Mr. Nolte’s concern, it was not a question of impugning the Statute. As for the phrase “should be deleted altogether or revised”, his proposal would be for it to be amended to read “should be revised and replaced”.

Ms. Galvão Teles said that she would support the formulation “the term ‘civilized nations’ was inappropriate and outdated and should not be used in the context of the present topic”.

Ms. Escobar Hernández said that there seemed to be general agreement to refer to the term as “inappropriate and outdated”. She would also support Sir Michael Wood’s proposal to state that the term “should not be used in the context of the present topic”. She was in favour of Mr. Grossman Guiloff’s addition of the words “including international organizations” in the second sentence.

Sir Michael Wood said that, drawing on Mr. Murphy’s proposal, the first sentence could be reformulated to read: “Members generally agreed that the term ‘civilized nations’ was inappropriate and outdated and should not be used in the present draft conclusions”.

Mr. Vázquez-Bermúdez (Special Rapporteur) said that he would support Sir Michael Wood’s final proposal. While he was not opposed to including an express reference to international organizations in the second sentence, they were implicitly included in the current formulation. He suggested adding a sentence to the end of the paragraph to reflect another important proposal that had been made: “It was also suggested to use the term ‘community of nations’, contained in article 15, paragraph 2, of the International Covenant on Civil and Political Rights: ‘general principles of law recognized by the community of nations’.”

The Chair said there appeared to be general consensus to adopt the paragraph with the addition of the word “inappropriate” and the reformulation of the first sentence as proposed by Sir Michael Wood, the addition of the reference to international organizations in the second sentence and the insertion of the new sentence proposed by the Special Rapporteur.

Paragraph 42 was adopted with those amendments.

(d) *The origins of general principles of law as a source of international law*

Paragraph 43

Mr. Park said that paragraph 43 referred to “several members” who had agreed with the two categories proposed by the Special Rapporteur, while paragraph 44 mentioned “some members” who had suggested that the category of general principles formed within the international legal system should not be considered. He wondered whether those designations – “several members” and “some members” – accurately reflected the number of members who had taken each position. As he recalled, the latter group – “some members” in paragraph 44 – had been larger.

Sir Michael Wood said that while he agreed with Mr. Park’s point about the size of the different groups of members, it would be too complicated to try to nuance the text further. The current wording was good enough for it to be retained.

Mr. Murphy proposed that the words “several members” should be replaced with the more neutral “some members” in paragraph 43 to align it with paragraph 44. In the last sentence, he proposed replacing the formulation “the Commission was cautioned against the proliferation of categories” with “some members cautioned against the proliferation of categories”.

Mr. Vázquez-Bermúdez (Special Rapporteur) said that he supported Mr. Murphy’s proposal for the last sentence. To address the concern of Mr. Park and Sir Michael Wood, he proposed referring to “several members” in both paragraphs.

Mr. Murase proposed deleting the words “as a source of international law” from the heading of section (d).

Mr. Nolte said that, in his view, the reference to “a source of international law” was appropriate in the heading and should be maintained.

Paragraph 43, as amended by Mr. Murphy and the Special Rapporteur, was adopted.

Paragraph 44

Mr. Cissé said that, for the sake of consistency, the beginning of the final sentence should be amended to read “some members expressed the view that a hard distinction should not be made” rather than “a view was expressed that a hard distinction should not be made”.

Mr. Nolte proposed reformulating the end of the third sentence for greater clarity by inserting the words “and could undermine the conditions for the formation of” before “customary international law”.

Mr. Murphy said that perhaps the word “conditions” in Mr. Nolte’s proposed reformulation could be changed to “requirements”.

Mr. Vázquez-Bermúdez (Special Rapporteur) said that he accepted the proposed amendments and would also change, in the first sentence, the words “some members” to “several members”.

Paragraph 44, as amended, was adopted.

(e) Comments on the draft conclusions proposed in the first report

Paragraph 45

Paragraph 45 was adopted.

(f) Future programme of work

Paragraph 46

Mr. Nolte proposed that, in the second sentence, the phrase “the criteria for the transposition of principles” should be amended to read “the criteria for the transposability or transposition of principles”.

Paragraph 46, as amended, was adopted.

3. Concluding remarks of the Special Rapporteur

Paragraphs 47 and 48

Paragraphs 47 and 48 were adopted.

Paragraph 49

Mr. Vázquez-Bermúdez (Special Rapporteur) proposed inserting, in the second sentence, the words “were not needed and” between “such proposals” and “would not accurately reflect the scope of the topic”.

Paragraph 49, as amended, was adopted.

Paragraph 50

Paragraph 50 was adopted.

Paragraph 51

Mr. Vázquez-Bermúdez (Special Rapporteur) proposed adding, in the second sentence, the words “with respect to certain specific aspects of the topic” after “the scarcity

of State practice”. In the fourth sentence, the words “might encourage States” should be replaced with “might stimulate States”.

Paragraph 51, as amended, was adopted.

Paragraph 52

Mr. Grossman Guiloff proposed moving the last sentence of paragraph 52 to the beginning of paragraph 53.

Paragraph 52 was adopted on that understanding.

Paragraph 53

Paragraph 53 was adopted subject to the appropriate relocation of the sentence from paragraph 52.

Paragraphs 54 to 56

Paragraphs 54 to 56 were adopted.

Paragraph 57

Sir Michael Wood said that, in the second sentence, the word “one” could be deleted from the phrase “each one of the categories”.

Paragraph 57, as amended, was adopted.

Paragraph 58

Mr. Grossman Guiloff said that, for the sake of consistency, the words “inappropriate and” should be added before “anachronistic”.

Mr. Nolte proposed replacing the word “anachronistic” with “outdated”, as had been used in paragraph 42.

Mr. Vázquez-Bermúdez (Special Rapporteur) said that, as the word “inappropriate” had already been added to paragraph 42, it was perhaps unnecessary to repeat it in paragraph 58. The word “anachronistic” had been included because it was the word that he had used in his summing up.

Mr. Grossman Guiloff said that the word “anachronistic” did not imply “inappropriate”.

Mr. Cissé proposed adding the words “of States” after “sovereign equality” at the end of the first sentence.

Paragraph 58, as amended, was adopted.

Paragraph 59

Paragraph 59 was adopted.

Paragraph 60

Mr. Vázquez-Bermúdez (Special Rapporteur) said that, based on a suggestion by Mr. Murphy, he wished to propose the addition of a new sentence after the first sentence, to read: “First, the identification of a principle at the national level and, second, its transposability or transposition to the international level.”

With that addition, paragraph 60 was adopted.

Paragraph 61

Paragraph 61 was adopted.

Chapter IX of the draft report, as a whole, as amended, was adopted.

Chapter X. Sea-level rise in relation to international law (A/CN.4/L.938)

The Chair invited the Commission to consider chapter X of its draft report, which was contained in document [A/CN.4/L.938](#).

A. Introduction

Paragraphs 1 and 2

Paragraphs 1 and 2 were adopted.

B. Consideration of the topic at the present session

Paragraphs 3 and 4

Paragraphs 3 and 4 were adopted.

Discussion of the Study Group

Sir Michael Wood said that the subheading “Discussion of the Study Group” did not seem to capture the content of the passage that followed. He suggested that, for the sake of readability, it should be deleted.

It was so decided.

Paragraphs 5 and 6

Paragraphs 5 and 6 were adopted.

Paragraph 7

Mr. Grossman Guiloff said that the word “generally” in the second sentence should be deleted, as it might be taken to imply that not all the members of the Commission supported the approach taken by the Study Group in terms of its programme of work.

Mr. Murphy said that, as the paragraph concerned a discussion within the Study Group, the words “members of the Commission” in the second sentence should be replaced with “members of the Study Group”.

Paragraph 7, as amended, was adopted.

Paragraph 8

Mr. Park asked for clarification of the statement in the third sentence that the issues paper prepared by the Co-Chairs prior to each session would be “edited, translated and circulated as an official document”.

Ms. Galvão Teles said that it had been agreed at the meeting of the Study Group that the issues paper would be submitted by the Co-Chairs prior to the session of the Commission for translation and distribution in all six official languages. Papers submitted by Study Group members would, in contrast, be available in English only.

Paragraph 8 was adopted.

Paragraph 9

Paragraph 9 was adopted.

Paragraph 10

Mr. Murphy proposed amending the first sentence to read: “The Study Group also recommended that the Commission invite the comments of States on specific issues to be included in chapter III of the report of the Commission.” He also suggested that it might be prudent to delete from the second sentence the reference to “other relevant units of the United Nations”, so that the amended sentence would read: “The possibility of requesting a study from the Secretariat of the United Nations was discussed in the Study Group as well”.

Ms. Oral said that the mention of other entities in the second sentence had been included to indicate that other United Nations bodies could be involved in the work. She could, however, accept the deletion of the phrase.

Sir Michael Wood, referring to Mr. Murphy's proposal for the first sentence, said that the phrase "to be included in" was inappropriate, as it was not the comments of States that were to be included in chapter III.

Mr. Murphy proposed that the wording referred to by Sir Michael Wood should be replaced with "that are identified in".

Paragraph 10, as amended, was adopted.

Paragraph 11

Paragraph 11 was adopted.

Chapter X of the draft report as a whole, as amended, was adopted.

Chapter I. Introduction (A/CN.4/L.925)

The Chair invited the Commission to consider chapter I of its draft report, which was contained in document [A/CN.4/L.925](#).

Introduction

Paragraph 1

Paragraph 1 was adopted.

A. Membership

Paragraph 2

Paragraph 2 was adopted.

B. Officers and the Enlarged Bureau

Paragraphs 3 to 5

Paragraphs 3 to 5 were adopted with a minor editorial amendment.

C. Drafting Committee

Paragraphs 6 and 7

Paragraphs 6 and 7 were adopted.

D. Working Groups and Study Group

Paragraphs 8 and 9

Paragraphs 8 and 9 were adopted.

E. Secretariat

Paragraph 10

Paragraph 10 was adopted.

F. Agenda

Paragraph 11

Paragraph 11 was adopted.

Chapter I of the draft report, as a whole, as amended, was adopted.

*Chapter II. Summary of the work of the Commission at its seventy-first session
(A/CN.4/L.926)*

The Chair invited the Commission to consider chapter II of its draft report, which was contained in document [A/CN.4/L.926](#).

Paragraphs 1 to 14

Paragraphs 1 to 14 were adopted.

Chapter II of the draft report as a whole was adopted.

Chapter III. Specific issues on which comments would be of particular interest to the Commission (A/CN.4/L.927)

The Chair invited the Commission to consider chapter III of its draft report, which was contained in document [A/CN.4/L.927](#).

Paragraphs 1 to 3

Paragraphs 1 to 3 were adopted.

A. Immunity of State officials from foreign criminal jurisdiction

Paragraph 4

Paragraph 4 was adopted.

B. General principles of law

Paragraph 5

Paragraph 5 was adopted.

C. Sea-level rise in relation to international law

Paragraph 6

Mr. Murphy asked why the International Red Cross and Red Crescent Movement was specifically mentioned.

Ms. Galvão Teles said that it had been thought that it would be relevant, notably in respect of the protection of persons affected by sea-level rise, to follow the wording that had been used in the draft articles on the protection of persons in the event of disasters. There had been some informal contacts with the International Federation of Red Cross and Red Crescent Societies and the International Committee of the Red Cross, which had both expressed potential interest in providing information.

Sir Michael Wood said that it seemed more logical to place the current paragraph 6 after the current paragraph 7.

Ms. Galvão Teles said that paragraph 6 contained a general request for information on practice concerning the three subtopics. Paragraph 7 was then used to make specific requests for information related to the subtopic to be discussed during Commission's seventy-second session in 2020 and paragraph 8 outlined the two other subtopics that would be addressed during the seventy-third session in 2021.

Paragraph 6 was adopted.

Paragraph 7

Ms. Oral said that, following comments received from some members, she proposed amending the wording of the chapeau to take account of possible sensitivities of non-parties and to focus on the areas of interest to the Study Group. It would read:

“At its seventy-second session (2020) the Study Group will focus on the subject of sea-level rise in relation to the law of the sea. In this connection, the Commission

would appreciate receiving examples from States of their practice that may be relevant (even if indirectly) to sea-level rise or other changes in circumstances of a similar nature. Such practice could, for example, relate to baselines and where applicable archipelagic baselines, closing lines, low-tide elevations, islands, including artificial islands, land reclamation and other coastal fortification measures, limits of maritime zones, delimitation of maritime boundaries and any other issues relevant to the subject. Relevant materials could include:"

Mr. Murphy said that, in the proposed amended text, the words "by 31 December 2019" should be inserted after the word "receiving" in the second sentence. In the third sentence, he proposed deleting the word "including" before "artificial islands", as such islands did not form part of anything mentioned previously in the sentence. In subparagraph (b), he suggested inserting, after the phrase "national legislation", the words "or regulations". In subparagraph (d), he proposed replacing "law of the sea related disputes" with "disputes related to the law of the sea". He asked whether there was a footnote related to paragraph 7.

The Chair said there was no footnote related to paragraph 7.

Ms. Oral said that she agreed to all the amendments proposed by Mr. Murphy.

Paragraph 7, as amended, was adopted with minor editorial amendments.

Paragraph 8

Paragraph 8 was adopted.

Chapter III of the draft report, as a whole, as amended, was adopted.

The report of the International Law Commission, as a whole, as amended, was adopted.

Programme, procedures and working methods of the Commission and its documentation (agenda item 8) *(continued)*

Report of the Planning Group

The Chair said he took it that the Commission wished to take note of the report of the Planning Group, which had been circulated informally the previous day.

It was so decided.

Chair's concluding remarks

The Chair said that the seventy-first session had been very productive. The Commission was submitting to the General Assembly the draft articles on crimes against humanity, which had been completed on second reading. It was also submitting to the General Assembly the draft conclusions on peremptory norms of general international law (*jus cogens*) and the draft principles on protection of the environment in relation to armed conflicts, which had been completed on first reading. It was also giving States in the Sixth Committee of the General Assembly plenty of material on which to comment in relation to the various other topics that the Commission had considered during the session. The Commission had decided to place the topic of sea-level rise in relation to international law on its programme of work and two new topics on its long-term programme of work, namely reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law and prevention and repression of piracy and armed robbery at sea.

The Commission could be proud of its productivity, its creativity and the continued collegial spirit in which it worked and overcame differences of view. It had successfully concluded the International Law Seminar, to which it attached great importance. He was grateful to his colleagues on the Bureau for their advice and guidance in managing the affairs of the Commission. He thanked the members of the Secretariat from the Codification Division for their competent assistance and continuous support and to the Legal Liaison Office in Geneva for their efficient assistance. He also thanked the précis-

writers, interpreters, editors, conference officers, translators and other members of the conference services who had extended their assistance to the Commission on a daily basis.

Closure of the session

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

The meeting rose at 1.10 p.m.