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International Law Commission

Seventy-second session (second part)

Provisional summary record of the 3561st meeting

Held at the Palais des Nations, Geneva, on Thursday, 5 August 2021, at 10 a.m.

Contents

Present:

Chair:	Mr. Hmoud
Members:	Mr. Argüello Gómez
	Mr. Aurescu
	Ms. Escobar Hernández
	Mr. Forteau
	Ms. Galvão Teles
	Mr. Grossman Guiloff
	Mr. Hassouna
	Mr. Jalloh
	Mr. Laraba
	Ms. Lehto
	Mr. Murase
	Mr. Murphy
	Mr. Nguyen
	Ms. Oral
	Mr. Ouazzani Chahdi
	Mr. Park
	Mr. Petrič
	Mr. Rajput
	Mr. Ruda Santolaria
	Mr. Saboia
	Mr. Šturma
	Mr. Tladi
	Mr. Vázquez-Bermúdez
	Sir Michael Wood
	Mr. Zagaynov

Secretariat:

Mr. Llewellyn	Secretary to the Commission

The meeting was called to order at 10 a.m.

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

Chapter VI. Immunity of State officials from foreign criminal jurisdiction (*continued*) (A/CN.4/L.946, A/CN.4/L.946/Add.1 and A/CN.4/L.946/Add.2)

The Chair invited the Commission to resume its consideration of paragraph (6) of the commentary to draft article 8 (A/CN.4/L.946/Add.1), which had been left in abeyance.

Commentary to draft article 8 (Examination of immunity by the forum State)

Paragraph (6)

Ms. Escobar Hernández (Special Rapporteur) said that, as members would recall, Mr. Zagaynov had suggested that the Commission should postpone the adoption of the paragraph pending further discussions. The necessary consultations had taken place and a new version of the paragraph had been drafted and submitted to the Commission for consideration. The second part of the second sentence, "in other words, when the act carried out by the competent authorities of the forum State has a direct impact on the official of another State", had been deleted, as it had been deemed repetitive.

To address the concerns raised by Mr. Zagaynov and other members, the following text had been inserted after the second sentence:

> "As follows from the judgments of the International Court of Justice in the case concerning the *Arrest Warrant of 11 April 2000* and in *Certain Questions of Mutual Assistance in Criminal Matters*, a particular criminal procedure measure violates immunity of a foreign official if it hampers or prevents the exercise of the functions of that person by imposing obligations upon him. For example, the commencement of a preliminary investigation or institution of criminal proceedings, not only in respect of the alleged fact of a crime but also actually against the person in question, cannot be seen as a violation of immunity if it does not impose any obligation upon that person under the national law being applied. The forum State is also able to carry out at least the initial collection of evidence for this case (to collect witness testimonies, documents, material evidence, etc.), using measures which are not binding or constraining on the foreign official."

The cases of the International Court of Justice cited in the proposed text were each accompanied by a footnote providing a full citation with the exact paragraph being referred to. She fully supported the new text proposed by Mr. Zagaynov.

Mr. Forteau proposed replacing, in the first sentence of the new text, the phrase "violates immunity" with "may affect immunity" and inserting the word "only" after the term "foreign official" so that the text would read "may affect immunity of a foreign official only if it hampers".

The Chair said he took it that the Commission wished to adopt the new version of paragraph (6) of the commentary to draft article 8, as drafted by the Special Rapporteur and Mr. Zagaynov and as amended by Mr. Forteau.

Paragraph (6), as amended, was adopted.

The Chair invited the Commission to resume its consideration of paragraph (12) of the commentary to draft article 12 (A/CN.4/L.946/Add.2), which had been left in abeyance.

Commentary to draft article 12 (Requests for information)

Paragraph (12)

Ms. Escobar Hernández (Special Rapporteur) said that the paragraph had been simplified by deleting a large part of the text as originally drafted. Only the first sentence had been retained, and the following new text had been added to the end of it: "*inter alia* concerns of sovereignty, public order, security and essential public interest". The second, and final, sentence of the paragraph would now read: "In any event, the Commission did not consider

it necessary to refer expressly to these elements in draft article 12, recognizing that it is for the requested State to identify the reasons justifying its decision." The members who had taken part in the debate had been consulted about the new text and had approved it.

The Chair said he took it that the Commission wished to adopt the new version of paragraph (12) of the commentary to draft article 12, as proposed by the Special Rapporteur.

Paragraph (12), as amended, was adopted.

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

Ms. Escobar Hernández said she wished to inform members that she hoped to convene informal consultations on pending issues during the intersessional period. She would send members an email after she had consulted the secretariat and the Bureau on how best to organize them.

The Chair said that the Commission had taken note of her request for assistance in that regard.

Chapter VIII. General principles of law (*continued*) (A/CN.4/L.948, A/CN.4/L.948/Add.1 and A/CN.4/L.948/Add.2)

The Chair invited the Commission to consider the portion of chapter VIII of the draft report contained in document A/CN.4/L.948.

A. Introduction

Paragraphs 1 to 3

Paragraphs 1 to 3 were adopted.

B. Consideration of the topic at the present session

Paragraphs 4 to 6

Paragraphs 4 to 6 were adopted.

Paragraph 7

The Chair said that the appropriate meeting numbers and dates would be added once all the relevant documents had been adopted.

On that understanding, paragraph 7 was adopted.

1. Introduction by the Special Rapporteur of his second report

Paragraphs 8 to 13

Paragraphs 8 to 13 were adopted.

Paragraphs 14 and 15

Sir Michael Wood said that, in the first sentence of paragraph 14, the word "in" in "those formed in the international legal system" should be replaced with "within". The same replacement should be made in the second clause of paragraph 15.

Paragraphs 14 and 15, as amended, were adopted.

Paragraphs 16 to 18

Paragraphs 16 to 18 were adopted.

Paragraph 19

Sir Michael Wood said that, in the final clause of the paragraph, the words "was conferred the power" should be replaced with "was given the power", and the words "their

member States” with “its member States”, so that the text would read “if an international organization was given the power to issue rules that were binding on its member States”.

Paragraph 19, as amended, was adopted.

Paragraphs 20 to 25

Paragraphs 20 to 25 were adopted.

2. *Summary of the debate*

(a) *General comments*

Paragraph 26

Paragraph 26 was adopted.

Paragraph 27

Sir Michael Wood said that he wished to propose replacing, in the first sentence, the word “doctrine” in “State practice, jurisprudence and doctrine” with “teachings” to ensure consistency with past practice: “teachings” was the term used in the Commission’s conclusions on identification of customary international law and in Article 38 (1) (*d*) of the Statute of the International Court of Justice.

Mr. Murase, supported by **Mr. Jalloh**, said that the phrase “State practice, jurisprudence and doctrine” was based on the language used in article 15 of the statute of the International Law Commission, which referred to “State practice, precedent and doctrine”. He would prefer to retain the word “doctrine”.

Mr. Vázquez-Bermúdez (Special Rapporteur) said that the issue raised by Sir Michael Wood concerned only the English version of the text, as *doctrina* and *doctrine* were the standard equivalents of “teachings” in Spanish and French, respectively. He could support replacing the word “doctrine” with “teachings” in the English text.

Mr. Tladi said that, while Sir Michael Wood had raised an important point regarding the need for consistency with past practice, he could support either keeping the term “doctrine” or replacing it with “teachings”.

Mr. Rajput said that Mr. Murase had raised a valid point, but if the Commission wished to follow the exact wording of article 15 of the statute of the Commission, by rights, it should also replace the word “jurisprudence” with “precedent”. He supported the proposal put forward by Sir Michael Wood.

Sir Michael Wood said that he supported the Special Rapporteur’s proposal to replace the word “doctrine”, in the English version of the draft report only, with “teachings”.

Paragraph 27 was adopted with that amendment to the English text.

Paragraph 28

Mr. Rajput said that the suggestion made during the debate that the title of the topic should include a reference to Article 38 (1) (*c*) of the Statute of the International Court of Justice was not reflected in the paragraph. He wished to propose adding a sentence to the end of the paragraph to read: “A view was expressed that the title of the topic should have a specific and clear reference to Article 38, paragraph 1 (*c*).”

Mr. Park said that, if Mr. Rajput’s proposal was taken up, paragraph 28 would overlap with paragraph 29, which began with the words “Several members recalled that the starting point of the work of the Commission was Article 38, paragraph 1 (*c*), of the Statute of the International Court of Justice”.

Mr. Rajput said that the first sentence of paragraph 29 did not refer to the title of the topic specifically.

Mr. Forteau said that he wondered whether, to ensure coherence between the two paragraphs, it might not be better to include the language proposed by Mr. Rajput as the second sentence of paragraph 29.

The Chair said he took it that the Commission wished to accept the proposal made by Mr. Forteau.

It was so decided.

Paragraph 28 was adopted.

Paragraph 29

Mr. Rajput said that a view expressed during the debate was not reflected in the summary contained in the paragraph. He wished to propose inserting the following words after the final sentence: "Some members expressed the need to distinguish between 'principles', 'general international law' and 'general principles of law under Article 38, paragraph 1 (*c*)'."

Mr. Forteau said that he wondered whether it might not be better to include the language proposed by Mr. Rajput as the third sentence of paragraph 33.

The Chair said he took it that the Commission wished to adopt paragraph 29 of the draft report, with the language proposed by Mr. Rajput for paragraph 28 included as the second sentence, as suggested by Mr. Forteau.

It was so decided.

Paragraph 29, as amended, was adopted.

Paragraph 30

Mr. Jalloh said it was his understanding that, although some members had raised doubts and concerns about the term that would replace "civilized nations", there was, in fact, unanimous support for its abandonment. He wished to propose replacing, in the first sentence, the word "general" with "unanimous" so that it would begin "There was unanimous support for abandoning the term 'civilized nations'".

Mr. Murphy said that he wondered whether the word "unanimous" was meant to cover the Commission as a whole, despite the fact that not all members had taken the floor during the debate, or only those members who had taken part in it. He would prefer to avoid characterizing the views of other members who had not actually spoken during the debate and whose position remained unknown.

Mr. Forteau proposed replacing, in the first sentence, the words "general support for" with "consensus on" so that the text read: "There was consensus on abandoning the term 'civilized nations'".

Mr. Jalloh said that Mr. Murphy had raised an important point. The word "unanimous" was intended to reflect the unanimity expressed by the members who had taken part in the plenary debate. He wished to propose adding the words "in the plenary debate" so that the text would read: "There was unanimous support in the plenary debate for abandoning the term 'civilized nations'". While the alternative proposed by Mr. Forteau was plausible, the word "consensus" suggested that some members had expressed reservations on the abandonment of the term "civilized nations", which had not been the case among the members who had spoken.

Mr. Rajput said that Mr. Jalloh's concern could be addressed by simply deleting the word "general" from "There was general support for abandoning the term 'civilized nations'". The Commission could thus avoid attributing a position to members who had not taken the floor during the plenary debate while reflecting the underlying unanimity on the need to abandon the term "civilized nations".

Ms. Escobar Hernández said that the question of whether the Commission as a whole or only those members who had participated in the plenary debate unanimously supported the abandonment of the term "civilized nations" could be resolved by amending

the beginning of the first sentence to read: “The members who spoke were unanimous in their support for abandoning the term ‘civilized nations’”.

Mr. Murphy said that he could go along with either the revised proposal made by Mr. Jalloh or the proposal put forward by Ms. Escobar Hernández, if the Special Rapporteur could provide assurances that everyone who had spoken during the plenary debate had affirmatively addressed that point and unanimous support had in fact been expressed for abandoning that term. If there were members who had not directly addressed the issue, he would prefer the proposal put forward by Mr. Forteau. In any event, he was willing to be guided by the Special Rapporteur.

Mr. Tladi said that he could support either the revised proposal made by Mr. Jalloh or the proposal put forward by Ms. Escobar Hernández. To his mind, it was not necessary to seek assurances that all members who had taken the floor during the plenary debate had expressed support for abandoning the term. Any member who did not support the abandonment of the term and who had not taken the floor during the plenary debate could raise an objection while the text was being adopted in plenary.

Ms. Oral said that, in her view, the Commission had spoken with one voice on the issue. She could support either the revised proposal made by Mr. Jalloh or the proposal put forward by Ms. Escobar Hernández. Using the word “agreement” was also a possibility.

Mr. Ruda Santolaria, speaking via video link, said that there had indeed been broad support for abandoning the term “civilized nations”. He could support either the revised proposal made by Mr. Jalloh or the proposal put forward by Ms. Escobar Hernández.

Mr. Grossman Guiloff said that “consensus” was not the same as unanimity. To his knowledge, no member of the Commission had expressed opposition to abandoning the term. Once that had been confirmed, he saw no reason why the phrase “unanimous support”, as proposed by Mr. Jalloh, could not be used, as, to his mind, it accurately described members’ position.

The Chair said he took it that the Commission wished to accept the revised proposal made by Mr. Jalloh.

Paragraph 30, as amended, was adopted.

Paragraph 31

Ms. Escobar Hernández said that, in the debate on the terminology to be used in French and Spanish to refer to general principles of law, mention had been made of the need to continue to use the terms that were in common use in each language. As that point was not currently reflected in the paragraph, she wished to propose inserting a new second sentence to read: “Attention was also drawn to the need to align the terms in common use for this expression in each of the official languages” [*También se llamó la atención sobre la necesidad de adecuar la terminología empleada al uso común de esta expresión en cada una de las lenguas oficiales*].

Mr. Forteau said that he supported the proposal made by Ms. Escobar Hernández. He wished to propose amending the original second sentence to read: “On the other hand, it was said that the appropriate terminology would eventually depend on the scope given by the Commission to the topic.” He would send the French version of the amendment to the secretariat in due course.

The Chair said he took it that the Commission wished to adopt paragraph 31 of the draft report, as amended by Ms. Escobar Hernández and Mr. Forteau.

Paragraph 31, as amended, was adopted.

Paragraph 32

Sir Michael Wood said that, in the last sentence, the term “principle” should be made plural to mirror “rules”.

Mr. Forteau said that, in the French version of the draft report, both terms were in the singular, which he believed to be correct.

The Chair said that he took it that the Commission wished to adopt paragraph 32 with both terms in the singular, as suggested by Mr. Forteau.

Paragraph 32, as amended, was adopted.

Paragraph 33

Sir Michael Wood proposed replacing, in the first sentence of the English version of the draft report only, the word "doctrine" with "teachings".

The Chair said he took it that the Commission agreed to make that change to the English text and wished to include the new language proposed by Mr. Rajput for paragraph 29 as the third sentence of paragraph 33, as suggested by Mr. Forteau.

Paragraph 33, as amended, was adopted with that change to the English text.

(b) Draft conclusions 4 to 6

Paragraphs 34 and 35

Paragraphs 34 and 35 were adopted.

Paragraph 36

Mr. Forteau, supported by **Mr. Tladi**, proposed replacing the word "broad" in the second sentence with "strict".

Mr. Tladi proposed that, after the second sentence, a new sentence should be inserted, to read: "A view was expressed that the requirement for breadth and representativeness necessarily meant that the assessment did not have to be very deep."

Mr. Jalloh said that he supported Mr. Forteau's and Mr. Tladi's proposals. He had suggested to the Special Rapporteur that there was a further aspect of the plenary debate that should be captured in the text. The Special Rapporteur had incorporated his suggestion in paragraph 60, but, to ensure that paragraph 36 also reflected that aspect of the debate, he proposed that, after the first sentence, a new sentence should be inserted, to read: "This included ensuring representativeness of the various legal systems of the world, including of customary law."

Sir Michael Wood said that it would be odd to suggest that customary law had to be considered as part of the comparative analysis. Moreover, the meaning of the term "customary law" was unclear in that context.

Mr. Jalloh said that he was using the phrase "customary law" in the sense of, for example, "African customary law". It might be clearer to amend his proposed sentence to reflect the language used in paragraph 60, where reference was made to "the legal systems of indigenous, autochthonous or first peoples".

Mr. Forteau said that the paragraph should above all reflect what was actually said in the debate. He was open to Mr. Jalloh's second proposal, which was clearer than his first.

Sir Michael Wood said that it would be strange to suggest that a general principle of law could not be identified unless the legal systems of indigenous, autochthonous or first peoples had been studied.

Mr. Jalloh said that he was not suggesting that the comparative analysis necessarily had to include an analysis of such systems. The sentence that he was proposing would read: "This included ensuring representativeness of the various legal systems of the world, including of indigenous, autochthonous or first peoples."

Sir Michael Wood said that the wording proposed by Mr. Jalloh gave the impression that reference to such legal systems was compulsory.

The Chair said that, to address Sir Michael Wood's concern, the words "as appropriate" could be added to the sentence proposed by Mr. Jalloh.

Paragraph 36, as amended, was adopted.

Paragraphs 37 and 38

Paragraphs 37 and 38 were adopted.

Paragraph 39

Sir Michael Wood said that it would be better to replace the words "in domestic forums" in the first sentence with "in domestic legal systems" or "*in foro domestico*".

Mr. Ouazzani Chahdi said that, in the Drafting Committee, it had been decided that the expression "national laws" should be used in preference to "national legislations". The former expression was broader in scope, since it also included, for example, national constitutions, which enshrined principles common to all peoples. In the light of that decision, he wondered whether it would be better to replace the words "domestic forums" with "national laws".

Mr. Vázquez-Bermúdez (Special Rapporteur) said that he would prefer to replace the phrase "domestic forums" with "domestic legal systems", as suggested by Sir Michael Wood. The phrase "domestic legal systems" was broad enough in scope to encompass, *inter alia*, national constitutions.

Paragraph 39, as amended, was adopted.

Paragraph 40

Sir Michael Wood said that, in the English text, the word "conferred" in the first sentence did not quite work. He proposed that the word "given" should be used instead.

Mr. Grossman Guiloff said that the word "ample" in the second sentence seemed superfluous and should be deleted.

Mr. Vázquez-Bermúdez (Special Rapporteur) said that he could accept those two amendments.

Paragraph 40, as amended, was adopted.

Paragraphs 41 to 44

Paragraphs 41 to 44 were adopted.

(c) Draft conclusion 7

Paragraph 45

Paragraph 45 was adopted.

Paragraph 46

Mr. Rajput proposed that, after the first sentence, a new sentence should be inserted, to read: "The *travaux préparatoires* reflect that only general principles of law developed *in foro domestico*, that is, domestic law, were included in Article 38, paragraph 1 (*c*), and none of the cases make a reference to Article 38, paragraph 1 (*c*), which are cited as evidence for creation of general principles at the international level."

Mr. Vázquez-Bermúdez (Special Rapporteur) said that he had no objection to Mr. Rajput's proposal, but the words "A view was expressed that" should be inserted at the beginning of the new sentence.

Paragraph 46, as amended, was adopted.

Paragraphs 47 to 49

Paragraphs 47 to 49 were adopted.

Paragraph 50

Mr. Grossman Guiloff said that he had doubts about the choice of the word "shortcut". Perhaps it would be better to replace that word with "obstacle" [*obstáculo*] or "impediment" [*impedimento*].

Ms. Escobar Hernández said that, according to her understanding of the paragraph, the word "shortcut" was being used to describe an undesirable way of identifying customary norms that circumvented some of the requirements for that process. In that sense, it was the very opposite of an obstacle. Moreover, the word "*atajo*" was used in the Spanish version of the Special Rapporteur's second report (A/CN.4/741).

Mr. Vázquez-Bermúdez (Special Rapporteur) said that, if some members were hesitant to use the word "shortcut", the word "way" [*camino*] could be used instead.

Mr. Ruda Santolaria, speaking via video link, said that "*atajo*" was the right word to use in Spanish. It referred not to an obstacle but to an accelerated way of doing something. It was therefore more appropriate than "*camino*" in the context of the paragraph.

Sir Michael Wood said that "shortcut" was exactly the right word in English and should be retained in the English version.

Mr. Saboia said that the English word "shortcut" and the Spanish word "*atajo*" were similar in meaning. It seemed to him that "*atajo*" was the right word in Spanish, as it captured the sense of a "fast-track" way of doing something, with a negative connotation.

Mr. Grossman Guiloff said that, if the Special Rapporteur was indeed seeking to describe an expedited process, "*atajo*" might well be the best word in Spanish. He withdrew his suggestion.

Mr. Vázquez-Bermúdez (Special Rapporteur) said that the paragraph described the risk that, if the second category of general principles of law was construed too broadly or was not clearly distinguished from existing rules of customary international law, it would become a way of identifying customary norms where general practice had not yet emerged. In that context, the word "shortcut" would not cause any problems of interpretation. It also reflected some of the comments made during the debate.

Paragraph 50 was adopted.

(d) Draft conclusions 8 and 9

Paragraph 51

Paragraph 51 was adopted.

Paragraph 52

Ms. Escobar Hernández said that, in the Spanish text, paragraph 52 was drafted in a confusing way. She proposed that the words "*para demostrar no la existencia*" should be replaced with "*no para demostrar la existencia*".

Paragraph 52 was adopted with that amendment to the Spanish text.

Paragraph 53

Paragraph 53 was adopted.

(e) Future programme of work

Paragraphs 54 to 56

Paragraphs 54 to 56 were adopted.

3. Concluding remarks of the Special Rapporteur

Paragraphs 57 to 72

Paragraphs 57 to 72 were adopted.

The Chair invited the Commission to consider the portion of the chapter contained in document A/CN.4/L.948/Add.1.

C. Text of the draft conclusions on general principles of law provisionally adopted by the Commission at its seventy-second session

1. Text of the draft conclusions

Paragraph 1

Paragraph 1 was adopted.

2. Text of the draft conclusions and commentaries thereto provisionally adopted by the Commission at its seventy-second session

Paragraph 2

Paragraph 2 was adopted.

Commentary to draft conclusion 1 (Scope)

Paragraph (1)

Sir Michael Wood said that he had three suggestions for the second sentence. First, he suggested that the word "international" should be deleted from the expression "international courts and tribunals", as the Special Rapporteur's reports contained references to the decisions of national courts. The draft conclusion on decisions of courts and tribunals also addressed the decisions of national courts. Second, he suggested that, in the English text only, the word "doctrine" should be replaced with "teachings". Third, it would be useful to reflect the discussions that had taken place regarding the question of whether to reproduce the exact wording of Article 38 (1) (*c*) of the Statute in all six official languages or to use "*du*" in French and "*del*" in Spanish. The Chair of the Drafting Committee had included a useful passage on that question in her statement on the topic at the current session. He proposed that a footnote should be added to reflect the relevant passage, to read: "Taking into consideration recent practice of States and jurisprudence, the French and Spanish texts of draft conclusion 1 refer, respectively, to "*principes généraux du droit*" and "*principios generales del derecho*". It was understood that the use of "*du droit*" and "*del derecho*" did not change, nor imply a change to, the substance of Article 38, paragraph 1 (*c*), of the Statute of the International Court of Justice." The footnote marker should be placed at the end of the first sentence.

Mr. Vázquez-Bermúdez (Special Rapporteur) said that he accepted Sir Michael Wood's three suggestions. The suggested footnote provided some explanation of the conclusions reached by the Drafting Committee on that point.

Mr. Jalloh said that he would be grateful for an explanation of the Commission's practice regarding the use of the word "term". Throughout the text, "general principles of law" was described as a "term", in the singular, rather than as a "phrase", even though it consisted of multiple words.

Mr. Llewellyn (Secretary to the Commission) said that the words "phrase" and "term" were both used in relation to "general principles of law". In general, the Commission used the word "term". In the paragraph under consideration, which went to the heart of the topic, the word "term" was used.

Mr. Vázquez-Bermúdez (Special Rapporteur) said that the word "term" was appropriate in the paragraph under consideration. Throughout the text, it was used in a general sense.

Mr. Jalloh said that, in ordinary English, one might expect "general principles of law" to be described as a series of "terms". Nevertheless, he would not insist on that point.

Paragraph (1), as amended, was adopted.

Paragraph (2)

Mr. Rajput proposed that the first sentence should be deleted, as it was rather paternalistic.

Mr. Park said that the phrase "legal nature of general principles of law as such" in the second sentence was rather vague. He proposed that the beginning of that sentence should be amended to read "General principles of law as such are confirmed". He also proposed inserting the words "and national" before "courts and tribunals" in the fourth sentence. He further proposed that a footnote should be added to provide basic references to support the content of the fourth sentence.

Mr. Murase said that he fully agreed with Mr. Park that a footnote should be added to provide evidence of the assertion, in the fourth sentence, that general principles of law had been referred to as a source of international law in the decisions of courts and tribunals. He proposed that, in the first sentence, the words "international law" should be replaced with "the applicable law of the International Court of Justice"; that, in the second, the words "as part of the 'international law' that shall be applied by the Court to decide the disputes submitted to it" should be deleted; and that, in the fourth, the words "as a source of international law" should be deleted.

Sir Michael Wood said that the various proposals made by members were unhelpful. The first sentence served a useful purpose and should be retained, even if it was a statement of the obvious. The deletion of the words "The legal nature of" would strip the second sentence of its meaning, although the words "as such" in that sentence could perhaps be deleted. He disagreed with Mr. Murase's proposals. Draft conclusion 1 stated clearly that the draft conclusions concerned "general principles of law as a source of international law".

He proposed that, in the second sentence, the word "alongside" should be replaced with "together with" and that, in the fourth, the second instance of the word "international" should be deleted. If the Special Rapporteur wished to add a footnote to the paragraph, it should contain references to the Special Rapporteur's reports and to the memorandum by the secretariat.

Mr. Saboia, supported by **Mr. Petrič,** said that he agreed with all the comments made by Sir Michael Wood.

Mr. Forteau said that he also agreed with Sir Michael Wood's comments, with one exception: in the second sentence, it would be better to replace the words "as such" in the English text with "as a source of international law", in line with the French text.

Mr. Jalloh said that he too agreed with Sir Michael Wood's suggestions apart from the suggested deletion of "as such". Those words provided a link back to the first sentence.

Mr. Murphy said that he agreed with Mr. Jalloh. It would be better to retain the words "as such" in order to avoid confusion with the reference to "international law" later in the second sentence.

Mr. Vázquez-Bermúdez (Special Rapporteur) said that he agreed with all Sir Michael Wood's suggestions apart from the suggested deletion of the words "as such". The first sentence played an important role. Draft conclusion 1 made clear that the draft conclusions concerned general principles of law "as a source of international law". He had considered the possibility of adding a footnote to the paragraph but had decided that it would have been rather long. Nevertheless, he agreed that it would be useful to have a footnote containing references to his reports and to the memorandum by the secretariat.

Paragraph (2), as amended, was adopted.

Paragraph (3)

Mr. Murase said that there seemed to be some confusion in paragraph (3) regarding the distinction between formal and material sources. Formal sources were static, while material sources were dynamic. However, the paragraph presented formal sources as a dynamic process – the legal process and form through which a legal norm came into existence – that it then contrasted with material sources.

Mr. Rajput said that the distinction between formal and material sources was an important one and needed to be included in the commentary. Contrary to what was suggested in the paragraph, however, material sources did not relate to the content of a specific rule. Rather, they were elements that provided evidence of the existence of a rule. The phrase "the possible material sources of the content of a specific rule" should therefore be replaced with the formulation "the material sources where the evidence of the existence of a rule can be found".

While it had been appropriate for the Commission to omit references to academic writings from the commentaries to the conclusions on identification of customary international law, it was important for such references to be included in the present commentary, and not simply in an annex. He could provide references, including references to several academic commentaries, to be placed in a footnote to the amendment that he had proposed. In addition, the word "norm" should be replaced with "rule" in the first sentence, since a general principle of law was a binding rule.

Mr. Forteau said that the paragraph was too academic. The distinction between formal and material sources presented by Mr. Rajput did not correspond to the distinction made in the French-language literature, where the term "material source" referred to the sociological, political and religious roots of a rule. The Commission should avoid taking a position on the distinction between formal and material sources, which, in his view, was too complex. The words "the formal sources of international law, that is" and "as opposed to the possible material sources of the content of a specific rule" should be deleted from the first sentence, leaving "The term 'source of international law' refers to the legal process and form through which a legal norm comes into existence". The second sentence should be retained. The word "norm" should not be replaced with "rule", as Mr. Rajput had suggested, because the use of the word "rule" to refer to principles, such as general principles of law, could cause confusion.

Sir Michael Wood said that the paragraph touched on some very theoretical issues that it was perhaps not appropriate for the Commission to opine upon. As the key element of the paragraph seemed to be the statement, contained in the second sentence, of the purpose of the draft conclusions, only that portion of the paragraph should be retained. The first sentence and the words "Based on this understanding" in the second sentence should be deleted. If the first sentence was retained, however, the clause "as opposed to the possible material sources of the content of a specific rule" should be deleted. He would prefer to have the word "norm" replaced with "rule", as proposed by Mr. Rajput. The meaning of the word "norm" was rather vague in English, and the Commission had previously used the word "rule" to expressly include "principles", including in its work on the identification of customary international law.

Mr. Jalloh said that he supported the proposals made by Mr. Forteau and Sir Michael Wood for a short first and second sentence, respectively, as the Commission might be able to agree more easily on a shortened text. However, the Commission should review the academic work on the important distinction between formal and material sources with a view to setting out and taking a position on that distinction in the commentary at the first reading stage. He agreed with Mr. Rajput that references to academic commentaries should be included in the commentary.

Mr. Park said that he supported Mr. Forteau's proposal to amend the first sentence, but the second sentence should be retained as it was.

Mr. Šturma said that he also supported Mr. Forteau's proposal. The Czech literature made the same distinction between formal and material sources that Mr. Forteau had

described. The word “norm” was the most appropriate in the context and should not be replaced with “rule”.

Mr. Rajput said that Mr. Forteau’s proposal to amend the first sentence raised two issues. First, it would remove the distinction that the second sentence was based on. Second, the proposed wording referred only to the process of formation of legal norms; the Commission’s work, however, extended also to their content, as the Special Rapporteur had made clear in his report. Since, the distinction between formal and material sources in the French-language and Czech literature seemed to differ from the distinction made in the English-language literature, the distinction should be omitted from the commentary so as to avoid any confusion. He would therefore support Sir Michael Wood’s proposal to delete the first sentence and retain a portion of the second sentence.

Mr. Murphy said that the words “a legal norm” could be replaced with “a general principle of law”, so that the Commission would not have to choose between “norm” and “rule”. The deletion of the words “Based on this understanding” in the second sentence would resolve one of the issues that Mr. Rajput had raised. He favoured the approach taken by Mr. Forteau to the first sentence. He would therefore propose that paragraph (3) should read:

> “The term ‘source of international law’ refers to the legal process and form through which a general principle of law comes into existence. The draft conclusions aim to clarify the scope of general principles of law, the method for their identification, and their functions and relationship with other sources of international law.”

Mr. Vázquez-Bermúdez (Special Rapporteur) said that, as several members had noted, the distinction described in the first sentence between material and formal sources was an important one, but the commentary in question was not the place for the Commission to delve into theoretical matters: he supported Mr. Forteau’s proposal for that sentence. Although, in his view, the term “legal norm” encompassed rules and principles, Mr. Murphy’s proposal of “a general principle of law” could resolve the debate on that point. He agreed that the words “Based on this understanding” should be deleted in the second sentence.

Mr. Rajput said that he agreed with Mr. Murphy’s proposal and the Special Rapporteur’s comments. However, in order to reflect the fact that the term “source of international law” referred not only to the process of formation of general principles of law but also to their content, the words “and its content” should be inserted after the words “comes into existence” in Mr. Murphy’s proposal.

Sir Michael Wood said that he could support Mr. Murphy’s proposal but wished to know what the word “form” referred to in the expression “the legal process and form”. He had not understood the concern expressed by Mr. Rajput and did not support his proposal.

Mr. Forteau said that Mr. Rajput’s proposal might have been inspired by the fact that the Commission referred to both the existence and the content of a principle in other draft conclusions. The reference to content was not appropriate in paragraph (3), however, because the term “source of law” did not encompass content; in the French-language literature at least, a distinction was made between sources and norms. Furthermore, given the lack of alignment between the first sentence and the second, which added a reference to the functions of general principles of law, Sir Michael Wood’s proposal to delete the first sentence and retain only a portion of the second seemed the most appropriate.

Mr. Murphy, responding to Sir Michael Wood’s question, said that, in his view, the phrase “legal process and form” referred to the idea that treaties, customary international law and general principles of law each involved a different process – one involving *opinio juris*, for example, in the case of customary international law – that resulted in a certain form – in a written document that States ratified, for example, in the case of treaties.

Mr. Vázquez-Bermúdez (Special Rapporteur) said that he agreed with Mr. Murphy’s explanation of the phrase “legal process and form”. He supported the text proposed by Mr. Murphy.

Mr. Rajput said that the proposed language only partially reflected the meaning of "source of international law", which included both the process of its creation and its content. The content was the real heart of a source.

Paragraph (3), as amended by Mr. Murphy, was adopted.

Commentary to draft conclusion 2 (Recognition)

Paragraph (1)

Mr. Forteau said that, while draft conclusion 2 stated that "for a general principle of law to exist, it must be recognized by the community of nations", the commentary said that "for a general principle of law to exist, or to form part of international law, it must be 'recognized' by the community of nations". Either the word "or" should be replaced with "and" – since, if a general principle of law existed, it formed part of international law – or, preferably, the entire phrase "or to form part of international law" should be deleted.

Paragraph (1), as amended, was adopted.

Paragraph (2)

Mr. Park said that the first sentence of the paragraph was unclear because it seemed to indicate that doctrine was the essential condition for the emergence of a general principle of law.

Sir Michael Wood said that, in the first sentence, the word "international" should be deleted before "courts and tribunals" and, in the English-language version of the text only, the word "doctrine" should be replaced with "teachings". The sentence referred to by Mr. Park was quite clear: it stated that recognition featured as the essential condition, not doctrine.

Mr. Rajput said that a footnote should be added to refer readers to the Special Rapporteur's second report (A/CN.4/741), which provided a wealth of information on recognition.

Mr. Petrič said he agreed with Sir Michael Wood that the word "international" should be deleted before "courts and tribunals", given the importance of national jurisprudence in general principles of law. "Doctrine" could mean many things, as the references to the French-language and Czech doctrines during the debate on paragraph (3) of the commentary to draft conclusion 1 had demonstrated. The identification of doctrine as a significant element of a source of international law whose status was equal to that of treaties and customs and which bound States *erga omnes* was a dangerous step towards legal insecurity.

Mr. Tladi said that he shared Sir Michael Wood's understanding of the first sentence. If the footnote requested by Mr. Rajput was added, it should refer to the sources that the Special Rapporteur had cited in his second report rather than to the report itself. It did not seem to be the Commission's practice to refer to the report of the Special Rapporteur in the commentaries.

Mr. Murphy said that, although the Commission had occasionally cited special rapporteurs' reports, he agreed with Mr. Tladi that references to the sources cited by the Special Rapporteur would be more helpful to readers and more transparent than a reference to the report of the Special Rapporteur. The Special Rapporteur should consider whether it might be appropriate for the footnote to the paragraph to refer to a later draft conclusion.

Mr. Vázquez-Bermúdez (Special Rapporteur) said that he agreed with Sir Michael Wood's and Mr. Tladi's reading of the first sentence. He supported the replacement of the word "doctrine" with "teachings" and the deletion of the word "international". He would look into materials that could be included in a footnote at the second reading stage: as draft conclusions 1 and 2 set the stage for the following draft conclusions, he would, as Mr. Murphy had suggested, consider the most appropriate place for the footnote.

On that understanding, paragraph (2), as amended by the Special Rapporteur, was adopted.

Paragraph (3)

Mr. Grossman Guiloff said that, in the first sentence, the phrase "which is nowadays regarded as anachronistic" should be replaced with "because it is anachronistic" [*por ser anacrónica*].

Mr. Park said that, in order to more fully explain why the Commission had chosen the term "community of nations", the words "instead of other expressions, for example 'States', 'international community', and" should be inserted after the words "the term 'community of nations'" in the first sentence.

Sir Michael Wood said he agreed with Mr. Grossman Guiloff that the first sentence needed to be amended, but he would prefer to replace "which is nowadays regarded as anachronistic" with "which is anachronistic". Otherwise, the text of the paragraph should be retained as it was. While Mr. Park's suggestion would give a fuller explanation, it could also lead to confusion, as, for example, "international community" was the term used in the Spanish version of the International Covenant on Civil and Political Rights and would be the term used in the Spanish version of the draft conclusions.

Mr. Jalloh said that he supported Mr. Grossman Guiloff's proposal. Mr. Park had raised an important point. The Drafting Committee had spent quite some time discussing the appropriate formulation before settling on the use of the terms from article 15 of the International Covenant on Civil and Political Rights. Because the decision not to use the phrase "civilized nations" represented an important step forward, it would be useful to note that a debate had taken place and indicate the main alternatives considered, which were noted in the statement of the Chair of the Drafting Committee.

Mr. Murphy said that he did not oppose Mr. Grossman Guiloff's proposal but was concerned that the language that he and Sir Michael Wood had proposed could be interpreted as implying that the Statute of the International Court of Justice was anachronistic. The clause "which is nowadays regarded as anachronistic" should therefore be replaced with "because the latter term is anachronistic". He agreed with Mr. Jalloh that, if the Commission pursued Mr. Park's proposal, further examples of the alternatives considered should be given.

Mr. Saboia said that he supported the proposal made by Mr. Grossman Guiloff and found the formulation proposed by Mr. Murphy acceptable. However, he had doubts about Mr. Jalloh's suggestion that the text should mention the terms considered as possible alternatives to "community of nations" at the Drafting Committee stage. Commentaries should not reproduce information included in the report of the Drafting Committee as that would expand their content still further, and the aim was to keep them as succinct as possible.

Mr. Zagaynov said that he shared the concern that the paragraph, as currently drafted, might be interpreted as implying that the entire Statute of the International Court of Justice was anachronistic. To avoid that misinterpretation, he suggested that the word "anachronistic" should be inserted earlier in the sentence, as a qualifier for the term "civilized nations", and that the phrase that currently followed the reference to the Statute of the International Court of Justice should be deleted. The sentence would then be much simpler.

He agreed with Mr. Jalloh that it would be useful to provide information about alternatives to the term "community of nations" that had been considered, as that information would help States to understand the logic behind the Commission's choice. Furthermore, if he recalled correctly, in its commentary on the definition of the "community of States as a whole" in the topic "Peremptory norms of international law (*jus cogens*)", the Commission had taken the same approach and had mentioned alternative variants considered at the Drafting Committee stage.

Mr. Petrič said that the lack of clarity that Mr. Murphy had highlighted must be avoided. With regard to the need to explain the rationale behind the choice of the term "community of nations", he agreed that the alternatives considered should be mentioned. However, it might be better to include them either in a footnote or in a separate paragraph in order to avoid overloading paragraph (3) with information.

Mr. Rajput said that it was a good idea to mention the alternatives in a footnote rather than in the body of the text. The commentary did not need to incorporate the substance of the

debate in the Drafting Committee and its inclusion could be confusing for States. He noted, moreover, that the Special Rapporteur and the report of the Drafting Committee had made it amply clear that the term "community of nations" was to be understood to mean "States".

Mr. Vázquez-Bermúdez (Special Rapporteur) said that the formulation proposed by Mr. Murphy, based on the suggestion of Mr. Grossman Guiloff, should prevent any possible misinterpretation of the paragraph with regard to the Statute of the International Court of Justice: the final phrase of the first sentence should be amended to read "because the latter term is regarded as anachronistic", thereby switching the focus from the Statute to the term itself. Listing the alternatives to "community of nations" considered would indeed overload the paragraph. It would also shift the focus from the result of the discussion to the discussion itself, whereas the purpose of the conclusion was to convey the result. Furthermore, the report of the Drafting Committee was available for consultation by anyone wishing to know the background to the choice of term.

Mr. Jalloh said that he was prepared to be flexible. In his view, for the reasons explained by Mr. Zagaynov, the rationale for the choice of term was important enough to be included in the body of the text but he accepted that a footnote might be more appropriate.

Sir Michael Wood said that the footnote could simply list the other terms considered and state that the reasons for the final choice were detailed in the report of the Drafting Committee. Another important point that perhaps should be noted, either in a short additional sentence or a footnote, was that, since the term "community of nations" had been adopted because it was used in article 15 of the International Covenant on Civil and Political Rights, the translations of that term that appeared in all authentic versions of the commentary were drawn from the corresponding authentic versions of article 15 of the Covenant.

Mr. Vázquez-Bermúdez (Special Rapporteur) indicated that he supported that suggestion.

Mr. Ruda Santolaria said that he too supported Mr. Grossman Guiloff's suggestion and the formulation proposed by Mr. Murphy. He also agreed that the alternative terms considered would be best mentioned in a footnote and that an additional footnote clarifying the origin of the translations of "community of nations" would be helpful.

Mr. Forteau, supported by **Ms. Escobar Hernández** and **Mr. Jalloh**, said that the clarification regarding the translations should be included in the body of the text, not in a footnote.

The Chair said he took it that the Commission wished to adopt Mr. Murphy's proposed formulation of Mr. Grossman Guiloff's suggestion, to add a footnote listing the alternatives to "community of nations" and to add a short sentence in the body of the text to clarify the origin of the translations used in the different authentic versions of the commentary.

Paragraph (3), as amended, was adopted, subject to those additions.

Paragraph (4)

Mr. Grossman Guiloff said that he was not happy with the use of the term "unified" in the second sentence, although he understood the meaning behind it. He would welcome any suggestions for a suitable alternative that would achieve the same objective.

Sir Michael Wood said that, initially, he too had found the use of the word "unified" odd but he had subsequently discovered that, in a similar sentence in her statement, the Chair of the Drafting Committee had referred to the "need for a unified or collective recognition". He suggested that the addition of the words "or collective" might add context and thus mitigate any concerns about the use of the word "unified". More generally, he found the sentence rather complicated, particularly the phrase "as opposed to individual instances of recognition within national legal systems" – although the meaning became much clearer when the sentence was read in conjunction with the statement of the Chair of the Drafting Committee. He would like to suggest a further change so that the sentence would read: "In particular, the term does not seek to suggest that there is a need for a unified or collective

recognition of a general principle of law by States, nor does it suggest that general principles of law can only arise within the international legal system."

Mr. Forteau said that he had no such concerns in respect of the French version of paragraph (4), in which the language used was more precise. In particular, the phrase "there is a need for a unified recognition of a principle" was translated as "*un principe doit être reconnu uniformément*" ("a principle must be uniformly recognized"). He suggested that reproducing that phrasing in the English version, and stating that the use of the term "community of nations" did not imply that a principle must be "uniformly recognized", might eliminate the problem identified by Mr. Grossman Guiloff.

Mr. Murphy said that the issue addressed in the second sentence was not whether or not uniformity was required in the general principles of law of the 193 States. Rather, the aim was to avoid any implication that, in its use of the term "community of nations", the Commission was looking for the community of States as a whole to articulate general principles of law in some unified or collective manner. He had raised that concern in the Drafting Committee and the issue had been discussed extensively. His agreement to the use of the term "community of nations" had been predicated on the understanding that that point was made very clear in the statement of the Chair of the Drafting Committee and he was pleased that the Special Rapporteur had captured that concern when drafting the commentary. He agreed that the addition of "or collective" after "unified" could be helpful, although he was also happy with the original language. In any case, the word "unified" should not be replaced with any reference to uniformity as that language would be taking the text in a different direction.

Mr. Grossman Guiloff said that he agreed with Mr. Murphy and was likewise against the inclusion of any reference to uniformity. Sir Michael Wood's suggestion that the qualifiers "unified" and "collective" should both be included was a clear and effective solution. He also supported the suggestion that the phrase "as opposed to individual instances of recognition within national legal systems" should be deleted, although he remained flexible should other members see a need to retain it.

Ms. Escobar Hernández said that, after hearing all statements, she thought that Sir Michael Wood's proposal could work. She would prefer to retain the part of the sentence referred to by Mr. Grossman Guiloff but the addition of "or collective" would probably be sufficient. On the other hand, she did not think it appropriate to speak of general principles of law being recognized "by States" because the use of the term "States" had been the subject of very lengthy discussions that she did not wish to see reopened and the formulation "community of nations" had been adopted precisely so that the Commission could avoid having to refer to "States".

Mr. Jalloh said he too agreed that Sir Michael Wood's proposal, based on the statement of the Chair of the Drafting Committee, made the second sentence clearer. He also agreed that the middle part of the sentence was cumbersome. Another possibility would be to express the message conveyed by that text in a separate sentence rather than eliminating it altogether. However, he would not oppose the adoption of Sir Michael Wood's proposal.

Sir Michael Wood said that, to address Ms. Escobar Hernández's concern, the words "by States" could be dropped, although they were used in the report of the Drafting Committee. The sentence would then be even simpler.

Paragraph (4), as amended by Sir Michael Wood, was adopted.

Paragraph (5)

Paragraph (5) was adopted.

Chapter VII. Succession of States in respect of State responsibility (*continued*) (A/CN.4/L.947 and A/CN.4/L.947/Add.1)

The Chair invited the Commission to resume its consideration of the portion of chapter VII of its draft report that was contained in document A/CN.4/L.947/Add.1, beginning with paragraph (4) of the commentary to draft article 9.

Commentary to draft article 9 (Cases of succession of States when the predecessor State continues to exist)

Paragraph (4)

Paragraph (4) was adopted with a minor drafting change.

Paragraph (5)

Mr. Šturma (Special Rapporteur) said that the aim of the changes that he was proposing was to clarify the text and harmonize it with the new language introduced to draft article 11 by the Drafting Committee. He proposed that the second sentence should be amended to read: "For example, the successor State may be relevant in a situation where restitution of property is appropriate in order to address responsibility or there is a link between the territory of the successor State and the internationally wrongful act." The next two sentences should be deleted and the penultimate sentence should be amended to read: "Additionally, the successor State may be relevant for addressing the injury in a circumstance where the successor State would be unjustly enriched as a result of an internationally wrongful act committed before the date of succession."

Mr. Jalloh said that he found paragraph (5) somewhat ambiguous. The paragraph was intended to explain the meaning of the phrase "in particular circumstances" but it failed to establish a sufficiently close link between that phrase and the text of the draft article itself. One way to establish a clearer link would be to add the words "after reaching an agreement to that effect" at the end of the first sentence. That addition would make clear that, in particular circumstances, an agreement was needed in order for a successor State to address an injury. The rest of the paragraph would then flow more naturally.

Mr. Murphy said that, while he appreciated Mr. Jalloh's point, he was not convinced that paragraph (5) was intended to address situations that would arise after an agreement had been reached. Rather, the intention was to capture situations in which a successor State might be relevant for the conclusion of such an agreement. As an alternative approach, he suggested that the end of the first sentence should be amended so that the full sentence read: "The phrase 'in particular circumstances' covers diverse situations where a successor State may be relevant for addressing the injury."

Mr. Zagaynov said that he agreed with those comments and that the wording proposed by Mr. Murphy was more in line with the intended meaning of paragraph (5). However, having discussed the matter with the Special Rapporteur, he wished to propose a further amendment. The paragraph provided a list of examples of situations in which a successor State might be relevant for addressing an injury that was non-exhaustive and, in particular, did not include situations in which an organ of the successor State was in some way related to the injury, even though the Special Rapporteur had referred to such cases in his report. To reflect those cases and make clear that there could be a link between an organ of a successor State and an internationally wrongful act, in the second sentence the words "or an organ" should be inserted after "territory".

Mr. Jalloh said that Mr. Murphy's proposal addressed the concern he had raised more directly than the solution that he himself had proposed.

Mr. Šturma (Special Rapporteur) said that he too agreed with Mr. Murphy's proposal. He also supported the addition of the words "or an organ", as proposed by Mr. Zagaynov.

Paragraph (5), as amended, was adopted.

Paragraph (6)

Paragraph (6) was adopted.

The Chair invited the Commission to resume its consideration of paragraph (4) of the commentary to draft article 7, which had been left in abeyance.

Paragraph (4)

Mr. Šturma (Special Rapporteur), recalling that the Commission had already discussed and agreed the text of the first half of the paragraph and that the outstanding issues related to the final sentence, said that he had checked both *Lighthouses Arbitration (Greece v. France)* and the commentary to the 2001 articles on responsibility of States for internationally wrongful acts, which referred to the case in paragraph (3) of the commentary to article 11. He had decided to reproduce the relevant text of the arbitration in paragraph (4) of the present commentary, having first checked the original French text. The sentence most relevant to succession of States was to be found on page 198 of the arbitration report: "*Dans de telles conditions, le Tribunal ne peut arriver qu'à la conclusion que la Grèce, ayant fait sienne la conduite illégale de la Crète dans son passé récent d'Etat autonome, est tenue, en qualité d'Etat successeur, de prendre à sa charge les conséquences financières de l'infraction au contrat de concession*" [Given the circumstances of the case, the Court must conclude that, having endorsed the illegal conduct of Crete in its recent past as an autonomous territory, Greece is required, as the successor State, to assume responsibility for the financial consequences of the breach of the concession contract]. Although the *Lighthouses* case had originally been one of breach of contract, it had developed into an inter-State dispute over State responsibility, and specifically the responsibility of Greece. The case had been considered relevant to the 2001 articles on responsibility of States for internationally wrongful acts and was possibly even more relevant in the context of succession of States. The reference to the case could be included as a footnote but he would prefer to keep it within the body of the text.

Mr. Forteau said that the Special Rapporteur had raised some important points but that he respectfully disagreed with four of them. First, the Commission was not under an obligation to stick to a position taken in 2001 if that position had subsequently been found to be erroneous. Second, the *Lighthouses* arbitration related to a claim brought by an individual and the responsibility of private persons was excluded from the scope of the present draft articles. Third, the dispute in the *Lighthouses* arbitration addressed succession in respect of liability for State debt, not succession in respect of international responsibility. Fourth, the Court had found Greece liable, not responsible, which was an important difference since it confirmed that the central issue was liability for debt. For those reasons he wished to propose, as a compromise solution, that the new text proposed should not be added and that the footnote reference to the commentary to the 2001 articles on responsibility of States for internationally wrongful acts originally included should be reinstated.

The meeting rose at 1 p.m.