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International Law Commission

Seventy-third session (first part)

Provisional summary record of the 3586th meeting

Held at the Palais des Nations, Geneva, on Friday, 3 June 2022, at 10 a.m.

Contents

Present:

Chair:	Mr. Tladi
Members:	Mr. Argüello Gómez
	Mr. Cissé
	Ms. Escobar Hernández
	Mr. Forteau
	Ms. Galvão Teles
	Mr. Hassouna
	Mr. Laraba
	Ms. Lehto
	Mr. Murase
	Mr. Murphy
	Mr. Nguyen
	Ms. Oral
	Mr. Ouazzani Chahdi
	Mr. Park
	Mr. Rajput
	Mr. Reinisch
	Mr. Ruda Santolaria
	Mr. Saboia
	Mr. Šturma
	Mr. Valencia-Ospina
	Mr. Vázquez-Bermúdez
	Sir Michael Wood
	Mr. Zagaynov

Secretariat:

Mr. Chimimba	Senior Assistant Secretary to the Commission

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

Organization of the work of the session (agenda item 1) (*continued*)

The Chair said that he wished to draw members' attention to the draft programme of work for the second part of the seventy-third session, which would of course be applied with the necessary flexibility.

Mr. Valencia-Ospina said that there appeared to be an imbalance in the amount of time allotted to consideration of the topic "General principles of law". The plenary debates were only half meetings, compared with eight full Drafting Committee meetings. In his opinion, more time should be allowed for debates in plenary meetings. Given that the Study Group on sea-level rise in relation to international law had already reached the stage of considering its draft report, he wondered why five meetings were to be devoted to that topic.

The Chair said that all the plenary debates on the topic "General principles of law" were full meetings. The Drafting Committee would meet on those days only if the full amount of meeting time was not used for the plenary debate.

Mr. Ruda Santolaria (Co-Chair of the Study Group on sea-level rise in relation to international law) said that the Study Group would discuss its draft interim report during the first week of the second part of the seventy-third session and would then devote its remaining meetings to considering its future work.

Mr. Ouazzani Chahdi said he hoped that the secretariat would ensure that the Special Rapporteur's report on the topic "General principles of law" would be available in all languages in time for its consideration at the plenary meetings.

The Chair said he took it that the Commission wished to approve the programme of work for the second part of the seventy-third session.

It was so decided.

Immunity of State officials from foreign criminal jurisdiction (agenda item 2)

Report of the Drafting Committee (A/CN.4/L.969)

Mr. Park (Chair of the Drafting Committee), introducing the report of the Drafting Committee on the topic of immunity of State officials from foreign criminal jurisdiction (A/CN.4/L.969), said that the document reproduced the text of draft articles 1 to 18 adopted by the Drafting Committee on first reading. The Committee had devoted 16 meetings to the topic.

At the current session, the Drafting Committee had continued its consideration of draft articles 8 to 16, as contained in the Special Rapporteur's seventh report (A/CN.4/729), which had been referred to the Drafting Committee in 2019. The Committee had taken account of the proposals made in plenary meetings in connection with those draft articles. At the Commission's seventy-second session, the Special Rapporteur had proposed a revised and reordered version of the provisions contained in her seventh report. The reordered version of the provisions of Part Four, complemented by a series of further revisions proposed by the Special Rapporteur in the light of members' comments and suggestions, had formed the basis of the Committee's work at the current session. The Drafting Committee had also examined the draft article on "Definitions" contained in the Special Rapporteur's second report (A/CN.4/661), which had been referred to the Drafting Committee in 2013, as well as draft articles 17 and 18, proposed by the Special Rapporteur in her eighth report (A/CN.4/739) and referred to the Drafting Committee in 2021.

After it had adopted draft articles 1 (3) and 14 to 18, the Drafting Committee had undertaken a final *toilettage* of the entire set of draft articles. At the seventy-second session, the Committee had concluded that, at the end of the first reading, it would need to consider the order of the draft articles and the consistency of their wording. As a result, the draft articles had been renumbered. His introduction would focus on draft articles 14 to 18, which had been provisionally adopted by the Drafting Committee at the current session.

Draft articles 1, 3 and 4 had been provisionally adopted by the Drafting Committee at the sixty-fifth session, in 2013. Draft article 2 (e), which had become draft article 2 (a), and draft article 5 had been provisionally adopted by the Committee at the sixty-sixth session, in 2014. Draft article 2 (f), which had become draft article 2 (b), and draft article 6 had been provisionally adopted by the Drafting Committee at the sixty-seventh session, in 2015. The titles of Part Two and Part Three and the texts and titles of draft article 7 and the annex had been provisionally adopted by the Drafting Committee at the sixty-ninth session, in 2017. The text and title of draft article 8 *ante*, which had become draft article 8, had been adopted by the Drafting Committee at the seventy-first session, in 2019. Lastly, the texts and titles of draft articles 8 to 12, which had been renumbered as draft articles 9 to 13, had been provisionally adopted by the Drafting Committee at the seventy-second session, in 2021. Attention was drawn to the relevant statements and reports of the Chair of the Drafting Committee at those sessions.

He recommended that the provisions should be entitled “Draft articles on immunity of State officials from foreign criminal jurisdiction”.

With reference to draft article 1 (3), in her eighth report the Special Rapporteur had proposed a draft article 18 that had read: “The present draft articles are without prejudice to the rules governing the functioning of international criminal tribunals.” The Special Rapporteur had explained that the purpose of that draft provision was to safeguard, through a “without prejudice” clause, both the separation and the independence of the regimes applicable to immunity before national criminal courts and international criminal tribunals and to preserve the special rules that governed the functioning of international criminal tribunals. In the plenary debate, some members had supported the inclusion of such a clause on the grounds that it would usefully address the relationship between those regimes and ensure that international criminal courts and tribunals and developments in international criminal law were not undermined. Other members had opposed its inclusion, taking the view that the potential overlap between national and international jurisdiction was not sufficient to warrant making provision for it in the draft articles; that the matter was already addressed in draft article 1 and the commentary thereto; and that the absence of a provision of that nature was unlikely to undermine developments in international criminal law. Some members had contended that such a clause might be understood to create a hierarchical relationship between the rules governing international criminal tribunals and the law of immunity of State officials from the jurisdiction of national courts, which in turn would raise concerns about the application of the principle of complementarity. Those differences of opinion had resurfaced in the Drafting Committee’s deliberations.

After an extensive discussion, the Committee had agreed to draft a compromise text and had then considered where to place it. A range of possibilities had been contemplated, such as keeping it as a separate last article, possibly in a separate Part Five, as it did not fit perfectly in Part Four; making it a separate article in Part One; or inserting it into draft article 1 as a new paragraph 2 or 3. In the end the Committee had made it a new paragraph 3 of draft article 1, since the commentary to that draft article already addressed some aspects of the issue, and paragraphs 1 and 2 were interlinked.

The wording of the new draft paragraph was modelled on article 26 of the United Nations Convention on Jurisdictional Immunities of States and Their Property, which stated that: “Nothing in the present Convention shall affect the rights and obligations of States Parties under existing international agreements which relate to matters dealt with in the present Convention as between the parties to those agreements.” A similar provision was contained in article 33 of the European Convention on State Immunity, which read: “Nothing in the present Convention shall affect existing or future international agreements in special fields which relate to matters dealt with in the present Convention.”

The Drafting Committee had discussed whether replacing the phrase “rights and obligations of States” with “the question of immunity” would clarify the scope of the text, but had decided not to alter it. On the other hand, it had taken the view that the reference to “the rules governing the functioning of international criminal tribunals” in the Special Rapporteur’s original proposal was unclear and did not specifically address immunity issues. It had also considered that a reference to “international agreements which relate to matters dealt with in the present draft articles, including those establishing international courts and

tribunals", which had also been suggested by the Special Rapporteur, was too broad, as the focus was on "agreements establishing international criminal courts and tribunals". The purpose of the qualifying phrase "as between the parties to those agreements" was to provide further clarity as to the scope of the provision.

Even though the Drafting Committee had adopted the wording as it appeared in the Committee's report, there had been some concern that it did not correspond to recent practice with regard to the creation of international criminal courts and tribunals, as some had been created through United Nations Security Council resolutions, some were of a hybrid nature and certain regional organizations and arrangements had developed or were developing their own practice, which could not necessarily be characterized as "international agreements".

The second issue addressed by the Drafting Committee had related to draft article 2, which it had already considered in 2013 on the basis of the Special Rapporteur's second report. The original version of that provision, entitled "Definitions", had sought to group together concepts, definitions and terms that were to be clarified in the course of elaborating the draft articles, in particular "criminal jurisdiction", "immunity from foreign criminal jurisdiction", "immunity *ratione personae*" and "immunity *ratione materiae*". Even though it had been generally recognized that there might be a need for a draft article on definitions, some members had doubted whether it was necessary to define those particular terms, given that the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations and the Convention on Special Missions dealt with criminal jurisdiction and immunity from criminal jurisdiction, but did not define those terms. During informal consultations conducted by the Special Rapporteur on 25 May 2022, the participants had discussed the usefulness of defining terms such as "criminal jurisdiction", "exercise of criminal jurisdiction", "immunity from criminal jurisdiction" and "inviolability".

In that discussion, the general feeling had been that such an exercise would be unnecessary and difficult to carry out, particularly in view of the time constraints that the Commission was facing and the diversity of definitions and practices across different legal systems and traditions. As some of those practices were still evolving, it would be necessary to build in a degree of flexibility. Moreover, it had been reiterated that other instruments on similar subjects did not contain definitions of those terms. Once the Drafting Committee as constituted for the topic had been convened, the Special Rapporteur had suggested that no new definitions should be added, and the matter had not been discussed further. Accordingly, the subparagraphs containing definitions of the terms "State official" and "act performed in an official capacity" had been renumbered (a) and (b), respectively. Any other relevant terms used in the draft articles would be described in the commentary.

In the context of the consultations, there had also been some discussion of whether it was necessary to make clear that Part Four covered both current and former officials. Some members had considered that the inclusion of the words "current or former" in draft article 8 was inadequate, while others had noted that draft article 8 was quite clear in that regard. As a compromise, on the basis of a suggestion made by the Special Rapporteur, agreement had been reached to add the words "and refers to both current and former State officials" to the definition of the term "State official" in draft article 2, thereby making clear that former State officials were included under that term in cases involving immunity *ratione materiae*. The Drafting Committee had deemed it unnecessary to make a corresponding change to draft article 6 (2), which provided that immunity *ratione materiae* continued to subsist after the individuals concerned had ceased to be State officials, as it was clear from the context that the draft article dealt with the material scope of immunity *ratione materiae*.

Throughout the draft articles, several expressions were used to refer to the State official. They included "official of another State", "the official" and "an official". The use of those various expressions did not imply any divergence from the meaning of the term "State official" as defined in draft article 2.

Draft article 8, "Application of Part Four", had been amended so as to broaden its scope. Whereas the previous text had stated that the procedural provisions and safeguards in Part Four were applicable in relation to "any criminal proceeding against a foreign State official, current or former", the new text stated that they were applicable in relation to "any

exercise of criminal jurisdiction by the forum State over an official of another State, current or former".

The last of the provisionally adopted draft articles to which the Drafting Committee had made changes was draft article 12, "Waiver of immunity". Those changes, which concerned the English text only, served to provide greater clarity and did not affect the substance: in paragraph 1, the words "immunity from foreign criminal jurisdiction of the State official" had been replaced with "immunity of a State official from foreign criminal jurisdiction" and, in paragraph 2, the words "of immunity" had been added after "waiver".

Turning to the draft articles that the Drafting Committee had provisionally adopted at the current session, namely draft articles 14 to 18, he said that draft article 14, "Determination of immunity", set out the requirements applicable to the procedure whereby the forum State determined, before it exercised criminal jurisdiction over a foreign State official, whether or not the official enjoyed immunity. The text was based on a proposal made by the Special Rapporteur in her seventh report and subsequent proposals that she had made to take into account the views expressed in the Drafting Committee.

The provision was divided into five paragraphs. Paragraph 1 set out the general rule that a determination of immunity should be made by the competent authorities of the forum State according to its law and procedures and in conformity with the applicable rules of international law. The Drafting Committee had given thorough consideration to the question of determination. While the Special Rapporteur, in her original proposal, had placed emphasis on determinations by the courts of the forum State, the Committee had agreed that, as shown by State practice, the immunity of a foreign State official could be determined far earlier in the process, for example by a police officer, a prosecutor or an official of the ministry of foreign affairs. It had therefore decided that the term "competent authorities of the forum State" should be used, in line with the wording used in draft articles 9 and 10. Such wording allowed for flexibility as to which authorities might make a determination, leaving the matter to be decided by the forum State according to its law and procedures. It had been noted, however, that the competent authorities referred to in draft articles 9 and 10 might not be the same as those referred to in draft article 14. Furthermore, the courts of the forum State were not necessarily absent from the process of determination. It had also been noted that, while draft article 14 provided for a determination of immunity by the forum State, it did not exclude the possibility of a determination by another competent body, such as an international court to which the States concerned had submitted a dispute.

In the English text, the indefinite article had been used at the beginning of the paragraph, since the paragraph was intended to cover diverse domestic systems. The question of whether that word should be translated into French and Spanish as "*La*" or as "*Toute/Toda*" would be settled after the commentary had been considered. It had been noted that, in the Spanish text, it would be inelegant to use "*Toda*" in that context.

The middle part of the paragraph set out in general terms how a determination was to be made. In that regard, the Drafting Committee had noted that it would be inappropriate to dictate a single procedure to States in view of the importance of accommodating diverse domestic legal systems. The provision therefore included an explicit reference to the procedures of the forum State. However, it had been decided that reference should also be made to the law of the forum State in order to accommodate those legal systems in which domestic law provided for substantive rules to govern decisions relating to immunity. Although the Committee had considered making reference to the "national" or "internal" laws of the forum State, it had opted for the current wording, "its law and procedures", which obviated the need for a second reference to the forum State and elegantly captured the intended meaning.

The last part of the paragraph had been added to emphasize that, notwithstanding the flexibility envisaged in respect of the organs, laws and procedures of the forum State, the result produced by the determination must be consistent with international law. In an earlier version of the paragraph, the Special Rapporteur had proposed that the words "taking into account" should be used to introduce the reference to applicable international law. The Drafting Committee had considered that such wording would not be sufficient to ensure respect for international law, particularly with regard to certain substantive matters. The

possibility of using the phrase “in accordance with” had also been considered. Ultimately, “in conformity with” had been chosen in the English text for closer alignment with the Spanish wording “*de conformidad con*”. In addition, some members had considered that “in conformity with” imposed a higher standard than “in accordance with”.

Paragraph 2 specified the elements to be taken into account in making a determination about immunity. It was intended to provide useful guidance to the authorities involved in that process with a view to facilitating effective cooperation between the States concerned. The phrase “In making a determination about immunity” in the chapeau established a link between the elements listed in the paragraph and the broader process of determination.

The Drafting Committee had debated whether the chapeau should end with the words “in particular” or “*inter alia*”. The words “in particular” had been chosen to emphasize that, while the elements mentioned in the paragraph were of special importance in that context, the list was not intended to be exhaustive.

Subparagraphs (a), (b) and (c), which concerned notification, invocation and waiver, and requests for information, respectively, corresponded to draft articles 10 to 13, and the order of the subparagraphs broadly reflected the chronological order in which the actions foreseen therein would be carried out. The Drafting Committee had thoroughly considered the question of whether those subparagraphs should each include a cross reference to the corresponding draft article.

It had been decided that an explicit reference to draft article 10 should be added to subparagraph (a) to clarify that the subparagraph referred to the specific obligations of the forum State under draft article 10. In an earlier proposal, the Special Rapporteur had included a reference to notification of the “intention to exercise jurisdiction over the official”. However, that wording had raised the question of whether the notification foreseen in draft article 14 might be different from that provided for in draft article 10. In addition, it had been recalled that the purpose of notification was to enable the State of the official to invoke or waive immunity.

The Drafting Committee had considered whether omitting cross references from subparagraphs (b) and (c) would imply that those provisions did not concern the invocation, waiver and exchange of information foreseen in draft articles 11, 12 and 13. It had decided that cross references were not needed, since, unlike draft article 10, draft articles 11 to 13 did not impose a condition precedent to the exercise of criminal jurisdiction by the forum State over a foreign State official. Rather, those draft articles allowed the State of the official to provide the forum State with information that must be taken into account. That distinction, it had been suggested, could be clarified in the commentary.

Subparagraph (d) concerned information provided by authorities of the forum State other than the authority making the determination, and subparagraph (e) concerned other relevant information from other sources. In the text originally proposed by the Special Rapporteur, both types of information had been dealt with in the same sentence. The Drafting Committee had discussed whether it was necessary to address the question of information-sharing within the forum State. In view of the variety of domestic legal systems and practices, it had been considered important to reflect the fact that information from other authorities within the forum State, such as the ministry of foreign affairs, could be relevant to a determination concerning immunity and to strike a balance between such information and the information provided by the State of the official. However, it had been decided that, for the sake of clarity, information from other authorities of the forum State should be addressed in a separate subparagraph.

Subparagraph (e) had emerged from discussions regarding other possible sources of information, for example third States, international organizations, including the International Criminal Police Organization (INTERPOL), international investigative mechanisms, courts and tribunals, the International Committee of the Red Cross and non-governmental organizations. Practice showed that such sources had provided information of value to forum States’ determinations in respect of immunity. While a number of members had considered that the words “in particular” in the chapeau already allowed the forum State to take such information into account, the Drafting Committee had decided that it would be preferable to include a specific provision on the matter. The wording used in the subparagraph had been

discussed in detail. While the terms “actors”, “entities” and “international actors or international institutions” had been proposed, the Committee had settled on the general term “sources”.

The wording of subparagraphs (c) to (e), which each referred to “any other relevant information”, reflected the fact that no hierarchy was implied among the various sources.

Paragraph 3 established the safeguards that the forum State was to apply when considering the prosecution of a foreign State official for one of the crimes listed in draft article 7. Its purpose was to balance the interests of the States concerned and to reduce the potential for the political abuse of draft article 7 without hampering its application in good faith. It had been recalled that, under draft article 8, all the procedural safeguards in Part Four applied to cases involving draft article 7. However, the concern had been raised that, because immunity did not apply in the cases covered by draft article 7, the safeguards set out previously in Part Four would be of less relevance to such cases. In addition, the view had been expressed that the application of the safeguards now foreseen in paragraph 3 might not be appropriate in cases involving less serious crimes. It had therefore been decided that safeguards specific to draft article 7 were needed. After consideration, the Drafting Committee had concluded that the inclusion in Part Four of a paragraph applicable only to cases involving draft article 7 would not be inconsistent with draft article 8.

The structure of paragraph 3 largely mirrored that of paragraphs 1 and 2: subparagraph (a) provided a more precise indication of who should make the determination when the forum State was considering the application of draft article 7, and subparagraph (b) set out additional elements to be considered by the authority in question. In earlier proposals, those two components had been included under the same chapeau. The draft article had been restructured in recognition of the need to address separately the questions of who should make the determination and how it should be made.

Subparagraph (a) concerned the hierarchical level of the authority making the determination. Given the gravity of a decision by the forum State to proceed with the exercise of criminal jurisdiction against a foreign State official in respect of a crime under international law and its potential to have a negative impact on international relations, the Drafting Committee had agreed that the authorities making a determination that immunity did not apply, in application of draft article 7, should be of an appropriately high level. The Committee had also discussed whether it was necessary for the level of the authority making the determination to correspond to that of the official. The wording chosen had been considered clearer and more appropriate than the original text, in which reference had been made to the “highest level of authority”. The possibility of using the wording “an appropriately senior level” had also been considered.

After some consideration, the Committee had decided that an explicit reference to hierarchy should not be added to clarify the word “level”, since it was necessary to preserve the subparagraph’s applicability to whichever authorities might make a determination, whether administrative, executive, prosecutorial or judicial. The possibility of qualifying the word “authorities” with the adjective “competent” had also been rejected, as the very purpose of the subparagraph was to define which authorities were competent.

Subparagraph (b) set out the elements that the authorities were to consider, in addition to those specified in paragraph 2, when deciding whether draft article 7 was applicable to the case in question. In the original proposal, the chapeau would have mirrored that of paragraph 2, ending with the words “take into account”. After thorough discussion, the Drafting Committee had decided that different verbs should be used in subparagraphs (i) and (ii) to allow for greater precision, in the interest of ensuring the effectiveness of the safeguards against the political abuse of draft article 7 set out in paragraph 3.

Subparagraph (i) set out the standard of proof indicating the degree to which the competent authorities must be convinced that the official had committed a crime under draft article 7, as a prerequisite for determining that immunity did not apply. After an extensive debate, the Drafting Committee had agreed that, if the provision was to function as a safeguard, it must set out a necessary condition, and should thus begin with the words “assure themselves that” rather than wording such as “take into account” or “assess”.

The Committee had discussed the applicable standard of proof in detail. It had been recalled that the task of determining whether immunity applied was not the same as that of reaching a conviction; rather, it involved establishing that the proof that the official had committed one of the crimes enumerated in draft article 7 was sufficient for criminal proceedings to be instituted. The need for a clear and precise standard had been highlighted. While the standard of "*prima facie* evidence" had been deemed too low to provide an effective safeguard, that of "clear and convincing evidence" had been considered too stringent for the pretrial phase of proceedings. The Committee had also discussed whether it might be appropriate to include a reference to the highest standard of proof for the prosecution of crimes in the domestic legal system.

The Committee had concluded that it would be desirable to use a standard that already existed in international practice. Inspiration had been drawn from the Rome Statute of the International Criminal Court, which contained previously negotiated standards that applied as safeguards at various stages of international criminal proceedings against State officials – often high-level ones – accused of crimes under international law. The Committee had considered the possibility of using the standard of "sufficient evidence to establish substantial grounds to believe", which, under article 61 of the Rome Statute, was applied by the Pre-Trial Chamber of the Court when confirming charges; that of "reasonable grounds to believe", which, under article 58, was applied by the Pre-Trial Chamber when issuing a warrant of arrest; and that of "reasonable basis", which, under article 53, was applied by the Prosecutor when determining whether to proceed with an investigation. The view had been expressed that standards relating to investigations were insufficiently stringent, particularly as the draft articles, unlike the Rome Statute, did not establish robust procedural rights for the accused during investigations. The Drafting Committee had been concerned that using the "interests of justice" standard, which had been discussed as a possibility, might politicize the determination process.

The Committee had ultimately decided that "substantial grounds to believe" constituted an appropriately high standard. The words "sufficient evidence to establish" had been omitted, since the intention was not to require the forum State to conduct as thorough an examination of the evidence as was required of the Pre-Trial Chamber in confirmation hearings. The key point was that, before proceeding with the exercise of criminal jurisdiction in application of draft article 7, the competent authorities of the forum State should believe, on the basis of evidence, that the foreign official had indeed committed the alleged crime. The applicable standard of proof would be further explained in the commentary. As emphasized in the Drafting Committee, that standard was not intended to prejudice the presumption of innocence or the procedural rights of the accused during investigation or trial. Accordingly, qualifiers such as "allegedly" or "may have" had not been included, on the understanding that the relevant procedural rights would be dealt with in draft article 16 and in the commentary.

Under subparagraph (ii), the competent authority was required to give consideration to any request or notification by another authority, court or tribunal that was exercising or intended to exercise criminal jurisdiction over the official. An earlier proposal had referred only to the intention of the other authority to exercise criminal jurisdiction. The provision was intended to open up the possibility of international cooperation and the application of mutual legal assistance mechanisms. The Drafting Committee had considered that the reference should be expanded to cover the possibility that proceedings might already have been instituted against the official. The decision to include both the exercise of criminal jurisdiction and the intention to exercise such jurisdiction accommodated a range of procedural possibilities that could arise in practice, given the diversity of national legal systems.

There was a clear link between the subparagraph and draft article 15, "Transfer of the criminal proceedings". It had been decided that a cross reference to that draft article was not necessary, since the scope of the subparagraph was not limited to cases involving a transfer of the proceedings to the State of the official. Requests or notifications by the authorities of third States or international or hybrid criminal courts or tribunals also fell within the scope of the provision, as would be noted in the commentary.

Paragraph 4 concerned the moment at which immunity was to be determined. It had originated in a discussion of whether an additional subparagraph should be added to paragraph 3 to stipulate that the official must be in the territory of the forum State. The Drafting Committee had considered that a provision of that kind would be inappropriate, given that the determination of immunity would occur at the pretrial stage. Among the issues raised had been the concern that such a provision could hinder investigations and that it would be inconsistent with those domestic legal systems in which a person could be tried *in absentia* and with several instances of State practice. The Committee had concluded that the priority was to protect the official from coercive measures until the determination concerning immunity had been made.

To address outstanding concerns regarding the possible abuse of coercive measures, paragraph 4 instead built on a proposal made in the Drafting Committee in 2021 in the context of a discussion regarding draft article 11. It stipulated that the competent authorities of the forum State were always required to determine immunity before initiating criminal proceedings or taking coercive measures that might affect the official, including those that might affect any inviolability that he or she might enjoy under international law.

The text of paragraph 4 was based on draft article 9 (2). The difference between them lay in the second sentence of subparagraph (b). According to that sentence, coercive measures could be taken against the official before a determination of immunity had been made if the absence of such measures would preclude subsequent criminal proceedings. Such measures would include those intended to prevent the flight of the official from the forum State, such as the surrender of his or her passport pending trial. That distinction served to balance the interests of the States concerned.

Paragraph 5, concerning the review in judicial proceedings of a determination that an official did not enjoy immunity from the criminal jurisdiction of the forum State, had been added to draft article 14 after discussions in the Drafting Committee had resulted in the adoption of broader language for paragraph 1, which had originally been based on the assumption that such determinations would be made by the judiciary of the forum State. The purpose of the addition was to ensure that, as a final safeguard, a determination concerning immunity would still be subject to judicial oversight. The Committee had given extensive consideration to the language that should be used to describe the possibility of recourse to the courts. It had rejected the phrase “subject to judicial review” originally proposed by the Special Rapporteur, since it could be read as an implied reference to the specific procedure known as “judicial review” in domestic legal systems. After considering various alternate wordings, including “can be challenged before the courts”, “can be reviewed before the courts” and “subject to appropriate judicial proceedings”, it had settled upon “open to challenge through judicial proceedings”, a formulation considered broad enough to accommodate the variety of domestic legal systems.

As originally proposed, the judicial oversight requirement would have applied to any determination about immunity, including a determination that the official enjoyed immunity and that criminal proceedings could not be pursued by the forum State. However, after further discussion, the Drafting Committee had decided to refocus the provision so that it constituted a further safeguard for the foreign State and its official. For that reason, the first sentence referred only to determinations that the official in question did not enjoy immunity. There were practical concerns behind the reformulation. For example, it might not be desirable to leave open the possibility of judicial proceedings in a case where a police officer made a determination of immunity when stopping a vehicle for a traffic violation. The reformulation also accommodated the practice of States whose domestic legal systems did not allow for legal challenges to the exercise of prosecutorial discretion in decisions not to proceed to trial, including for reasons of immunity.

Given the importance of access to justice for victims of crime, the Drafting Committee had nonetheless deemed it important to make clear, in the second sentence of paragraph 5, that other challenges to a determination about immunity could be possible and should not be prejudiced by the first sentence. The expression “applicable law of the forum State” was included in the second sentence to allow for the possibility that challenges to a determination about immunity might arise not only under the domestic legislation of the forum State but also under the international law applicable in that State, which might include, for example,

regional human rights instruments and the judgments of regional courts. The commentary would expand upon those considerations.

Draft article 15, "Transfer of the criminal proceedings", served as an important safeguard that balanced the interests of the two States involved. In the case concerning the *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, the International Court of Justice had emphasized that immunity from criminal jurisdiction and individual criminal responsibility were quite separate concepts and that immunities enjoyed under international law did not represent a bar to criminal prosecution in certain circumstances, including situations in which officials did not enjoy immunity under international law in their home country and could thus be tried before that country's courts in accordance with the relevant rules of domestic law. Draft article 15 was based on the formulation proposed by the Special Rapporteur in her seventh report and the reformulations submitted in the light of the plenary debate. Although some members had expressed a preference for a short provision simply establishing an obligation for the forum State to consider in good faith any request for proceedings to be transferred, the Drafting Committee had settled on a text comprising five paragraphs organized in a logical sequence that moved from the question of how and by whom a transfer was initiated to the issues of suspension and possible resumption, before concluding with a "without prejudice" provision.

The opening phrase of paragraph 1 had been streamlined by the Drafting Committee to read "The competent authorities of the forum State may, acting *proprio motu* or at the request of the State of the official", instead of the earlier proposal "When the competent authorities of the forum State determine that immunity does not apply". Although the Drafting Committee recognized that the cases at issue would mostly be cases in which immunity did not apply, transfers might also be warranted in other instances, for other reasons. The term "competent authorities of the forum State" should be understood to include its judicial authorities. The paragraph focused on the transfer without considering the various circumstances that might trigger a transfer, such as a determination by a court or a simple decision not to exercise jurisdiction.

An earlier iteration of paragraph 1 had envisaged the possibility that the competent authorities of the forum State might decline to exercise their jurisdiction and offer to transfer the criminal proceedings to the State of the official. Some members had found the link between declining to exercise and offering to transfer problematic, as it was not clear whether those requirements were cumulative. In addition, that formulation risked leaving open the possibility that the forum State could decide not to honour its obligation under international law either to prosecute certain international crimes or to extradite the alleged perpetrators. Those concerns were resolved by the simplified formulation "offer to transfer the criminal proceedings to the State of the official", coupled with the "without prejudice" clause contained in paragraph 5. Although the words "offer to" could have been omitted without compromising the paragraph's substance and scope, the Drafting Committee had decided to retain those words because they were consonant with the consensual formulation of the following paragraph 2.

The Drafting Committee had decided to limit the scope of paragraph 1 to relations between the forum State and the State of the official but was aware that, in practice, requests from third States usually formed part of agreements or arrangements for the transfer of proceedings, and that such a scenario was also envisaged in the *Arrest Warrant* case. The narrower focus settled upon was without prejudice to the possibility that a transfer could be effected to a third State under international law.

Paragraph 2 provided for good-faith considerations that applied to both the forum State and the State of the official: the first sentence established that the forum State must consider a request for transfer in good faith, while the second sentence made any transfer agreement conditional upon an undertaking from the State of the official to submit the case for prosecution. The wording "submit the case to its competent authorities for the purpose of prosecution" was informed by the "Hague formula", whose meaning had been elucidated previously in the Commission's final report on the topic "The obligation to extradite or prosecute (*aut dedere aut judicare*)" and in its draft articles on prevention and punishment of crimes against humanity; that understanding would be reflected in the commentary to the current draft article. Agreement to submit the case for the purpose of prosecution was not

merely a requirement of form; it also entailed efforts to compile a dossier containing evidentiary and other information. Paragraph 2 was cast broadly to encompass a wide range of crimes, but the Drafting Committee had noted that crimes under international law such as those referred to in draft article 7 might require different treatment in the commentary in view of the obligations that international law imposed on States in respect of such crimes.

Concerning paragraph 3, the Drafting Committee had taken the view that it was more appropriate to refer to a transfer "agreed" than to a transfer "offered" and that the simplified wording "suspend its criminal proceedings" was preferable to the earlier formulation "suspend the exercise of criminal proceedings" proposed by the Special Rapporteur in the light of the plenary debate. The "without prejudice" clause contained in the second half of the paragraph, which replicated the language used in draft article 14 (4) (b), would mean that a suspension of proceedings would not preclude the forum State from investigating or continuing to investigate, as appropriate, the matter to which the suspension related.

Paragraph 4 had been adjusted for the sake of clarity and brevity. It now began simply with "The forum State", as the omission of the words "competent authorities of" did not change the meaning. The phrase "can resume the exercise of their criminal jurisdiction when" had been changed to "may resume its criminal proceedings if", in part for clarity but also because the reference to "criminal proceedings" was consistent with the previous paragraphs of draft article 15, whereas the phrase "the exercise of their criminal jurisdiction" was broader in scope. The phrase "after the transfer" had replaced the formulation "after having accepted the transfer" in order to provide a better sequential link with paragraph 3.

The Drafting Committee had discussed extensively the conditions that might give rise to a resumption of proceedings by the forum State. In an earlier proposal, the Special Rapporteur had suggested that such a resumption would be warranted if the State of the official had no intention of bringing the official concerned to justice and/or was seeking to shield the official from criminal responsibility. In the Committee's view, those conditions were subjective, it was unclear whether they were cumulative and the difference between them was not easily discernible. The proposed phrase "conducted themselves in a manner indicating" only added to the subjectivity of the wording. Although those conditions were inspired by article 17 (2) of the Rome Statute, building upon the "unwilling or unable" standard established in article 17 (1), the Committee had decided that a link back to paragraph 2 could provide a solution, as that paragraph envisaged that the State of the official would agree to submit the case "for the purpose of prosecution". The Committee had accordingly adopted the wording "does not promptly and in good faith submit the case to its competent authorities for the purpose of prosecution".

Presented as a "without prejudice" clause, paragraph 5 had been added to allay concerns that draft article 15 did not fully address relations with third States and could conceivably create a conflict of obligations with respect to the obligation to extradite or prosecute established in various treaties in relation to crimes under international law. The text was broader than the earlier proposal by the Special Rapporteur in that, rather than being limited to the forum State's obligations in relation to criminal matters, it encompassed any other obligations of either the forum State or the State of the official.

The Drafting Committee had decided to delete two paragraphs that had been proposed for draft article 15. Firstly, it had removed a paragraph that read: "The criminal proceedings shall be transferred in accordance with the national law of the forum State and, as appropriate, any agreement between the forum State and the State of the official, including the international cooperation and mutual judicial assistance agreements to which the forum State and the State of the official are parties." That decision was predicated on the understanding that the substance of the provision would be addressed in the commentary. Some members had considered that the paragraph was unnecessary, particularly in view of the content of paragraph 5, and that the reference to the "national law of the forum State" was problematic, given the absence of a reference to the national law of the State of the official, and might conflict with a State's obligations under other rules of international law. Secondly, the Committee had removed a paragraph providing that: "The competent authorities of the forum State may also decline to exercise their criminal jurisdiction and to transfer the criminal proceedings to an international criminal court or tribunal, in accordance with their national

law and the applicable international law.” That paragraph had been deleted after agreement had been reached on draft article 1 (3).

Draft article 16, “Fair treatment of the official”, was based on a reformulated text proposed by the Special Rapporteur and drew upon draft article 11 of the draft articles on prevention and punishment of crimes against humanity, adopted by the Commission in 2019. Some members of the Drafting Committee had considered the inclusion of a draft article on fair treatment unnecessary, given that the focus of the draft articles was on the immunity of State officials, not their rights, and that applicable law at the national and international levels would in any case provide guarantees of due process. However, the Committee had ultimately opted to include a provision tailored to the specific needs of State officials in the circumstances envisaged, to serve as an additional safeguard.

Paragraph 1 established the principle of fair treatment in clear, general and concise terms, with the opening phrase “An official of another State” signalling a focus on the individual as opposed to the forum State. The phrase “over whom the criminal jurisdiction of the forum State is exercised or could be exercised” was intended to capture an array of processes that might occur before, during and after criminal proceedings. The paragraph mirrored the language of draft article 11 (1) of the draft articles on prevention and punishment of crimes against humanity, except for the addition of a reference to “procedural guarantees” after the reference to “rights”. Since the term “rights” was understood to include “guarantees”, some members had considered the addition unnecessary and largely unsupported in treaty practice, but the Drafting Committee intended the additional reference to evoke certain particular guarantees that might conceivably be relevant in the process of determination of immunity in the context of any criminal proceedings or any coercive measures that might be taken against an official. After discussing various formulations that might adequately reflect United Nations gender policy considerations, the Committee had decided to retain “his or her” as a qualifier before “rights” in paragraphs 1 and 2.

Paragraph 2, concerning the entitlements of a State official “in prison, custody or detention in the forum State”, had initially been reformulated by the Special Rapporteur, in the light of the plenary debate, in terms of an obligation for the forum State to “communicate without delay” the detention or any other measure affecting the personal freedom of the official. However, some members of the Drafting Committee had questioned whether such a provision was necessary and, if so, whether the current formulation was adequate, since it dealt only with matters of communication. It had thus been suggested that, if retained, the paragraph should be broader in scope, requiring the forum State to guarantee not only the State official’s right to communicate, but also his or her rights to be visited and to be informed of those rights. Even then, some members had wondered whether, without a link to nationality, the paragraph would be consistent with existing rules such as article 38 of the Vienna Convention on Diplomatic Relations, which established that “a diplomatic agent who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions”, unless additional privileges and immunities were granted by the receiving State.

The current formulation of paragraph 2 was inspired by the language of draft article 11 (2) of the draft articles on prevention and punishment of crimes against humanity but offered a different kind of protection. The latter paragraph dealt with the right of consular access, whereas the former served as an additional safeguard for State officials over whom the criminal jurisdiction of the forum State might be exercised. In contrast to typical consular access provisions, draft article 16 made no reference to “the State or States of which such person is a national or which is otherwise entitled to protect that person’s rights or, if such person is a stateless person, of the State which, at that person’s request, is willing to protect that person’s rights”. The Drafting Committee had concluded that the inclusion of paragraph 2 was justified by the relationship between the official and the State of the official, and the rationale that immunity was recognized in the interest of the State of the official and not the official himself or herself. The right of consular access was unimpaired by the provisions of paragraph 2, which, like all the draft articles in Part Four, was understood to refer to both current and former State officials. The opening phrase of paragraph 2 had been changed from “A foreign State official” to “Any such official” to accentuate the link back to paragraph 1, which established the meaning of that phrase.

Paragraph 3 established that, although the rights referred to in paragraph 2 must be exercised in conformity with the laws and regulations of the forum State, those laws and regulations could not nullify the rights in question. Once again, some members of the Drafting Committee had questioned the need for the provision and had sought its deletion, but the paragraph had been retained on the grounds that it provided a necessary balance to paragraph 2. The reference to "the rights accorded under paragraph 2" in an earlier draft had been changed to "the rights referred to in paragraph 2" to signal that paragraph 2 created rights independent of consular access. The wording of paragraph 3 was again based on draft article 11 (2) of the draft articles on prevention and punishment of crimes against humanity, which was in turn inspired by article 36 (2) of the Vienna Convention on Consular Relations.

An earlier proposal formulated by the Special Rapporteur in the light of the plenary debate had included a paragraph 2 stating that fair treatment should be guaranteed in certain specific situations, namely those relating to the determination of immunity; criminal proceedings, once instituted; and coercive measures taken against the official. Following an extensive discussion in the Drafting Committee, the general sense among members had been that the paragraph should be deleted. It had been pointed out that paragraph 1, which set forth the general principle, was sufficient as a safeguard. The proposed paragraph 2 had been deleted on the understanding that the specific scenarios it covered would be highlighted in the commentary to paragraph 1.

Draft article 16 was entitled "Fair treatment of the official". The words "and impartial" had been deleted from the earlier text, since "fair treatment" was understood to include such notions as "impartiality" and "independence". Draft article 16 preceded the draft article on consultations, which was now draft article 17. In the view of the Drafting Committee, the draft article on consultations was more closely related to the draft article on settlement of disputes.

Turning to draft article 17, on consultations between the forum State and the State of the official, he said that there had been discussions about whether it was appropriate, in that provision, to establish an obligation to consult by using the word "shall". In that context, it had been noted that the relevant States might not have diplomatic relations or might be engaged in an armed conflict with each other. The formulations "may consult" or "should consult" had therefore been proposed. However, it had been considered that an obligation to consult was a valuable safeguard that did not impose a heavy burden on States and could help prevent the emergence of disputes. Flexibility with regard to its implementation was reflected by the inclusion of the words "as appropriate". To the same end, the idea of beginning the provision with the words "When necessary" had also been proposed.

As originally proposed, the provision had been limited in scope to consultations concerning the determination of immunity in accordance with the draft articles. That limitation had been removed because the Drafting Committee had considered that consultations could concern any issue relating to immunity. The final part of the draft article made clear that the scope of the provision was wide and pertained to all matters relating to the immunity of a foreign official covered by the draft articles. The title of draft article 17 was "Consultations", as the Special Rapporteur had proposed in her seventh report.

Concerning draft article 18, which related to the settlement of disputes, he said that the dispute settlement procedure was the final procedural safeguard provided for in the draft articles. The Drafting Committee had noted that, as discussed in the plenary debate, the shape of the provision was intimately linked to the final form of the Commission's work on the topic. A binding provision had been considered to be most appropriate for a product that was intended to be the basis of negotiations for a treaty. The Committee had kept that consideration in mind when drafting the provision and had noted that the provision could be used to invite the views of States both on dispute settlement and on the final form of the Commission's work. For those reasons, the Committee had decided not to follow an alternative approach in which draft article 18 would have provided a recommended procedure for dispute resolution.

While drafting the provision, the Committee had drawn inspiration from draft article 15 of the Commission's draft articles on prevention and punishment of crimes against humanity. The importance of maintaining consistency with the Commission's recently

drafted dispute settlement clauses had been highlighted. Nevertheless, the Committee had taken care to avoid simply copying the Commission's prior work, in order to accommodate the specificities of the topic. The Committee had also been reminded that it had not been the Commission's practice to prepare dispute settlement clauses, as they were often the object of negotiations among States.

The draft article adopted by the Drafting Committee had two paragraphs. Paragraph 1 required the forum State and the State of the official to seek, by negotiation or other peaceful means of their own choice, a solution to any dispute concerning the application or interpretation of the draft articles. The Committee had considered whether the paragraph should make reference to consultations, including a possible cross reference to draft article 17 to make the link between the dispute settlement provision and the previously enumerated safeguards more explicit. It had also noted that not all matters related to the consultations referred to in draft article 17 would take the form of disputes in the sense of draft article 18. In the end such a reference had not been included because the Committee did not wish to imply that consultations were a precondition for negotiations. The difficulty of distinguishing between consultations and negotiations in practice had also been noted. Earlier proposals that had linked the negotiations to prior consultations had also resulted in a discussion of whether it would be better to say that a dispute "subsisted" or "existed" following consultations. The Committee had avoided those issues by omitting the reference to consultations and opening the paragraph with the words "In the event of a dispute".

The discussion of whether the provision would be a binding dispute settlement clause or a recommended procedure had also had significant consequences for the wording of paragraph 1. Earlier proposals put forward by the Special Rapporteur had referred to "differences with regard to the determination and application of immunity" and "disagreement on matters relating to the immunity of the foreign official". The Drafting Committee had opted for the more familiar wording "dispute concerning the interpretation or application of the present draft articles", both to ensure consistency in terminology with paragraph 2 and to reflect its move towards a more traditional dispute settlement provision.

A thorough discussion had been held on how precisely to phrase the obligation of States under paragraph 1. The formulas "shall endeavour to settle", as used in the draft articles on prevention and punishment of crimes against humanity, and "shall negotiate" had been considered. The Drafting Committee had decided instead to use the wording "shall seek a solution", borrowed from Article 33 of the Charter of the United Nations. Wording from Article 33 had also been used at the end of the paragraph, which reflected the fact that the States involved could agree to attempt to resolve a dispute between them by a number of other peaceful means. That flexibility would be further explained in the commentary.

Paragraph 2 provided for the submission of the dispute to the International Court of Justice if a mutually acceptable solution could not be reached in a reasonable time and if the States had not agreed to submit the dispute to another means of dispute settlement entailing a binding solution. The Drafting Committee had discussed whether the words "mutually acceptable" were necessary at the beginning of the paragraph. It had noted that those words emphasized that a negotiated solution should be reached in a genuine manner, without undue influence. The question of whether to use "cannot be reached" or "is not reached" had been debated; the Committee had opted for the former as being narrower and more consistent with formulations used in other precedents. The Committee had also considered whether to include a time limit for negotiations. In her eighth report, the Special Rapporteur had proposed alternative time limits of 6 or 12 months, but they had been considered inflexible. It had been noted that the omission of a time limit would enable the States concerned to submit a dispute to the Court immediately. The Committee had opted for the limit "within a reasonable time", which was a known standard that would allow the Court or another dispute settlement body to determine, according to the circumstances of the case, whether attempts to negotiate had been sufficient. Furthermore, the phrase "at the request of either the forum State or the State of the official" appeared directly after "shall" to emphasize that either State could submit the dispute to the Court.

A thorough discussion in the Drafting Committee had led to the wording of the end of the paragraph. Some members had considered it important to refer to arbitration, which was also a traditional means of binding inter-State dispute settlement. The possibility that

States might resort to regional courts, for example in the context of the African Union or the European Union, to settle disputes relating to matters concerning the draft articles had also been considered. The Committee had not wished to foreclose that possibility and had therefore adopted a reference to "any other means of settlement entailing a binding decision", borrowed from article 282 of the United Nations Convention on the Law of the Sea.

The Drafting Committee had also considered whether to add an opt-out clause to paragraph 2, along the lines of paragraphs 3 and 4 of draft article 15 of the draft articles on prevention and punishment of crimes against humanity. While such clauses were common in States' treaty practice, the Committee had decided not to include one in draft article 18 for two main reasons. Firstly, it had considered that binding dispute settlement was an important additional safeguard for the State of the official and had special relevance to the current topic, and should thus be included in Part Four of the draft articles. Secondly, the Committee had not wished to prejudge the willingness of States to commit to binding dispute resolution. The Committee looked forward to receiving the views of States on the question.

The Committee had also considered the inclusion of a third paragraph, which would have invited the forum State to consider, as an additional safeguard, the suspension of any criminal proceedings pending the resolution of the dispute in accordance with paragraph 2. While some members had seen the value of such a safeguard, concerns had been raised about the implications of such a provision, including the possibility that it could interfere with the prerogatives of both international and domestic judicial systems; a lack of relevant practice, including of the International Court of Justice; and the human rights implications of the potentially years-long detention of the official while the dispute was being settled at the international level. For those reasons, a third paragraph had not been included in the provision. The Committee had agreed that it remained for the court or tribunal considering a dispute to decide whether an interim measure ordering the suspension of criminal proceedings would be appropriate.

The title of draft article 18 was "Settlement of disputes", as had been proposed by the Special Rapporteur in her eighth report.

Having completed, at the current session, all the draft articles comprising Part Four, the Drafting Committee had adopted the title of that part as a whole. The title "Procedural provisions and safeguards", as had been proposed by the Special Rapporteur, reflected the fact that Part Four contained provisions of a procedural nature and included safeguards required for the draft articles, thereby bringing some balance to the text.

The meeting was suspended at 12.20 p.m. and resumed at 12.25 p.m.

The Chair invited the Commission to adopt the texts and titles of the draft articles on immunity of State officials from foreign criminal jurisdiction and the draft annex thereto, as adopted by the Drafting Committee on first reading (A/CN.4/L.969).

Part One

Draft articles 1 to 2

Draft articles 1 to 2 were adopted.

Part Two

Draft articles 3 to 4

Draft articles 3 to 4 were adopted.

Part Three

Draft articles 5 to 7

Draft articles 5 to 7 were adopted.

Sir Michael Wood said he wished to recall that draft article 7, together with the associated annex, had been adopted by vote on 20 July 2017, as reflected in the summary

record of the relevant meeting (A/CN.4/SR.3378). Since then, under the Special Rapporteur's guidance, the Commission had worked hard on the procedural provisions and safeguards which now appeared as Part Four of the draft articles. While that outcome should be welcomed, it did not resolve the central issue, namely the status of what would be proposed to States in draft article 7.

He and other members of the Commission had voted against draft article 7. They had set out their reasons in explanations of vote, as well as during the plenary debate on draft article 7 and in numerous statements at subsequent meetings of the Commission. The fact that no vote had taken place at the current meeting did not mean that either the law or the legal positions set out earlier had in any way changed.

The Chair said that he too recalled the many statements made at the time of the provisional adoption of draft article 7, some of which had concerned the question of the inclusion of the crime of aggression. Draft article 7 should be read in conjunction with all the statements made by members in relation to it.

Part Four

Draft articles 8 to 15

Draft articles 8 to 15 were adopted.

Draft article 16

Mr. Forteau said that the French version of paragraph 3 of the text contained an error and should be corrected.

Mr. Valencia-Ospina said that, in the title of draft article 16, the word "State" should be inserted before the word "official".

Draft article 16, as amended, was adopted.

Draft articles 17 to 18

Draft articles 17 to 18 were adopted.

Draft annex

The draft annex was adopted.

The Chair said he took it that the Commission wished to adopt, as a whole, on first reading, the texts and titles of the draft articles on immunity of State officials from foreign criminal jurisdiction and the draft annex thereto, as contained in document A/CN.4/L.969.

It was so decided.

Ms. Escobar Hernández (Special Rapporteur) said she was delighted that, after a great deal of hard work over three quinquenniums, the Commission had adopted, on first reading, the draft articles on immunity of State officials from foreign criminal jurisdiction. The topic was an extremely important one for States, and the text struck a balance between their interests and concerns, on the one hand, and the need to preserve the integrity of certain norms that reflected fundamental principles and values of the international community, on the other. She greatly appreciated the work of the previous Special Rapporteur for the topic, the contributions and collegiality of the Commission members, and the support of the secretariat.

The meeting rose at 12.45 p.m.