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International Law Commission

Seventy-fifth session (second part)

Provisional summary record of the 3698th meeting

Held at the Palais des Nations, Geneva, on Tuesday, 30 July 2024, at 3 p.m.

Contents

Present:

Chair:	Mr. Vázquez-Bermúdez
Members:	Mr. Akande
	Mr. Argüello Gómez
	Mr. Asada
	Mr. Fathalla
	Mr. Fife
	Mr. Forteau
	Mr. Galindo
	Ms. Galvão Teles
	Mr. Grossman Guiloff
	Mr. Jalloh
	Mr. Laraba
	Mr. Lee
	Ms. Mangklatanakul
	Mr. Mavroyiannis
	Mr. Nesi
	Mr. Nguyen
	Ms. Okowa
	Ms. Oral
	Ms. Orosan
	Mr. Ouazzani Chahdi
	Mr. Oyarzábal
	Mr. Paparinskis
	Mr. Patel
	Mr. Reinisch
	Ms. Ridings
	Mr. Ruda Santolaria
	Mr. Sall
	Mr. Savadogo
	Mr. Zagaynov

Secretariat:

Mr. Llewellyn	Secretary to the Commission

The meeting was called to order at 3.05 p.m.

Immunity of State officials from foreign criminal jurisdiction (agenda item 3) (*continued*) (A/CN.4/775)

Report of the Drafting Committee (A/CN.4/L.1001)

Ms. Okowa (Chair of the Drafting Committee), introducing the report of the Drafting Committee on the topic "Immunity of State officials from foreign criminal jurisdiction", said that the report contained the texts and titles of draft articles 1, 3, 4 and 5 [6], which had been provisionally adopted by the Drafting Committee on second reading at the current session. The text of draft article 2 was not included in the report, for reasons that she would come to later. The Special Rapporteur's cooperation and mastery of the subject had greatly facilitated the work of the Committee, which had devoted seven meetings to the topic, from 9 to 22 July 2024. The Committee had proceeded on the basis of the six draft articles proposed by the Special Rapporteur in his first report on the topic (A/CN.4/775), which the Commission had referred to the Drafting Committee at its 3680th meeting.

Draft article 1, as provisionally adopted by the Drafting Committee, contained three paragraphs and was entitled "Scope of the present draft articles". The Committee had made a few amendments to the text adopted on first reading, affecting paragraphs 2 and 3 only.

Paragraph 1 contained a statement of the general scope of the draft articles. The Drafting Committee had considered rewording the paragraph so that it referred to immunity "from the exercise of criminal jurisdiction", a phrase that was used elsewhere in the draft articles. It had been noted, however, that the meaning of that phrase in national law, where it might refer to the use of certain procedures in an individual case, might differ from its meaning in international law, where it could refer to the general right of a State to impose penalties. Moreover, some members had considered the rewording inadvisable because the provisions of draft articles 9 and 11, which dealt with the examination and invocation of immunity respectively, might apply before the initiation of criminal proceedings and, therefore, before criminal jurisdiction was exercised. It had also been suggested that such a change, if adopted, would limit the scope of the draft articles. Conversely, it had been recalled that paragraph (6) of the commentary to draft article 9 indicated that the generic category "exercise of criminal jurisdiction" was broader in scope than the range of acts covered by the draft articles. There had also been some concern that, if the provision was amended, it could be read as implying that there was immunity from the exercise by a State of its prescriptive jurisdiction over criminal offences.

The Drafting Committee had ultimately concluded that the text adopted on first reading was sufficiently clear and that its scope was clearly and precisely established. Keeping the paragraph as currently drafted was also in line with the Commission's practice of aligning the provision concerning the scope of a text with the title of the text. Furthermore, the current phrasing was analogous with the language used in article 1 of the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property. It had been agreed that the use of the phrase "exercise of criminal jurisdiction" throughout the draft articles should be analysed on a case-by-case basis and that the issues raised in the discussions should be addressed in the commentary.

Paragraph 2, as amended and provisionally adopted by the Committee, was framed as a "without prejudice" clause with respect to special rules of international law. Its purpose was to make clear that the provision preserved both the immunity provided for in such rules, where it existed, as well as any exceptions to that immunity. The provision was also considered broad enough to preserve the inviolability and the privileges enjoyed by persons under such special rules, where relevant.

Members of the Committee had highlighted the importance of certain words used in the paragraph. Specifically, the word "on" had been chosen to describe the relationship between the special rules and their content, as it was deemed to be simpler, clearer and more precise than other options considered by the Committee, such as "relating to". The word "enjoyed" had been chosen because its use was consistent with the provisions of conventions establishing special rules of the kind referenced in the paragraph, such as article 31 of the Vienna Convention on Diplomatic Relations, establishing the immunity of diplomatic agents

from the criminal jurisdiction of the receiving State. The inclusion of the words "in particular" after "enjoyed" was intended to emphasize that the special rules referred to in the paragraph were rules related to the enjoyment of immunity and that treaty-based waivers of immunity were not within the scope of the provision. The word "persons" was also important as it made clear that the provision related only to immunities enjoyed by individuals and not to immunities enjoyed by, for example, diplomatic missions or consular posts themselves.

The list of special regimes of immunity contained in paragraph 2 was indicative only, as the inclusion of the term "in particular" made clear. A specific reference to police and paramilitary forces had been deemed unnecessary since any special rules of international law relating to the immunities of members of such forces that might exist already fell within the scope of the provision. Paragraph (11) of the commentary to draft article 1 had been recalled in that connection. Responding to doubts expressed as to whether bilateral agreements fell within the scope of the provision, the Special Rapporteur had indicated that additional special rules could be addressed in the commentary. The only change to the list relative to the text adopted on first reading was that the term "military forces" had been replaced with "armed forces" in the English version in order to align the English text more closely both with general usage and with the French and Spanish versions. The provision did not alter the scope of the immunity provided for under the special regimes it addressed, a point that would be addressed in the commentary.

Paragraph 3, concerning the relationship between the draft articles and the provisions on immunity in international criminal courts and tribunals, had been provisionally adopted by the Drafting Committee with changes to the text adopted on first reading. The text of the provision, and whether or not it should be retained, had been debated extensively in the light of the comments submitted by States in writing, the proposal made by the Special Rapporteur in his first report and the views expressed by members of the Commission during plenary meetings. The paragraph clarified that the draft articles concerned immunity from foreign criminal jurisdiction and did not affect the rights and obligations of States under agreements establishing international criminal courts and tribunals, which were subject to their own rules. Clarifying the relationship between the draft articles and such rules was particularly important in cases where an international criminal court or tribunal requested the cooperation of a domestic criminal court or tribunal in securing the arrest and surrender of a suspect. The paragraph was also relevant to the relationship between any potential treaty that might be concluded on the basis of the draft articles and pre-existing treaties establishing or relating to the operation of international criminal courts and tribunals, which would otherwise be governed by the *lex posterior derogat legi priori* rule reflected in article 30 of the Vienna Convention on the Law of Treaties.

The main difference between paragraph 3 as provisionally adopted by the Drafting Committee and the text adopted on first reading was the addition of the phrase "or relating to the operation of". The additional text was intended to broaden the scope of the provision so as to better accommodate the complexity of international criminal law. It had been noted, for example, that an important source of obligations in relation to referrals by the Security Council to the International Criminal Court was the Charter of the United Nations. With regard to the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, it had been noted that, although those tribunals had been established under the Charter of the United Nations, which was an international agreement, their operation was regulated not only by the Charter but also by the relevant Security Council resolutions.

The Drafting Committee had considered the possibility of deleting the phrase "as between the parties to those agreements" at the end of paragraph 3. As used in the text, that phrase reflected the generally accepted principle of treaty law, reflected in articles 34 and 35 of the Vienna Convention on the Law of Treaties, that a treaty did not create obligations for a State that had not consented to be bound by its provisions. The commentary would explain that that point related only to treaty law and had no implications for the question of whether a rule of customary international law also existed. Some members had thus concluded that the phrase was superfluous and could be omitted. Others had expressed the view that retaining the phrase might prejudice the consideration of the same issues before the International Criminal Court and would be akin to taking sides in the debate as to the

relationship between the Court and States that were not parties to the Rome Statute. On the other hand, some members had noted that, if the phrase was deleted, the Commission might be perceived to be taking a position in the aforementioned debate and the balance of the provision might be altered.

Ultimately, the discussion itself had demonstrated that the phrase added necessary clarity to the text. Members had generally agreed that the Commission should remain neutral in the ongoing debate on the relationship between the International Criminal Court and nationals of States that were not parties to the Rome Statute, which was a question that fell outside the scope of the topic. It had been recalled that, in its judgment in the *Jordan Referral re Al-Bashir Appeal*, the Appeals Chamber of the International Criminal Court had based its decision on customary international law, which was outside the scope of paragraph 3. The importance of the phrase in the context of tribunals created by acts of international organizations had also been highlighted. The decision to retain the phrase represented a compromise and, on that basis, the Drafting Committee saw a need to strengthen paragraph (26) of the commentary to draft article 1.

The possible need for a separate subparagraph relating to international criminal courts and tribunals established by acts of international organizations, as proposed by the Special Rapporteur in his first report, had been discussed extensively. Several members had taken the view that a separate subparagraph would enhance the clarity of the paragraph, as the text adopted on first reading might be read as excluding international courts and tribunals established by international organizations from the scope of the paragraph. Additionally, concerns had been raised as to whether the words “international agreements” covered Security Council resolutions and, consequently, the *ad hoc* tribunals. For some members, the text was ambiguous in that respect. The addition of a separate subparagraph had in the end been ruled out, it having been noted that international criminal courts and tribunals established by acts of international organizations had their ultimate legal basis in a treaty – a point that would be explained later in the commentary.

The discussions concerning the possible addition of a separate subparagraph had demonstrated the complexity of addressing the issue of international courts and tribunals established under the auspices of international organizations appropriately. It had been generally agreed that the appropriateness of the different methods of establishing such courts and tribunals was outside the scope of the topic and that the effect of any act of an international organization establishing a court or tribunal was a question for the States members of the international organization concerned. The Drafting Committee had rejected a proposal that the text should refer only to decisions of the Security Council, on the grounds that the proposal would, if adopted, have overly limited the scope of the paragraph.

A question mark had been raised as to whether paragraph 3 was necessary at all, given that work on the provision had drawn the Commission into discussions on subjects that were outside the scope of the topic, such as the matter of how international criminal courts and tribunals should be established and the jurisdiction of such courts and tribunals. Some members had called for the paragraph to be removed in its entirety, noting that article 98 of the Rome Statute provided an adequate basis for dealing with concerns regarding potential conflicts between the draft articles and the rules of the International Criminal Court. On the other hand, several members had recalled the richness of the discussions leading to the adoption of the paragraph on first reading, including the statement delivered by the Chair of the Drafting Committee at the seventy-third session. The text had represented a compromise between members at that time. Furthermore, a very clear explanation would be needed to justify any decision to delete the paragraph at the second-reading stage.

With regard to draft article 2, the Drafting Committee had decided not to present the text, which dealt with definitions, for adoption by the Commission until the next session, when the members would have a clearer picture of the entire set of draft articles, and in particular, of draft articles 7 to 18, which would be covered in the Special Rapporteur’s second report. The Drafting Committee would have a complete view of the terms that needed to be defined and the effect of the definitions contained in draft article 2 only once it had the entire text of draft articles before it for consideration. For that reason, her comments on draft article 2 at the present meeting were for information purposes only. The Drafting Committee had made no amendments to the text or title of the draft article as adopted on first reading but

might do so at the seventy-sixth session if deemed appropriate. The commentary to the draft article would be further elaborated to address concerns raised by States in their written comments.

In particular, in relation to subparagraph (a), a fuller explanation of the expression "both current and former" would be provided, as well as a clarification regarding cases in which an official who represented a State or exercised State functions might be a national of a State other than the State that he or she represented. The word "*représentants*", used to translate the word "officials" in the French text, as adopted on first reading, had been retained on the basis of comments made by members during the plenary debate.

With regard to subparagraph (b), the commentary would address the concept of "official acts" in greater detail. On the basis of comments made during the plenary debate, comments received from States and the judgment of the International Court of Justice in *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, it had been proposed that the phrase "in the exercise of State authority" should be replaced with the phrase "in the exercise of elements of the governmental authority". Some members of the Drafting Committee had considered the proposed amendment necessary to address the complexity of the relationship between rules of immunity and the responsibility of States for internationally wrongful acts. The issue of *ultra vires* acts in the context of immunity had also been mentioned in that connection. Ultimately, however, the Committee had concluded that, in the light of paragraphs (26) and (27) of the commentary to draft article 2 as adopted on first reading, the phrase "in the exercise of State authority" was more appropriate and should be retained, not least because immunities were based not only on the functional necessity theory but also on the "representative character" theory.

Turning to draft article 3, which listed those State officials who enjoyed immunity *ratione personae,* she noted that the Commission confined itself to identifying the persons to whom immunity of that type applied and made no reference to the substantive scope of that immunity. After a rich debate, the Drafting Committee had decided to make no changes to the text or title of the provision as adopted on first reading but had agreed that certain specific issues needed to be addressed in the commentary.

The central question that the Drafting Committee had addressed, as had also been the case during the plenary debate, had been whether the draft article should be amended to extend immunity *ratione personae* to State officials other those envisaged in the provision as currently drafted. Members continued to express differing views on that question. A number of members had taken the view that the provision reflected customary international law and enjoyed broad support from States and that there was thus no reason to amend the text; the concerns raised by some States and members of the Committee could be addressed in the commentary. Other members had expressed the view that, since for some States immunity *ratione personae* was not limited to Heads of State, Heads of Government and Ministers for Foreign Affairs – the so-called troika – the words "such as" should be added to the draft article to make clear that the list contained therein was not exhaustive, especially in view of the decision of the International Court of Justice in *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, which had left open the possibility of immunity being extended to officials beyond the troika. The members taking that view had indicated that, if the provision remained as adopted on first reading, the commentary would need to address at least the points raised by those States for which immunity *ratione personae* was broader in scope. Paragraph (15) of the commentary, in particular, had been considered too categorical and warranted further analysis and nuance.

The Drafting Committee had discussed the possibility of adding the word "shall" before the word "enjoy", to reflect the wording of draft article 7 of the draft articles and article 31 of the Vienna Convention on Diplomatic Relations. In the end, however, it had decided that the addition was unnecessary and would inadvertently weaken the provision, which reflected a rule of customary international law. The commentary would explain the differing approaches taken in draft articles 3 and 7. On the basis of a proposal put forward in the plenary debate, the Committee had also discussed the possibility of merging draft articles 3 and 4 or, alternatively, adding the phrase "in accordance with draft article 4" at the end of draft article 3. Although a bridge between the two draft articles had been deemed necessary by certain States, the members had concluded that standalone provisions were more

appropriate in the light of the commentaries adopted on first reading and because the structure of the draft articles would thus be maintained. A cross reference to draft article 4 had also been ruled out, on the basis that it would detract from the clear statement of law contained in draft article 3 and could create confusion. As a final point on paragraph 4, she noted that, while understanding that the commentary would address the question of immunity *ratione personae* vis-à-vis acting Heads of State, Heads of Government and Ministers for Foreign Affairs, some members of the Drafting Committee had considered it important to clarify in the commentary that the immunity status of family members of the troika fell outside the scope of the Commission's work on the topic.

Draft article 4, which contained three paragraphs, had been adopted by the Drafting Committee with amendments to the text adopted on first reading. In paragraph 1, the expression "term of office" had been replaced with "period of office", in line with comments from States indicating that the word "term" was too restrictive and did not reflect certain situations that arose in practice; monarchs and Ministers for Foreign Affairs, for example, might not have a specific term of office. That change clarified the temporal scope of the provision and was inspired by the terminology used by the International Court of Justice in the *Arrest Warrant* case.

Paragraph 1 of draft article 4, as amended by the Committee, had been adopted on the understanding that the plenary discussions regarding the expression "period of office" would be reflected in the commentary. The same amendment had been applied in paragraph 2 of the text adopted on first reading in order to maintain the symmetry between paragraphs 1 and 2 of the draft article. No other changes to paragraph 2 had been deemed necessary. The French and Spanish versions of paragraphs 1 and 2 had not been amended to reflect the replacement of the expression "term of office" with "period of office" in the English version because the words "*mandat*" in French and "*mandato*" in Spanish were considered sufficiently clear to cover the meaning that the provisions were intended to convey.

Paragraph 3 of the draft article, concerning the cessation of immunity *ratione personae*, had been extensively debated in the Drafting Committee and two changes had been made to the text adopted on first reading. Firstly, the words "the application of" had been removed. Secondly, the preposition "concerning" had been replaced with "on" in the English version, with a corresponding change being made in the Spanish version, where the words "*relativas a la*" had been replaced with "*sobre*", but the French version remaining unchanged. Additionally, in the French version, "*l'extinction*" had been replaced with "*la cessation*", to align the text with usage in other relevant instruments and in the light of comments by States on the terminology.

Those amendments brought the text more closely into line with the original intent of the provision, which was explained in paragraph (15) of the commentary adopted on first reading. The Committee members had concluded that the words "the application of" did not adequately reflect that intent. The amendment was considered appropriate to preserve the applicability of immunity *ratione materiae* and certain rules contained in the draft articles themselves that were related to immunity *ratione materiae*, and that, in turn, were not about the applicability of immunity *per se* but rather concerned process and procedure for resolving immunity claims when raised. The preposition "concerning" had been considered to make the scope of paragraph 3 wider than intended. The Drafting Committee had also considered it necessary to retain the phrase "the rules of international law". The paragraph had been adopted on the understanding that the rationale for the changes would be explained in the commentary.

After paragraph 3 had been adopted, some Committee members had taken the floor to explain their position. According to those members, the word "application" should have been retained because, without it, the provision became ambiguous. It had been stated that the question addressed in paragraph 3 was whether the cessation of immunity *ratione personae* had an impact on the application of rules, rather than on the rules themselves.

Draft article 5 [6], concerning the scope of immunity *ratione materiae*, contained three paragraphs and was a merger of draft articles 5 and 6 as adopted on first reading. The Drafting Committee had decided to merge the previous draft articles 5 and 6 after a thorough discussion on the merits of doing so or not. Some members who would have preferred to

keep the two provisions separate had expressed the view that a standalone draft article 5 affirming the general rule that State officials enjoyed immunity *ratione materiae* would have added value to the draft articles. The utility of distinguishing between the personal scope of immunity *ratione personae*, which was narrow, and the scope of immunity *ratione materiae*, which was broader, had been underscored. A number of members had taken the view that having parallel structures in Part Two and Part Three of the draft articles, which concerned immunity *ratione personae* and immunity *ratione materiae*, respectively, also lent clarity to the draft articles. Some members had been concerned that a reorganization of the draft articles would lead to confusion and would give rise to drafting difficulties that might otherwise be avoided.

Other members, however, had taken the view that, to emphasize the differences between immunity *ratione personae* and immunity *ratione materiae*, it would be better not to have symmetrical structures for Part Two and Part Three. They had noted that the reorganization proposed was not a question of legal technique but a reflection of the stance that the Commission would be taking on how immunity *ratione personae* and immunity *ratione materiae* were to be conceived. Several members had also noted that, since immunity *ratione personae* attached to certain categories of individuals while immunity *ratione materiae* attached to acts, it was conceptually problematic to highlight "persons enjoying immunity *ratione materiae*" in a standalone provision. Additionally, it had been suggested that, if the phrase "acting as such" was to be deleted – a possibility that had been discussed and which she would address subsequently – draft article 5 would be devoid of content unless, as proposed by the Special Rapporteur in his first report, a cross reference to draft article 6 was added.

The Drafting Committee had in the end decided to merge the text of the former draft articles 5 and 6, as adopted on first reading, on the basis of a proposal from the Special Rapporteur. The Committee had also considered – but had not adopted – a proposal to merge draft article 5 and draft article 6 (1) but to leave draft article 6 (2) and (3) as a separate stand-alone draft article. The new paragraph 1 retained certain aspects of the former paragraph 1 of draft articles 5 and 6 while omitting others. The first omission was the phrase "acting as such", which had been included in the former draft article 5 but had no longer been considered necessary, since the new paragraph 1 specified that immunity *ratione materiae* applied with respect to acts performed in an official capacity. Several members had been of the view that the meaning of the phrase adopted on first reading was unclear. Recalling the comments and observations of certain States, a few members had noted that, while the phrase was connected with other concepts covered in the draft articles – notably, the exercise of State functions, contained in draft article 2 (a), and an "act performed in an official capacity", contained in draft article 2 (b) – the relationship between the phrase and those concepts was unclear. Although attention had been drawn to the explanation contained in paragraph (3) of the commentary to draft article 5 adopted on first reading, that explanation had also been considered unclear.

The word "only", which had appeared in the text of draft article 6 (1) as adopted on first reading, had also been omitted, being considered unnecessary in the revised formulation as the text would ordinarily, without the word "only", be understood to convey the notion that immunity *ratione materiae* existed only with respect to acts performed in an official capacity. Some members had been of the view that, in the texts adopted on first reading, the word had served mainly to balance draft article 6 (1) with draft article 5. Certain members, on the other hand, had proposed that the word "only" should be retained so as to underline that immunity *ratione materiae* was exceptional in nature and applied only when an individual acted in an official capacity. Retaining the word would also have maintained a parallelism with draft article 4 (1), and the Committee had discussed whether such parallelism was desirable. There had been concerns that the word's deletion might prompt questions as to the rationale for the change. Thus, the reasons for the deletion of the word "only" would be explained in the commentary, which would also make clear that immunity *ratione materiae* existed only with respect to acts performed in an official capacity.

Some members of the Drafting Committee had expressed doubts as to whether the paragraph reflected customary international law as applied to State officials in general, and when such officials were not representing the State in particular, but it had been noted that

such doubts did not appear to be widely shared among the members of the Commission. Paragraph 2 of draft article 5 [6] corresponded to the former draft article 6 (2) as adopted on first reading and had been adopted without amendment. Paragraph 3 of the new draft article was also largely in line with the text adopted on first reading. The one amendment made affected the English text only, where the term "period of office" had replaced "term of office", which was consistent with the amendments made to draft article 4.

The Drafting Committee had, however, had an extensive discussion as to whether the words "*ratione materiae*" should be added after the phrase "continue to enjoy immunity" in order to specify that it was immunity *ratione materiae* in particular that persons entitled to immunity *ratione personae* continued to enjoy after their period of office had ended. That possibility had been considered following a proposal made by the Special Rapporteur in his first report inspired by comments and observations submitted by States. For some members, such an addition would have added clarity to the paragraph. For others, however, the change would have introduced new complexities; as had been explained both in the statement of the Chair of the Drafting Committee at the sixty-seventh session and in paragraph (13) of the commentary to draft article 6 adopted on first reading, the Commission had chosen the language adopted on first reading specifically to avoid having to take a view on whether the members of the troika enjoyed immunity *ratione materiae* at the same time as immunity *ratione personae* during their period of office. Some members had taken the view that adding the words "*ratione materiae*" would imply that that was the case, and that, in order to balance the text, it would then be necessary to delete the words "continue to". Other members had perceived a need for an explicit reference to the continuation of immunity.

The provision provisionally adopted by the Drafting Committee thus represented a compromise among the members. The text adopted on first reading had been maintained to preserve the emphasis on the continuation of the immunity that members of the troika enjoyed for acts performed in an official capacity during their period of office after that period of office had come to an end. The fact that the immunity enjoyed by members of the troika after their period of office had ended constituted immunity *ratione materiae* would be emphasized in the commentary.

Proposals to delete paragraph 3, on the grounds that it duplicated the content of draft article 4 (3) and might lead to confusion, had also been considered, but the Drafting Committee had decided that the paragraph should be retained, as some members had considered it to offer useful clarification.

The title of the new draft article 5 [6] was the title of the former draft article 6 as adopted on first reading. The Drafting Committee had considered changing the title to reflect the fact that the provision addressed more elements related to immunity *ratione materiae* than were addressed in relation to immunity *ratione personae* in draft article 4. Notably, draft article 5 [6] specified the persons who enjoyed immunity *ratione materiae*, in addition to the acts covered by such immunity and the period of time for which it applied. Some members had thought it important to reflect the personal aspect in the title of the provision. Options considered had included "Enjoyment of immunity *ratione materiae*" and "Enjoyment and scope of immunity *ratione materiae*". It had also been noted that draft article 5 [6] was not the only provision concerning the scope of immunity *ratione materiae*; draft article 7 covered the circumstances in which such immunity did not apply. The Drafting Committee had ultimately concluded that the title of the former draft article 6 was appropriate for a provision that addressed the personal, temporal and material scope of immunity *ratione materiae* and, thus, that no change was necessary.

She wished to clarify, before closing, that the Commission was being requested, at present, to take note of draft articles 1, 3, 4 and 5 [6] but was not being requested to take action on draft article 2. The latter provision would be left pending before the Drafting Committee until the seventy-sixth session.

The Chair said he took it that the Commission wished to take note of draft articles 1, 3, 4 and 5 [6] on the topic of immunity of State officials from foreign criminal jurisdiction.

It was so decided.

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

Chapter VII. Immunity of State officials from foreign criminal jurisdiction (*continued*) (A/CN.4/L.993)

The Chair invited the Commission to resume its consideration of chapter VII of its draft report, as contained in document A/CN.4/L.993. Only one paragraph remained to be adopted, namely paragraph 28, which had been left in abeyance at the previous meeting pending consultations between the Special Rapporteur and other members of the Commission.

Paragraph 28 (*continued*)

Mr. Grossman Guiloff (Special Rapporteur) said that, on the basis of his informal consultations with members since the previous meeting, he proposed to amend the third sentence of paragraph 28 so that it would read: "It was observed that prior State comments were incorporated into the prior reports on the topic." The fourth sentence should be amended to read: "The importance of giving adequate and equal consideration to the views of States from all regions was emphasized." Lastly, in the fifth sentence, as proposed by Ms. Okowa, the word "normal" should be replaced with "formal".

Mr. Forteau, said that he broadly supported the revised text proposed but would be interested to know which members of the Commission were of the view that prior State comments had been adequately incorporated into the prior reports on the topic. He recalled that the Special Rapporteur made broadly the same point in paragraph 66 of the document under consideration, in which he summarized the plenary debate.

Ms. Okowa said that she too was happy with the proposed changes. For clarity, however, the words "of consultations by" should be added after "formal process" since the current formulation might still prompt questions as to the nature of the Commission's "formal" process.

Mr. Grossman Guiloff (Special Rapporteur) said that he was not opposed to Ms. Okowa's suggestion. In response to Mr. Forteau's question, he recalled that Mr. Asada, Mr. Paparinskis, Mr. Oyarzábal and Mr. Jalloh, among others, had expressed support for his methodology, which entailed taking account of States' written comments and comments made in the Sixth Committee following the second reading of the text. His proposed revision reflected a desire to minimize the changes but, if the members preferred, the sentence could be fleshed out. In that case, an appropriate alternative might be: "On the contrary, several other members supported the methodology employed by the Special Rapporteur, which consists in analysing the responses given by States in the Sixth Committee and the comments submitted by States."

Mr. Forteau asked whether the new sentence proposed by the Special Rapporteur was intended to replace the current third sentence. While he was not against the deletion of the third sentence, the new sentence proposed seemed to address a completely different issue. The current third sentence addressed the question of whether comments made by States prior to the conclusion of the first reading had been adequately taken into account in prior reports. That was not the case, in his view, and other members shared that view. The new sentence proposed by the Special Rapporteur concerned support for his methodology in general, which was a different matter.

Mr. Grossman Guiloff (Special Rapporteur) said that the question of support for his methodology was directly related to the question of whether the prior comments of States had been taken into account, because his methodology consisted in analysing comments made by States in the Sixth Committee upon conclusion of the first reading and comments subsequently submitted in writing. He was aware that some members perceived a need to expand upon that approach. Others, however, were satisfied with his methodology. It was important to include a reference to that methodology and the support that it had garnered somewhere in the chapter.

Mr. Paparinskis suggested, as a possible compromise solution, a slight change in emphasis that would leave the sentence to read: "Other members supported the methodological choices of the Special Rapporteur." That formulation attested to the general

support for the Special Rapporteur's methodology without implying specific support for the notion that certain comments and submissions did not need to be taken into account because they had already been incorporated.

The Chair said he took it that the Commission accepted the compromise proposed by Mr. Paparinskis, the amendments proposed by the Special Rapporteur to the fourth and fifth sentences, and the amendment proposed by Ms. Okowa.

Paragraph 28, as amended, was adopted.

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

Chapter V. Subsidiary means for the determination of rules of international law (*continued*) (A/CN.4/L.991 and A/CN.4/L.991/Add.1)

The Chair invited the Commission to resume its consideration of the portion of its draft report contained in document A/CN.4/L.991/Add.1. He drew attention to an informal document that the Special Rapporteur had circulated earlier, in English only, showing the changes that he was proposing to the paragraphs of the commentaries to the draft conclusions that had been left in abeyance at earlier meetings.

Mr. Jalloh (Special Rapporteur), introducing the revised text that he was proposing, said that the revised paragraphs to the commentaries reflected the outcome of informal consultations held with members over the previous two days. In most cases, the revisions served to shorten and sharpen the text.

At the suggestion of **Mr. Oyarzábal, the Chair** proposed that the meeting should be suspended briefly to allow members to consult the revised text to be presented by the Special Rapporteur.

The meeting was suspended at 4.15 p.m. and resumed at 4.40 p.m.

Commentary to draft conclusion 4 (Decisions of courts and tribunals) (continued)

Paragraph (14) (*continued*)

Mr. Jalloh (Special Rapporteur), noting that paragraph (14) had been adopted at the 3695th meeting on the understanding that footnote 19 would be corrected, provided the wording for the first half of the footnote:

> See, for example, the Revised Treaty of Chaguaramas establishing the Caribbean Community, including the CARICOM [Caribbean Community] Single Market and Economy (Nassau, 5 July 2001), United Nations, *Treaty Series*, vol. 2259, No. 40269, p. 403, art. 211 and 212 (noting the court has jurisdiction to resolve contentious disputes between member States);

There were no changes to the second half of the footnote, from the reference to the Treaty for the Establishment of the East African Community onwards.

The amendment to footnote 19 was adopted.

Paragraph (22) (*continued*)

Mr. Jalloh (Special Rapporteur), noting that paragraph (22) had been adopted at the 3695th meeting, said that, as agreed, he was providing some foreign-language references for footnote 30. He proposed the addition of a reference to a publication by an Italian author – *I Tribunali penali internazionalizzati: Fondamento, giurisdizione, diritto applicabile*, by Chiara Ragni – contributed by Mr. Nesi, and references to two publications by French authors – *Les juridictions pénales internationalisées,* by H. Ascensio et al., and *Les juridictions pénales internationalisées – Un nouveau modèle de justice hybride,* by A.-C. Martineau – contributed by Mr. Forteau.

The amendment to footnote 30 was adopted.

Paragraph (25) (*continued*)

Mr. Jalloh (Special Rapporteur) said that the amended text he had proposed at the 3695th meeting appeared to be acceptable to members. He proposed the following wording to replace the penultimate sentence of that text: "Less weight will attach to decisions of lower national courts."

Mr. Nguyen said that, in the antepenultimate sentence, the reference to "higher courts" should be replaced with a reference to "higher national courts".

Paragraph (25), as amended, was adopted.

Commentary to draft conclusion 5 (Teachings) (*continued*)

Paragraph (1) (*continued*)

Mr. Jalloh (Special Rapporteur), noting that paragraph (1) had been adopted at the 3695th meeting on the understanding that he would supply a few examples of privately created international expert bodies, proposed to add the following sentence to the end of footnote 38:

> Examples of these private bodies include the Institute of International Law (Institut de droit international) and the International Law Association; see para. (5) of the commentary to draft conclusion 9 of the draft conclusions on "General principles of law", Yearbook …, vol. II (Part Two), para…., at p. …, and Harvard Research in International Law. That said, in the context of the present topic, the Commission has indicated that it will revisit this issue.

The amendment to footnote 38 was adopted.

Paragraph (7) (*continued*)

Mr. Jalloh (Special Rapporteur) proposed the following wording for the first half of paragraph (7):

> (7) As regards the first part of the first sentence of draft conclusion 5, the Commission has already indicated in its previous work, including the commentaries adopted at its seventy-fourth session, that the term "teachings" is in practice a broad category. The word "especially" was included in the part of the first sentence set off by commas to emphasize two potential situations involving teachings. The first being that there could, in some situations, be an abundance of teachings that could be employed to determine the existence and content of rules of international law. In such a case, the word "especially" underlines the possibility that there could be among them "those generally reflecting the coinciding views of persons with competence in international law". The idea is to underline that particular attention should be paid to those teachings reflecting such characteristics.

Mr. Fife said that, in the first sentence, the word "already" should be replaced with "previously" and the words "in its previous work" should be deleted. He would also delete the phrase "in practice" at the end of the sentence. To simplify the paragraph, he also proposed deleting the phrases "two potential situations involving teachings. The first being" and "In such a case, the word 'especially' underlines the possibility that there could be among them" and replacing the words "those teachings reflecting such characteristics" with "those generally reflecting the coinciding views of persons with competence in international law". The last sentence would then read: "The idea was to underline that particular attention should be paid to 'those generally reflecting the coinciding views of persons with competence in international law'."

Mr. Grossman Guiloff said that he agreed with Mr. Fife's proposals, but the word "idea" in the last sentence should be changed to "purpose".

Mr. Savadogo said that he agreed that another term should be found for "idea". He suggested that "especially" should be referred to as an "adverb" rather than a "word" and also pointed out that the word "underline" had been repeated.

Mr. Fife said that, given the resistance to the word "idea", the sentence might be amended to read: "Particular attention in such cases should be paid to 'those generally reflecting the coinciding views of persons with competence in international law'."

Mr. Jalloh (Special Rapporteur) said that he was grateful for the helpful suggestions and would amend the paragraph accordingly.

He recalled the proposal put forward at the previous meeting to split the paragraph in two, and proposed the following wording for the second of the two resulting paragraphs:

> The preponderance of views contained in teachings from those with competence in international law from the various legal systems and regions of the world, expressed in the first sentence, may reflect a general trend when considered in totality against the body of scholarly work available. In such instances, this could be an indication that those views – to the extent that they are diverse and representative – are more likely to carry greater weight. The draft conclusion does not require scholarly consensus, let alone unanimity, for a high-quality teaching to be found valuable in determining the existence and content of rules of international law. On the other hand, that there are diverging views among scholars could also be relevant to determining the weight to attach to a particular teaching. Where scholarly views are divided, and perhaps matched by uncertainty in the other subsidiary means such as in decisions, this could indicate that the law on the issue under consideration is unsettled.

Paragraph (7), as amended, was adopted.

The Chair said that splitting the paragraph in two meant that subsequent paragraphs would need to be renumbered, but, for the moment, members should continue to use the current paragraph numbers.

Paragraph (8) (*continued*)

Mr. Jalloh (Special Rapporteur) proposed the following wording for paragraph (8):

> (8) While there may be express preference for teachings that reflect special expertise or competence in international law, the Commission recognizes the possibility that there may be circumstances whereby teachings in disciplines other than international law could also be relevant for the determination of the existence and content of rules of international law. This may arise, for instance, in the case of related subject areas, such as comparative law.

Paragraph (8), as amended, was adopted.

Paragraph (10) (*continued*)

Mr. Jalloh (Special Rapporteur) proposed the following wording for paragraph (10):

> (10) The formulation "especially those generally reflecting the coinciding views of persons with competence in international law from various legal systems and regions of the world" is an inclusive and broad phrasing. It seeks to ensure that the diversity of viewpoints and teachings from different parts of the world are fully considered when determining the existence and content of rules of international law. The reference to "various legal systems and regions of the world" also indicates that, on the whole, even the weight of a particular teaching would be enhanced where it engages in a survey demonstrating that a certain rule of international law is prevalent in various systems representing the main legal families and traditions of the world.

Paragraph (10), as amended, was adopted.

Paragraph (14) (*continued*)

Mr. Jalloh (Special Rapporteur) proposed the following wording for paragraph (14), on the basis of the earlier discussion in plenary and his informal consultations with members since then:

> (14) The Commission considers that teachings do play a vital role in the process of determining and applying rules of international law. The importance of teachings

notwithstanding, as indicated in the prior topics, there is a need for caution when drawing upon teachings because their actual value for the assessment of the existence and content of rules of international law may vary for different reasons. First, teachings sometimes seek not merely to record the state of the law as it is (*lex lata*) but to advocate for its development (*lex ferenda*). Second, teachings may reflect the national or other individual viewpoints of their authors. Third, teachings may differ greatly in quality. Assessing the authority of a given work is thus essential. This approach is well established in State practice. For instance, the Supreme Court of the United States referred, in its *Paquete Habana* ruling of 8 January 1900, to "the works of jurists and commentators, who by years of labor, research and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is."

Paragraph (14), as amended, was adopted.

New paragraph (15)

Mr. Jalloh (Special Rapporteur) proposed the following wording for a new paragraph (15):

(15) Another more recent example shows not only how teachings are used in practice, but how they may interact with judicial decisions as subsidiary means. The Supreme Court of Appeal of South Africa determined, in its March 2016 ruling, the narrow question of whether customary international law permitted exceptions to the immunity for Heads of State that might enable South Africa, including its courts, to disregard such immunity and authorize the execution of an arrest warrant by the International Criminal Court for then President of Sudan, Omar Hassan Ahmed Al-Bashir. The Court analysed the Rome Treaty, before turning to customary international law and, faced with difficulty to answer the question through analysis of those two sources contained in Article 38, paragraphs 1 (a) and (b), of the Statute of the International Court of Justice, considered that judicial decisions, including from the International Court of Justice as well as teachings, could offer "guidance" on whether an exception existed. As part of that analysis, the Court examined the writings of several scholars and noted that their views were divided on the question of whether or not immunity applied. In the end, it rejected the appellant's submission that such an exception existed under international law insofar as national courts were concerned. The Court observed that the views of scholars on the immunity point could "inform future debate and contribute to the development of customary international law". The latter observation addresses another role of teachings, which must be borne in mind, in the context of the present draft conclusion. It clarified that instead of resolving academic debates, its own task was more limited to assessing the state of customary international law as it stood and to apply it without creating new law.

Ms. Okowa said that the reference to the "Rome Treaty" should be changed to "Rome Statute of the International Criminal Court".

Mr. Jalloh (Special Rapporteur) said that, while it was more common to use the term "Rome Statute", the alternative term "Rome Treaty" was also used in the literature and in practice. However, he could accept the proposed change.

Mr. Forteau added that, in the European Union, the "Treaty of Rome" was understood to mean the Treaty on the Functioning of the European Union.

Mr. Oyarzábal said that, while he had no problem with the substance of the proposed paragraph, he did not know what its objective was or what value it added to the preceding paragraph.

Mr. Jalloh (Special Rapporteur) recalled that there had been a vigorous debate over the reference to the *Paquete Habana* case decided by the Supreme Court of the United States and he had invited members to share case law from other regions. The reference to the ruling of the Supreme Court of Appeal of South Africa cited in the proposed paragraph, which was

a good example of the way teachings were used, had been carefully negotiated and the paragraph had been agreed on in a spirit of compromise.

New paragraph (15), as amended, was adopted.

Commentary to draft conclusion 6 (Nature and function of subsidiary means) (*continued*)

Paragraph (7) (*continued*)

The Chair said that the proposal was to delete the paragraph. The Special Rapporteur would address the issue of supplementary means in a future report.

Paragraph (7) was deleted.

Mr. Paparinskis said that he was grateful to the Special Rapporteur for his flexibility regarding the deletion of paragraph (7). He hoped that, when the Commission took up the issue, the Special Rapporteur would find his and Ms. Mangklatanakul's remarks useful. They had argued that there was a clear distinction between subsidiary means and supplementary means and the two concepts should not be conflated either in principle or in practice.

Commentary to draft conclusion 7 (Absence of legally binding precedent in international law) (*continued*)

Paragraph (2) (*continued*)

Mr. Jalloh (Special Rapporteur) proposed the following wording for the footnote to be added at the end of paragraph (2), as proposed by Mr. Forteau during the earlier discussion:

> See also Institute of International Law, resolution adopted on 1 September 2023 (Angers Session) on "Precedents and Case Law (Jurisprudence) in Interstate Litigation and Advisory Proceedings", para. 3: "A precedent or case law (jurisprudence) may be used in support of a judicial pronouncement if they concern legal issues comparable to the case at hand (...)."

Paragraph (2), as amended, was adopted.

New paragraph (8)

Mr. Jalloh (Special Rapporteur) proposed the following wording for a new paragraph (8):

> The practice of international courts or tribunals of following previous decisions unless there are "convincing reasons" or "compelling reasons" not to do so, or the existence of a provision to the effect that they "shall be guided by" their own previous decisions, as in the statute of the Special Court for Sierra Leone or those of another international court or tribunal, could be seen, to some extent, as a functional equivalent to a rule of binding precedent. However, in these situations, there is no obligation under international law for the international courts or tribunals to follow previous decisions as legally binding precedents. For such an obligation to exist, it should be provided for in a specific instrument or a specific rule, as contemplated by the second sentence of draft conclusion 7.

Mr. Oyarzábal said that the reference to the Special Court for Sierra Leone or "another international court or tribunal" could be placed in brackets, as the sentence was very long. He proposed that "could be seen, to some extent, as a functional equivalent to a rule or binding precedent" should be changed to "could not be seen as a manifestation of a rule of binding precedent". The following word "However" would then be deleted.

Mr. Asada said that the changes proposed by the Special Rapporteur had fully met his concerns.

Mr. Grossman Guiloff said that, while he agreed with the substance of the proposal, the paragraph was not reader-friendly. He suggested the insertion of a full stop after the phrase "another international court or tribunal" and the addition of the words "This practice" thereafter.

Mr. Fife said that he was not comfortable with the reference to "This practice", as suggested by Mr. Grossman Guiloff. All the empirical evidence referred to in the footnotes considered situations that related to international criminal law, whether that involved international criminal tribunals or even the International Court of Justice in a particular case that concerned the *actus reus* of genocide. In such cases, the principle of legality, the requirements of predictability and fairness of adjudication had a very particular standing. The reasoning referred to in paragraph (8) was in fact relevant. However, he had difficulties in extrapolating from that very limited basis of empirical evidence a more general attitude of international courts and tribunals. For that reason, the suggestion made by Mr. Oyarzábal would be satisfactory. It was important to highlight the examples given in the footnotes, but care should be taken not give the practice referred to a broader impact.

Mr. Akande said that rather than place the reference to the Special Court for Sierra Leone or "another court or tribunal" in brackets, the phrase might be simply deleted altogether, as it was clear from the footnote which courts and tribunals were being referred to. The first sentence could then begin with the words, "The practice of certain international courts or tribunals", which might address Mr. Fife's concerns. The practice did exist but the phrase would not suggest that it was a general practice.

Mr. Forteau said that the memorandum by the secretariat showed that the practice referred to by Mr. Fife was in fact widespread and did not concern international criminal law alone. He proposed the following wording for the first sentence: "There is a practice of certain international courts or tribunals following previous decisions unless there are 'convincing reasons' or 'compelling reasons' not to do so, or there may exist provisions to the effect that they 'shall be guided by' their own previous decisions as in the statute of the Special Court for Sierra Leone."

Mr. Jalloh (Special Rapporteur) said that he would revise the paragraph on the basis of the comments made by members. He agreed that the first sentence could be shortened and that the second sentence could begin with the words "This practice of certain international tribunals could be seen".

New paragraph (8), as amended, was adopted on that understanding.

Paragraph 9 (*continued*)

Mr. Jalloh (Special Rapporteur) proposed to delete the first two sentences; to begin the third with "For example, according to article 221 …"; and to add the following sentence at the end of the paragraph: "The title of article 221 is 'Judgment of the Court to constitute *stare decisis*'."

Paragraph 9, as amended, was adopted with minor editorial changes.

Paragraphs (14) to (16) (*continued*)

Paragraphs (14) to (16) were deleted.

Paragraph (17) (*continued*)

Mr. Jalloh (Special Rapporteur) proposed the following wording for paragraph (17):

> In the view of the Commission, given the above practice, the general position contained in draft conclusion 7 that there is no system of legally binding precedent in international law remains valid in the sense that, in disputes involving States, decisions of the tribunals are binding only on the parties to the case. However, in some circumstances such as those discussed above, there are exceptions to the general rule whereby the obligation to follow prior decisions is established in either a specific instrument or a specific rule of international law articulated elsewhere.

Mr. Oyarzábal, supported by **Mr. Galindo**, proposed that the last two words in the paragraph, "articulated elsewhere", should be deleted, as that collocation was not normally used for rules.

Mr. Forteau said that it was perhaps too restrictive to say "in disputes involving States", as such disputes might also involve international organizations, and proposed the deletion of the phrase.

Mr. Grossman Guiloff said that he agreed with Mr. Oyarzábal's proposed deletion. He had trouble with the phrase "the general position contained in draft conclusion 7" and suggested that "the general position" should be changed to make it sound less tentative, either by deleting the phrase or replacing it with the words "the content of draft conclusion 7".

The Chair suggested that the phrase might be amended to read "the general proposition contained in draft conclusion 7".

Mr. Paparinskis said that he agreed with the point made by Mr. Forteau regarding the scope of decisions of the tribunals. He wondered whether the phrase "decisions of the tribunals are binding only on the parties to the case" was the appropriate way to refer to decisions of international criminal tribunals in which the prosecutor and the accused person were parties to the case. He proposed the wording, "decisions of the tribunals are binding only in relation to the particular case". Language drawn from the Statute of the International Court of Justice was more appropriate in paragraph (1) of the commentary to the draft conclusion, which addressed more specifically adjudication between States, than in the current paragraph.

Mr. Fife said that he supported the proposals aimed at simplifying the text, including the deletion of "articulated elsewhere", and was in favour of proceeding along the lines suggested by Mr. Paparinskis. In addition, he suggested that the words "there are exceptions to the general rule whereby" should be deleted so that the sentence would read: "However, in some circumstances such as those discussed above, the obligation to follow prior decisions is established in either a specific instrument or a specific rule of international law."

Mr. Jalloh (Special Rapporteur) said that "general position" would be replaced with "general proposition" and he would revise the paragraph along the lines suggested by Mr. Paparinskis. The phrases "there are exceptions to the general rule whereby" and "articulated elsewhere" would be deleted.

Mr. Oyarzábal said he did not see any added value in the proposed paragraph and suggested it could be deleted altogether, but he would not go against the consensus.

Mr. Akande said that the paragraph could be further simplified by deleting the phrase "in the sense that, in disputes involving States, decisions of the tribunals are binding only on the parties to the case" in the first sentence. If the question of disputes involving States or international criminal law was left aside, the point of the paragraph, namely that there was a general proposition and specific instruments and specific rules, would be clearer.

Mr. Jalloh (Special Rapporteur) said that he could accept the deletion proposed by Mr. Akande.

Paragraph (17), as amended, was adopted.

Commentary to draft conclusion 8 (Weight of decisions of courts and tribunals) (*continued*)

Paragraph (9) (*continued*)

Paragraph (9) was adopted with minor drafting changes.

Paragraph (10) (*continued*)

Mr. Jalloh (Special Rapporteur) proposed the following wording for paragraph (10):

> (10) To illustrate, in the Ahmadou Sadio Diallo case, the International Court of Justice pointed out that while it was in no way obliged to do so in the exercise of its judicial functions, when applying a human rights treaty, reference can be had to the works of the independent bodies that have been specifically established to supervise the application of the treaty in question for reasons of clarity, consistency and legal security for the individuals and States concerned. Thus, the Court referred to the "considerable body of interpretative case law" of the Human Rights Committee,

which though not a court, had been expressly mandated by States to monitor the application of the International Covenant on Civil and Political Rights. The Court ultimately concluded "that it should ascribe *great weight* to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty".

Mr. Patel proposed that the phrase "for reasons of clarity, consistency and legal security" should be replaced with "for reasons of clarity, essential consistency of international law, as well as legal security". The phrase "[emphasis added]" should be placed after the italicized words "*great weight*".

Paragraph (10), as amended, was adopted.

Chapter X. Sea-level rise in relation to international law (A/CN.4/L.996)

The Chair invited the Commission to consider the portion of its draft report contained in document A/CN.4/L.996.

A. Introduction

Paragraphs 1 to 4

Paragraphs 1 to 4 were adopted.

B. Consideration of the topic at the present session

Paragraphs 5 to 8

Paragraphs 5 to 8 were adopted, subject to completion by the secretariat and an editorial correction.

1. Introduction of the additional paper (A/CN.4/774 and Add.1) to the second issues paper by the Co-Chairs

Paragraphs 9 to 14

Paragraphs 9 to 14 were adopted.

2. Summary of the exchange of views

(a) General comments on the topic and the additional paper

Paragraphs 15 to 18

Paragraphs 15 to 18 were adopted.

(b) Reflections on statehood

Paragraphs 19 to 64

Paragraphs 19 to 64 were adopted.

(c) Protection of persons affected by sea-level rise

Paragraphs 65 to 71

Paragraphs 65 to 71 were adopted.

Paragraph 72

Mr. Forteau said that, although the wording of the side heading, "Human dignity as an overarching principle", had been discussed in the Study Group, the outcome was not properly reflected in the French version of the draft report. The term "*principe supérieur*" should read "*principe cardinal*".

Paragraph 72 was adopted, with that amendment to the French version.

Paragraphs 73 to 83

Paragraphs 73 to 83 were adopted.

(d) Working methods of the Study Group and future work on the topic

Paragraphs 84 and 85

Paragraphs 84 and 85 were adopted.

Paragraph 86

Mr. Patel recalled that he had proposed to the Study Group that the word "should" be replaced by "could" in the last sentence of the paragraph, so that it would read: "It was suggested that the views of States, particularly the ones most affected by sea-level rise, could play an important role in defining the direction of the Study Group's future work."

Mr. Grossman Guiloff said that such States should indeed play an important role. That did not mean, however, that they "must" play an important role: the Commission was not attempting to establish a binding obligation. The word "could" was overly tentative.

Ms. Galvão Teles, supported by **Mr. Ruda Santolaria**, added that both Co-Chairs of the Study Group, as well as other members, had spoken in favour of retaining the word "should".

Paragraph 86 was adopted.

Paragraph 87

Paragraph 87 was adopted.

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

The meeting rose at 6.05 p.m.