
Provisional

For participants only

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International Law Commission
Seventy-third session (second part)

Provisional summary record of the 3612th meeting

Held at the Palais des Nations, Geneva, on Friday, 5 August 2022, at 10 a.m.

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Present:

Chair: Mr. Tladi

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

Secretariat:

Mr. Llewellyn Secretary to the Commission

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

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

Chapter VIII. General principles of law (*continued*) (A/CN.4/L.964, A/CN.4/L.964/Add.1 and A/CN.4/L.964/Add.2)

The Chair invited the Commission to resume its consideration of the portion of chapter VIII of the report contained in document A/CN.4/L.964/Add.2, starting with the commentary to draft conclusion 3.

Commentary to draft conclusion 3 (Categories of general principles of law) (*continued*)

Paragraph (2) (*continued*)

Mr. Vázquez-Bermúdez (Special Rapporteur) said that, based on the various suggestions received, he had prepared a revised draft of paragraph (2), which had been circulated in an informal paper in the meeting room. The text of the paragraph would essentially remain the same, apart from the middle part of the second sentence, where the words “State practice” and “international” would be deleted, to leave “established in the jurisprudence of courts and tribunals and teachings”. In the new version, the revised first footnote would now appear after the words “jurisprudence of courts and tribunals”; a second footnote would be inserted after the reference to “teachings”; and a third, with a reference to the *procès-verbaux* of the proceedings of the International Committee of Jurists, would be inserted after “*travaux préparatoires* of the Statute”.

Mr. Murphy, supported by **Mr. Forteau**, said that the inclusion of ellipses at the end of each of the footnotes in the informal paper was not in line with the Commission’s usual practice and was in any case unnecessary since each footnote began with “See, for example”.

Mr. Vázquez-Bermúdez (Special Rapporteur) said he agreed that the ellipses could be deleted; doing so would not preclude the Commission from adding additional references at a later date.

Paragraph (2), as amended, was adopted.

Paragraph (3) (*continued*)

Mr. Vázquez-Bermúdez (Special Rapporteur) said that he proposed amending the paragraph to read:

Subparagraph (b) of draft conclusion 3 refers to the general principles of law that may be formed within the international legal system. The existence of this category of general principles of law in the sense of Article 38, paragraph 1 (c), of the Statute of the International Court of Justice appears to find support in the jurisprudence of courts and tribunals and teachings. Some members, however, consider that Article 38, paragraph 1 (c), does not encompass a second category of general principles of law, or at least remain sceptical of their existence as an autonomous source of international law.

The original footnote would be inserted after the words “courts and tribunals” and an additional footnote would be inserted after “teachings”, with the list of relevant references shown in the informal paper.

Mr. Forteau said that the cases cited in the original footnote should be rearranged in chronological order. The proposed new footnote included examples of the literature that supported the existence of the second category of general principles of law: although he did not wish to propose any changes to the amended paragraph or footnote, it should be noted that there were sources that supported the opposite conclusion. One such example was the latest edition of a French textbook on public international law by Alain Pellet and others, which expressly stated that a second category of general principles of law did not exist.

Mr. Rajput said that the various writings that supported the position that the second category of general principles of law did not exist should be kept in mind by the Special Rapporteur even if they were not mentioned in the footnotes.

Mr. Murphy said that, in the last sentence, the word “their” should be replaced by “its”, as it referred to “category” in the singular. He proposed that the single sentence of the proposed new paragraph (4) contained in the informal paper – “Further aspects about general principles of law formed within the international legal system are explained in the commentary to draft conclusion 7” – should be added to the end of paragraph (3) so as to mirror the structure of paragraph (2).

Paragraph (3), as amended, was adopted.

Commentary to draft conclusion 7 (Identification of general principles of law formed within the international legal system) (continued)

Paragraph (2) (continued)

Mr. Vázquez-Bermúdez (Special Rapporteur) said that he had prepared a revised text of the paragraph based on the proposals made at the previous meeting, which was contained in an informal paper circulated in the meeting room. The changes primarily involved reordering the reasons that justified the existence of general principles of law that could be formed within the international legal system and moving the amended footnote contained in the informal paper to the end of the first sentence. The text would now read:

Paragraph 1 of draft conclusion 7 provides that, to determine the existence and content of a general principle of law that may be formed within the international legal system, it is necessary to ascertain that the community of nations has recognized the principle as intrinsic to that system. The Commission considered that the existence of this type of general principles of law is justified for a number of reasons: first, there are examples in judicial practice which appear to support the existence of these general principles of law. Second, the international legal system, like any other legal system, must be able to generate general principles of law that are intrinsic to it, which may reflect and regulate its basic features, and not have only general principles of law borrowed from other legal systems. Third, nothing in the text of Article 38, paragraph 1 (c), of the Statute of the International Court of Justice limits general principles of law to those derived from national legal systems. Fourth, the *travaux préparatoires* of the Statute do not exclude the existence of such principles.

Mr. Forteau said that the single footnote attached to the paragraph contained no references to jurisprudence or practice. The sentence to which that footnote was attached referred to the recognition of a “principle as intrinsic” to the international legal system. However, many of the principles cited as examples in the footnote had not been presented by members during the debate in the Commission as examples of “intrinsic principles” but rather as “general principles”. For instance, he did not see how the principles of international environmental law could be “intrinsic to the international legal system”. He would therefore be in favour of deleting that footnote. Furthermore, it was regrettable that the commentary to draft conclusion 7 did not contain a definition of the term “intrinsic”.

Mr. Vázquez-Bermúdez (Special Rapporteur) said that he and other members considered it important to retain the footnote, which did not suggest that the Commission itself considered the principles cited to be intrinsic to the international legal system but simply that they had been referred to during the debates in the Commission. The examples cited would be helpful to the reader in understanding that type of principle.

Sir Michael Wood said he agreed that the footnote was valuable but it would be clearer if reformulated to refer to “examples that were referred to by members of the Commission during the debates”.

Mr. Forteau said that the footnote, if retained, would be better placed at the end of paragraph (1).

Mr. Jalloh said that he supported the retention of the footnote, which might best be placed after the word “examples” in the second sentence.

The Chair said that the difficulty with that proposal was that it would give the mistaken impression that the Commission considered the examples in the footnote to be examples from judicial practice.

Mr. Park said that the footnote should be moved to the end of paragraph (1). He also believed that a new footnote should be inserted at the end of the second sentence, to refer to examples of judicial practice that appeared to support the existence of a second category of general principles of law. The new footnote could refer to the footnote attached to paragraph (3) of the commentary to draft conclusion 3, which contained references to jurisprudence that supported the second category of general principles of law.

Mr. Forteau said that the difficulty with Mr. Park's proposal was that, according to draft conclusion 7, there were two categories of principles under the second category of general principles of law. If examples were given, it would have to be decided in each case whether they were linked to paragraph (2) or paragraph (4) of the commentary. For that reason, the safest solution would be to move the footnote to the end of paragraph (1) so as not to have to take a position on that point. He further proposed splitting the second sentence in two, with the new third sentence beginning with "first".

Mr. Vázquez-Bermúdez (Special Rapporteur) said that he could go along with the proposals to move the footnote to the end of paragraph (1), insert the words "by members of the Commission" at the beginning of the footnote, and split the second sentence of the paragraph in two.

Paragraph (2), as amended, was adopted.

Paragraph (8)

Mr. Vázquez-Bermúdez (Special Rapporteur) said that paragraph (8) would be renumbered as paragraph (7), as the Commission had agreed to delete paragraph (6) at an earlier meeting. Following consultations with Mr. Rajput, he proposed inserting the following two new sentences after the first sentence of the paragraph: "The view was expressed that, at the time of the drafting of the Statute of the Permanent Court of International Justice, the Advisory Committee of Jurists did not accept general principles of law formed within the international legal system. Equally, that during the drafting of the Statute of the International Court of Justice, the proposal for the creation of general principles of law within the international legal system was not accepted." At the end of each sentence, a footnote referring to the relevant proceedings of the Advisory Committee of Jurists would be inserted.

Mr. Forteau said that he supported the addition of the new sentences but would delete the words "in this regard" at the beginning of the sentence that followed them.

Mr. Murphy said that the additional new sentences might be better placed after the original second sentence rather than the first.

Mr. Jalloh said that it was somewhat confusing to have the first of the proposed new sentences begin with "The view was expressed" and to have what was now the fourth sentence begin with "The view was also expressed". He wondered whether it might not be preferable to keep those two sentences together.

Mr. Rajput said that, in his view, the new sentences were in the appropriate position, as there was a link between the first sentence and the proposed new sentences. As to Mr. Jalloh's point, it might be best to make the last two sentences of the paragraph, beginning with the words "The view was also expressed", into a new paragraph to indicate that they dealt with a different view.

Sir Michael Wood said he agreed with Mr. Rajput's proposal to create a new paragraph, as the view in question was a very important one that should be highlighted. He suggested that the two new sentences should be merged by deleting the word "equally" at the beginning of the second sentence and replacing it with "and".

Mr. Murphy said that, if a new paragraph was created, it would suggest that the additional views expressed were not necessarily tied to the proposition in the first sentence of paragraph (8).

Mr. Vázquez-Bermúdez (Special Rapporteur) said that Mr. Murphy made a valid argument for maintaining a single paragraph. He agreed with Sir Michael Wood's proposal

to merge the two new sentences and Mr. Forteau's deletion of the words "in this regard" in the original second sentence.

Paragraph (8), as amended and renumbered, was adopted.

Mr. Vázquez-Bermúdez (Special Rapporteur) said that, at the suggestion of some members, he proposed adding the following new paragraph after the paragraph just adopted by the Commission: "It is emphasized that the present commentary, together with the commentary to draft conclusion 3, are provisional and the Commission will revisit them at a later stage." The new paragraph would make it clear that, while the Commission had been keen to adopt the commentary to the draft conclusions by the end of the quinquennium, it could still be improved and expanded upon in the light of comments by States.

The Chair said he took it that the Commission wished to adopt the new paragraph proposed by the Special Rapporteur.

It was so decided.

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

Chapter IX. Sea-level rise in relation to international law (A/CN.4/L.965)

The Chair invited the Commission to consider chapter IX of the report, as contained in document [A/CN.4/L.965](#).

A. Introduction

Paragraphs 1 to 3

Paragraphs 1 to 3 were adopted.

B. Consideration of the topic at the present session

Paragraph 4

Paragraph 4 was adopted.

Paragraph 5

Mr. Forteau said that, at the end of the sentence, the words "in the original language only" should be added between "issued" and "in June 2022".

Paragraph 5, as amended, was adopted.

Paragraph 6

Paragraph 6 was adopted.

Paragraph 7

Paragraph 7 was adopted subject to its completion by the secretariat.

Paragraph 8

Paragraph 8 was adopted.

Paragraph 9

Mr. Forteau said that footnote 7 read "*Ibid.*, paras. 270–271" but the preceding footnote did not refer to the same reference. Footnote 7 would have to be reviewed.

Paragraph 9 was adopted on that understanding.

Paragraphs 10 and 11

Paragraphs 10 and 11 were adopted.

Paragraph 12

Mr. Murphy said that, in footnote 8, the word “forthcoming” in parentheses after the second citation could be deleted, as the report cited had already been published. He would provide the exact website details to the Co-Chairs so that they could update the reference.

Paragraph 12, as amended, was adopted on that understanding.

Paragraph 13

Mr. Forteau said that the footnotes in paragraph 13 would also have to be checked.

Paragraph 13 was adopted on that understanding.

Paragraphs 14 and 15

Paragraphs 14 and 15 were adopted.

Paragraph 16

Mr. Forteau said that, in the last sentence, the reference to the “1956 draft articles on the law of treaties, of the International Law Commission” was incorrect, as the Commission’s draft articles had not been adopted until a decade later. The reference should instead read: “the 1956 draft articles on the law of treaties proposed by the Special Rapporteur of the International Law Commission”.

Paragraph 16, as amended, was adopted.

Paragraphs 17 to 27

Paragraphs 17 to 27 were adopted.

Paragraph 28

Mr. Forteau said that, in the first sentence, the words “in its study on the identification of customary international law” should be replaced with “in its conclusions on the identification of customary international law”.

Paragraph 28, as amended, was adopted.

Paragraphs 29 to 48

Paragraphs 29 to 48 were adopted.

Paragraph 49

Mr. Murphy proposed deleting the words “a whole set of” in the first sentence, as the point was simply that additional criteria had been developed.

Paragraph 49, as amended, was adopted.

Paragraphs 50 to 56

Paragraphs 50 to 56 were adopted.

Paragraph 57

Paragraph 57 was adopted with a minor editorial change.

Paragraph 58

Mr. Murphy said that, as it was stated in the last sentence that, in the examples provided by the Co-Chair, the “entities in question” – namely, the Holy See, the Sovereign Order of Malta, and Governments in exile – appeared not to be truly regarded as States, a historical time frame should be added in respect of the Holy See so as not to call into question its current status. The first sentence could be amended to refer to “the Holy See during the period from ...”.

Mr. Ruda Santolaria (Co-Chair of the Study Group on sea-level rise in relation to international law) said that reference would be made to “the Holy See during the period from 1870 to 1929”.

Paragraph 58, as amended, was adopted.

Paragraph 59

Mr. Murphy said that a footnote should be added at the end of the final sentence with a reference to the specific agreement between three Governments under which the “75 persons selected by ballot were allowed to move to the larger State each year”. He would pass on the exact details to the Co-Chairs.

Paragraph 59, as amended, was adopted.

Paragraphs 60 to 87

Paragraphs 60 to 87 were adopted.

C. *Future work of the Study Group*

Paragraph 88

Paragraph 88 was adopted.

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

Chapter X. Other decisions and conclusions of the Commission (A/CN.4/L.966)

The Chair invited the Commission to consider chapter X of the report, as contained in document [A/CN.4/L.966](#).

A. *Inclusion of new topics in the programme of work*

Paragraph 1

Sir Michael Wood said that the Special Rapporteur had consulted members with a view to proposing that the title of the topic should be changed from “Settlement of international disputes to which international organizations are parties” to “Settlement of disputes to which international organizations are parties”.

Mr. Grossman Guiloff said that, as the Commission had not had time to discuss the proposed change in title and the Special Rapporteur was not available to give an explanation for such a change, he would be in favour of retaining the original formulation. The question could be revisited at a later stage.

Mr. Forteau said he agreed that a substantive discussion of the proposal was required and that it would be premature to take such a decision at the present stage. In any case, a dispute was “international” if an international organization was a party to it.

Mr. Park said he also agreed that the Commission should not make such a substantive change at the present stage. The Special Rapporteur could make the proposal again at the next session when he presented his first report, at which point the Commission could take a decision on the matter.

Sir Michael Wood said that he withdrew the proposal. The Special Rapporteur could take up the matter in his first report.

Paragraph 1 was adopted.

Paragraphs 2 and 3

Paragraphs 2 and 3 were adopted.

B. *Requests by the Commission for the Secretariat to prepare studies on topics in the Commission's programme of work*

Paragraph 4

Paragraph 4 was adopted subject to completion by the secretariat.

Paragraph 5

Paragraph 5 was adopted.

Paragraph 6

Sir Michael Wood said that, in subparagraph (a), he wondered why the reference was to the Commission's work on the topic "from 2019 to date". In subparagraph (b), the word "doctrine" should be replaced by "writings" in the English version.

Mr. Cissé said that 2019 was the year when the topic had been added to the Commission's long-term programme of work.

Mr. Murphy said that, as a topical summary had already been prepared, it might not be the best use of the secretariat's time to include in its memorandum the elements set out in subparagraph (a). Moreover, it was not standard practice to review what had been discussed in the Planning Group. He therefore proposed deleting that subparagraph. In subparagraph (b), the words "a study of" could be deleted, as the *chapeau* referred to the preparation of a memorandum.

Mr. Forteau said that, as the topic had only been added to the long-term programme of work in 2019, it could not be said that the Commission had been working on it since 2019. He therefore proposed amending subparagraph (a) to refer to the "views expressed by States in the Sixth Committee on the study plan adopted in 2019". As the existing topical summary was very brief, it would be helpful to have a more exhaustive analysis of the views expressed by States.

Mr. Rajput said that the Commission should seek the assistance of the secretariat to gather as much material as possible in relation to piracy, including from resolutions, discussions and statements on the topic. Paragraph 6 should therefore give the secretariat a slightly broader mandate, although the question of resources must be taken into account. Subparagraph (a) could be reformulated to include some of the elements of subparagraph (c). Although Somalia was the focus of various resolutions, the Commission should also pay attention to other examples. He therefore proposed amending subparagraph (a) to read: "the work of the Commission in relation to the topic, and the views expressed by States, and the resolutions adopted by the Security Council and the General Assembly and by other relevant international organizations". By "relevant international organizations" he had in mind, in particular, the International Maritime Organization.

Mr. Forteau said that, if no date was indicated to limit the scope in relation to the Commission's work on the topic, it might suggest that the secretariat should also include in its memorandum the discussions that had taken place in the Working Group on the long-term programme of work, which were usually considered confidential. He would therefore welcome clarification of the scope of the secretariat's study on the Commission's work on the topic.

Mr. Cissé said that he had no objection to Mr. Rajput's proposal to broaden the scope of the secretariat's study somewhat, but he would prefer to keep the reference to the resolutions of the Security Council and the General Assembly and the initiatives of relevant organizations, including regional organizations, in a separate subparagraph.

Sir Michael Wood said that the secretariat might also find useful documentation from the 1950s, when the Commission had been preparing its draft articles on the law of the sea.

Mr. Rajput said that there was an understanding that what was discussed in the Working Group on the long-term programme of work would never enter the public domain. He agreed with Sir Michael Wood that the secretariat could draw on much interesting material from the Commission's work on the law of the sea. In subparagraph (c) he would

propose simply deleting the words “off the coast of Somalia”. Referring to Mr. Cissé’s comments, he pointed out that the secretariat might not have the resources to deal also with regional organizations.

Mr. Jalloh said that he imagined that subparagraph (a) referred to the Commission’s work since 2019 for practical reasons, but, if that was not the case, he agreed that it would be worth also including the Commission’s earlier work and other work on piracy in the United Nations system, including reports by the Secretary-General dating back to 2010. He therefore supported Mr. Rajput’s proposals.

Mr. Llewellyn (Secretary to the Commission) said that the secretariat had limited resources to conduct the four studies requested in section B of the report, which had been drafted following negotiations between the relevant Special Rapporteurs and the secretariat, taking account of those resource constraints. The wording therefore reflected a delicate balance. On the topic of piracy, it would be reasonable to broaden the scope of the study by removing the references to the Commission’s work since 2019 and to Somalia. However, extending the scope to include the work of other international organizations would not be feasible given the limited human resources available.

The Chair suggested that subparagraph (a) should be amended to read “the work of the Commission on the topic and the views expressed on it by States”; that, in subparagraph (b) of the English version, the word “doctrine” should be replaced by “writings”; and that subparagraph (c) should be amended to read “resolutions adopted by the Security Council and by the General Assembly relevant to the topic”.

Mr. Murphy said that, in subparagraph (a), it might be helpful to use the same phrase as in paragraph 9, namely, “elements in the previous work of the Commission that could be relevant for its future work on the topic”.

Paragraph 6, as amended, was adopted with a minor editorial change.

Paragraph 7

Sir Michael Wood said that, in subparagraph (b), reference should perhaps be made to States’ application of articles 100 to 107 of the United Nations Convention on the Law of the Sea.

Mr. Murphy proposed that subparagraph (a) should be amended to read: “the legislation, case law and practice of States relevant to the topic, including in relation to articles 100 to 107 of the United Nations Convention on the Law of the Sea”. Subparagraph (b) could then be deleted.

Paragraph 7, as amended, was adopted.

Paragraph 8

Paragraph 8 was adopted.

Paragraph 9

Ms. Galvão Teles (Co-Chair of the Study Group on sea-level rise in relation to international law) said that the words ““Sea-level rise in relation to international law”” would be added after the word “topic”.

Paragraph 9, as amended, was adopted.

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

Paragraphs 10 and 11

Paragraphs 10 and 11 were adopted.

Paragraph 12

Paragraph 12 was adopted with a minor editorial change.

*Paragraphs 13 to 33**Paragraphs 13 to 33 were adopted.**Paragraph 34*

Mr. Forteau said that, in the eighth sentence, the words “to the Commission” should be inserted before “sufficiently in advance”.

*Paragraph 34, as amended, was adopted.**Paragraphs 35 to 44**Paragraphs 35 to 44 were adopted.**Paragraph 45*

The Chair said that the Commission had decided not to indicate that the paragraph was inspired by the fact that some members of the Commission had had problems obtaining visas to allow them to travel to Geneva to attend meetings in 2022. Those issues had been raised with the Swiss authorities in May and the Commission was awaiting a response.

*Paragraph 45 was adopted.**Paragraph 46*

Mr. Grossman Guiloff said that the fact that some members had experienced problems in obtaining Swiss visas was no reason to either assume or imply that they might encounter similar problems when applying for United States visas should the Commission decide to hold part of a future session in New York. Accordingly, the second sentence of paragraph 46 should be deleted. It was sufficient to draw attention to the importance of the timely issuance of visas in general.

Mr. Zagaynov said that the second sentence should be retained but the language could be softened. While it was true that members had had no problems obtaining United States visas when the Commission had met in New York in 2018, the situation had changed drastically in the years since.

Mr. Murphy said that he was in favour of the deletion of the sentence as its meaning was unclear. The implication seemed to be that the Government of the United States was expected to issue visas in advance of the Commission taking a decision on whether to hold part of a future session in New York. However, as visas to enter the United States clearly could not be issued up to two years in advance, any suggestion that their timely issuance would be a consideration in that decision did not make sense. He wondered whether Mr. Zagaynov’s concern could not be captured by adjusting the last sentence of paragraph 44 to read: “The need to ensure access and sufficient space for the members and their assistants to attend meetings of the Commission was also emphasized.”

Mr. Grossman Guiloff said his concern was that some members of the Commission had been unable to be present for the full session in Geneva because the Swiss authorities had not issued the requisite visas, and yet that fact was not mentioned in paragraph 46. Moreover, in paragraph 45, the Commission actually expressed gratitude to the Government of Switzerland for its support. To reflect that concern, he suggested that the second sentence of paragraph 46 should be redrafted in more general terms to state that the timely issuance of visas and the provision of facilities and support for all members of the Commission was essential for all countries that hosted the Commission’s meetings. He agreed that any implication either that the decision on whether to meet in New York might be conditional upon the issuance of visas or that obtaining United States visas might be problematic was inappropriate.

Sir Michael Wood suggested that, to take account of the very pertinent points raised by Mr. Grossman Guiloff as well as the concerns of others, the first sentence of paragraph 46 should be redrafted to read: “The Commission draws attention to the importance that its members receive visas in a timely manner for travel to Geneva (or New York), in accordance

with the relevant agreements, and requests the Secretariat to liaise, as appropriate, with the relevant authorities in that regard". The second sentence could then be deleted.

Mr. Forteau suggested that the first part of the sentence, as revised by Sir Michael Wood, might be further adjusted to reflect the language used in article 12 of the Statute of the International Law Commission. The revised sentence would thus begin: "The Commission draws attention to the importance that its members receive visas in a timely manner for travel to its seat at the European office of the United Nations at Geneva or to New York."

Mr. Jalloh said that he did not think it was necessary to adopt the language of article 12; the simpler formulation suggested by Sir Michael Wood was preferable.

Mr. Ouazzani Chahdi said he agreed that the second sentence should be deleted but he would like to suggest an addition in the first sentence, after the word "visas", so that it would read "visas enabling them to participate in the work of the Commission and for travel ...". That wording was important as members might require visas for travel in connection with their work as members of the Commission at times other than during sessions; for example, some members, including himself, had in the past been unable to participate in the International Law Weekend in New York after being denied visas.

Mr. Vázquez-Bermúdez said he was in favour of the reformulation proposed by Sir Michael Wood.

Mr. Forteau, noting that it was the Swiss national authorities that had been responsible for the visa issues, said that any implication that the city of Geneva was responsible should be avoided and for that reason the formulation he had proposed, which referred to the Commission's "seat at the European office of the United Nations at Geneva" was more appropriate.

Paragraph 46, as amended, was adopted.

Mr. Jalloh said that he wished to make some general points in respect of paragraphs 45 and 46. First, it was important to note that, while the host State was under an obligation to welcome all members of the Commission, there had been instances of unequal treatment in respect of visas in the past. He was grateful that the issue had been raised in paragraphs 45 and 46. Second, he wished to point out that article 12 of the Statute of the International Law Commission provided for members to hold meetings at places other than Geneva and New York. Thus, while he fully supported the proposal that part of a forthcoming session should be held in New York, he wished to suggest once again that members should consider meeting in other parts of the world.

Paragraphs 47 to 65

Paragraphs 47 to 65 were adopted.

Annexes 1 and 2

Annexes 1 and 2 were adopted.

Appendix

The appendix was adopted.

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

Chapter I. Introduction (A/CN.4/L.957)

The Chair invited the Commission to begin its consideration of chapter I of its draft report, as contained in document [A/CN.4/L.957](#).

Paragraphs 1 to 6

Paragraphs 1 to 6 were adopted.

Paragraph 7

Paragraph 7 was adopted subject to its completion by the secretariat.

Paragraphs 8 to 11

Paragraphs 8 to 11 were adopted.

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

Chapter II. Summary of the work of the Commission at its seventy-third session (A/CN.4/L.958)

The Chair invited the Commission to begin its consideration of chapter II of its draft report, as contained in document [A/CN.4/L.958](#).

Paragraphs 1 to 5

Paragraphs 1 to 5 were adopted.

Paragraph 6

Paragraph 6 was adopted with a minor editorial change.

Paragraph 7

Mr. Vázquez-Bermúdez said that the final sentence should be updated to read: “The Commission received and adopted the report of the Drafting Committee on the consolidated text of the draft conclusions provisionally adopted by the Drafting Committee.”

Paragraph 7, as amended, was adopted.

Paragraph 8

Ms. Galvão Teles said that the penultimate sentence should be reworked to read: “The Study Group had an exchange of views on the basis of the second issues paper and on other matters related to the subtopics under consideration.” In addition, in the preceding sentence, the given names of the Co-Chair, Mr. Ruda Santolaria, needed to be added.

Paragraph 8, as amended, was adopted.

Paragraphs 9 to 12

Paragraphs 9 to 12 were adopted.

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

Chapter III. Specific issues on which comments would be of particular interest to the Commission (A/CN.4/L.959)

The Chair invited the Commission to begin its consideration of chapter III of its draft report, as contained in document [A/CN.4/L.959](#).

Paragraph 1

Mr. Vázquez-Bermúdez noted that the word “international” should be removed from the heading above paragraph 1.

Paragraph 1, as amended, was adopted.

Paragraph 2

Paragraph 2 was adopted with two minor drafting changes.

Paragraph 3

Ms. Galvão Teles pointed out that the date by which the Commission wished to receive information was to be changed from 31 December to 1 December 2022.

Mr. Murphy asked whether it was necessary to repeat the request for information made in 2021 in full, as the Commission did in paragraph 3, when it was already stated in

paragraph 2 that the Commission was reiterating the requests that it had made in 2019 and 2021.

Mr. Forteau, sharing Mr. Murphy's concern, suggested that the paragraph should be shortened, especially in view of the length of subparagraph (b). Otherwise, there was a risk that States would skip paragraph 3 and respond only to paragraphs 4 and 5.

Mr. Jalloh said that he saw no problem with repeating the request.

Mr. Murphy said that, if paragraph 3 was to be retained, the Commission should make it clear that it was reiterating a previous request by adjusting the second sentence to read: "In this connection, the Commission reiterates that it would appreciate receiving the following information by 1 December 2022".

Paragraph 3, as amended, was adopted.

Paragraph 4

Paragraph 4 was adopted.

Paragraph 5

Mr. Ruda Santolaria said that, in order to specify the scope of the information that the Commission was requesting in paragraph 5 (a), the words "in the context of the phenomenon of sea-level rise" were to be added at the end of subparagraph (a) (i), the words "particularly in the context of sea-level rise" at the end of subparagraph (a) (ii), and the words "that may contribute with elements or be considered by analogy when addressing the phenomenon of sea-level rise" at the end of subparagraph (a) (iii).

Paragraph 5, as amended, was adopted with minor drafting changes.

Paragraph 6

Mr. Murphy said that, if the Commission requested States, international organizations and others to submit relevant information by 31 January 2023, the Special Rapporteur for the topic "Subsidiary means for the determination of rules of international law" might not have sufficient time to prepare his report. The Commission should therefore consider the possibility of setting an earlier date. In addition, he proposed that, in the *chapeau*, the words "the use" should be replaced with "their use", as it seemed inappropriate to request a State or international organization to carry out an analysis of the decisions of national courts, legislation and other relevant practice worldwide. He also proposed that, in subparagraph (a), the words "establishing rules expressly recognized by the contesting States" should be deleted, since, in some jurisdictions, treaties were often interpreted by private parties, who might rely on subsidiary sources. He further proposed that, in the same subparagraph, the word "civilized" should be deleted.

Mr. Jalloh, speaking as Special Rapporteur for the topic "Subsidiary means for the determination of rules of international law", said that the date had been negotiated with the secretariat. However, he hoped that it would be possible to set an earlier date so that he would have more time between the receipt of relevant information from States, international organizations and others and the submission of his first report. He had no objections to Mr. Murphy's proposals. The deletion of the words "establishing rules expressly recognized by the contesting States" would ensure that the request for relevant information was framed more broadly. The inclusion of the word "civilized" had been intended to reflect the language of Article 38 (1) (c) of the Statute of the International Court of Justice, but it was clear from the context that reference was being made to that Article.

The Chair said that States, international organizations and others should be requested to submit relevant information by 1 December 2022, although, of course, some submissions might be received after that date.

Mr. Forteau, supported by **Mr. Rajput** and **the Chair** speaking as a member of the Commission, said that replacing the words "the use" with "their use" would limit the scope of the request, since examples of the use of subsidiary means by other entities might be found in practice.

Mr. Vázquez-Bermúdez said that an alternative to deleting the word “civilized” would be to replace it with “the community of”, thereby reflecting the language that had been agreed in the context of the Commission’s work on the topic “General principles of law”.

Mr. Jalloh said that he agreed with Mr. Forteau. It would be prudent to frame the request as broadly as possible with a view to maximizing the number of submissions. He also supported Mr. Vázquez-Bermúdez’s suggestion, which would serve to ensure consistency with the Commission’s work on the topic “General principles of law”.

Paragraph 6, as amended, was adopted.

Sir Michael Wood, recalling that paragraph 7 of chapter X of the report indicated that the secretariat would be seeking information about piracy and armed robbery at sea, suggested that that request should be included in chapter III also, in a new section D entitled “Prevention and repression of piracy and armed robbery at sea”. The new paragraph would begin with the formulation “The Commission would appreciate receiving information from States, international organizations and others, by 31 January 2023, on” and would then pick up on the wording of the requests made in paragraph (7) of chapter X.

Mr. Llewellyn (Secretary to the Commission), responding to a request for clarification regarding the difference, if any, in the procedure for requesting information from States pursuant to chapter III and pursuant to chapter X, said that the secretariat sent out a note verbale for all such requests, without distinction as to the chapter in which the request was contained.

If the secretariat proceeded as Sir Michael Wood suggested and added a section D on piracy and armed robbery at sea, he suggested that, for the sake of consistency, it might proceed in the same manner in respect of the topic “Settlement of international disputes to which international organizations are parties”, on which the secretariat was also asked to gather information in chapter X.

The Chair said that, on the basis of that explanation, it did not appear necessary to include requests for information on the topics mentioned in chapter X in chapter III.

Sir Michael Wood said he suspected that States tended to pay greater attention to chapter III and to act as requested therein. Other communications from the secretariat might be treated less diligently.

The Chair said he took it that the Commission agreed that the secretariat should prepare a new section D, on “Prevention and repression of piracy and armed robbery at sea”, and a new section E, on “Settlement of international disputes to which international organizations are parties”, for inclusion at the end of chapter III. The new sections would begin with the language proposed by Sir Michael Wood and would then reproduce the language used in the relevant paragraphs of chapter X.

It was so decided.

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

The Chair said he took it that the Commission wished to adopt the draft report on the work of its seventy-third session.

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

Chair’s concluding remarks

The Chair said that, despite challenging circumstances, the seventy-third session had been a productive one. The Commission had completed the second reading of its outputs on two topics, namely “Peremptory norms of general international law (*jus cogens*)” and “Protection of the environment in relation to armed conflicts”, and the first reading of its output on another, namely “Immunity of State officials from foreign criminal jurisdiction”. The Commission had also made good progress on the topics “Succession of States in respect of State responsibility”, “General principles of law” and “Sea-level rise in relation to international law”. In addition, the Commission had decided that three topics should be included in its programme of work: “Settlement of international disputes to which

international organizations are parties”, for which Mr. Reinisch had been appointed Special Rapporteur; “Prevention and repression of piracy and armed robbery at sea”, for which Mr. Cissé had been appointed Special Rapporteur; and “Subsidiary means for the determination of rules of international law”, for which Mr. Jalloh had been appointed Special Rapporteur. The Commission had also decided that a new topic, “Non-legally binding international agreements”, should be included in its long-term programme of work.

The Commission could be proud of its productivity, its creativity and the collegial spirit in which it had worked. He was grateful to his colleagues on the Bureau. He thanked the members of the secretariat from the Codification Division for their competent assistance and continuous support and the Legal Affairs Section in Geneva for its efficient assistance. He also thanked the précis-writers, interpreters, editors, conference officers, online platform moderators, translators and other members of the conference services who extended their assistance to the Commission on a daily basis.

Closure of the session

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

The meeting rose at 1 p.m.