

Provisional

For participants only

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Seventy-sixth session

Provisional summary record of the 3722nd meeting

Held at the Palais des Nations, Geneva, on Tuesday, 27 May 2025, at 3 p.m.

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Corrections to this record should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within two weeks of the date of the present document* to the English Translation Section (trad_sec_eng@un.org).



Present:

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

Secretariat:

Mr. Pronto Secretary to the Commission

The meeting was called to order at 3.15 p.m.

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

Chapter V. Immunity of State officials from foreign criminal jurisdiction (continued)
(A/CN.4/L.1008 and A/CN.4/L.1008/Add.1)

The Chair invited the Commission to resume its consideration of chapter V (B) (2) (b) of its draft report (A/CN.4/L.1008), beginning with paragraphs 44 and 46, which had been left in abeyance at the previous meeting.

Paragraph 44 (continued)

Mr. Grossman Guiloff (Special Rapporteur) said that, following informal consultations with interested members, he wished to propose the addition of a new sentence, to be inserted after the first, which would read: "It was observed, *inter alia*, that those crimes were among the oldest examples of crimes under both customary international law and international treaty law, which in its separate work the Commission had qualified as bearing a *jus cogens* character." Two new sentences would also be added at the end of the paragraph, to read: "The exclusion of terrorism or acts of terrorism was reiterated and needed to be included in the list, despite its impact on the international community as a whole. Other members, while rejecting terrorism and considering it a grave crime, for the reasons expressed in the commentary adopted on first reading, was not included in the list, among other reasons for lack of an agreed definition."

Mr. Jalloh said that perhaps the wording for the first of the two proposed new sentences to be added at the end of the paragraph could read: "The exclusion of terrorism or acts of terrorism was reiterated and the argument was made that it needed to be included in the list."

The Chair said that the sentence proposed by Mr. Jalloh could perhaps be amended to read: "Concerns about the exclusion of terrorism or acts of terrorism were reiterated and the argument was made that they needed to be included in the list."

Mr. Grossman Guiloff (Special Rapporteur) said that it was important to retain the reference to the "impact on the international community as a whole" in that sentence in order to properly reflect the agreement reached during the informal consultations.

The Chair said that the sentence would thus read: "Concerns about the exclusion of terrorism or acts of terrorism were reiterated and the argument was made that they needed to be included in the list, because of their impact on the international community as a whole." The next sentence could read: "Other members, while rejecting terrorism and considering it a grave crime, preferred not to include it in the list, for, *inter alia*, the reasons expressed in the commentary adopted on first reading on the lack of an agreed definition."

Mr. Grossman Guiloff (Special Rapporteur) said that the words "preferred not to include it" should be replaced with "thought that it should not be included".

Paragraph 44, as amended, was adopted.

Paragraph 46 (continued)

Mr. Grossman Guiloff (Special Rapporteur) said it had been proposed that the third sentence should be amended to read: "Some members raised concerns regarding the reliance on the Rome Statute of the International Criminal Court in the annex, and the inclusion of crimes that were set out in treaties that were not universally ratified." The end of the third sentence as originally drafted would become the fourth sentence, which would read: "Other members supported the reference to the Rome Statute and its definitions, as well as to the other treaties referred to in the annex which were considered as part of customary international law." A new fifth sentence would be added, which would read: "Others stressed the fact that the pertinent definitions included in the Rome Statute and other treaties were the last definitions of the crimes listed in draft article 7." The rest of the paragraph would remain unchanged.

Paragraph 46, as amended, was adopted.

(c) *General comments to Part Four (Procedural provisions and safeguards)*

Paragraph 47

Paragraph 47 was adopted.

Paragraph 48

Mr. Jalloh said that, in the interest of clarity, perhaps the words “of the State of the official” could be added after the words “concerning notification” in the second sentence.

Paragraph 48, as amended, was adopted.

Paragraph 49

Mr. Jalloh said that the word “noted” should be replaced with “asserted” at the beginning of the first sentence. He would also propose deleting the last two sentences, which he believed introduced some confusion.

Paragraph 49, as amended, was adopted.

Paragraphs 50 and 51

Paragraphs 50 and 51 were adopted.

(d) *Draft article 8 (Application of Part Four)*

Paragraphs 52–55

Paragraphs 52–55 were adopted.

(e) *Draft article 9 (Examination of immunity by the forum State)*

Paragraphs 56–58

Paragraphs 56–58 were adopted.

Paragraph 59

Mr. Sall said that, in the third sentence of the French text, the meaning of the term “*connaissance constructive*” [constructive knowledge] was unclear to him. Could that sentence perhaps be deleted?

Mr. Jalloh said that, in common-law systems, the term “constructive knowledge” was used in criminal law in relation to the mental state of persons in situations where they were presumed to be aware of something in the sense that they should have known. He believed that the concept was relevant in the context of paragraph 59, but perhaps it could be reworded.

Mr. Forteau said that the term “constructive knowledge” had a particular meaning in English, but it was not clear in what sense it was being used in paragraph 59. Did it mean presumed knowledge or knowledge deduced from clues?

Ms. Ridings said that it was she who had referred to constructive knowledge in the debate, but she understood Mr. Sall’s concern. One solution might be to add explanatory wording along the lines of “that is, where the person ought to have been aware of a situation” after the term “constructive knowledge”.

Mr. Forteau said that Ms. Ridings’ proposal was acceptable, but in any case the French expression “*connaissance constructive*” remained problematic and could perhaps be replaced with “*connaissance implicite*”.

Mr. Jalloh said that perhaps the reference could be reformulated to read: “the ‘should have known’ standard of criminal law (constructive knowledge)”.

Mr. Grossman Guiloff (Special Rapporteur) said that the concept of “constructive knowledge” was also problematic in Spanish. It might be helpful to amend the beginning of

the first sentence to read “Further clarification of the scope, nature and subjective content of the obligation”.

The Chair said that the English text should perhaps be left unchanged, since constructive knowledge was a technical expression used in common-law systems and had not been explained in the debate, while the French text could be amended using one of the proposals put forward by Mr. Forteau.

Mr. Forteau said that the expression was not easily translatable into French, and the original English term would in any case have to be included in parentheses after the French term.

Mr. Sall said that “constructive knowledge” could be translated as either “*connaissance présumée*” or “*connaissance implicite*”, although they did not mean the same thing. Either would be acceptable, in his view.

Mr. Grossman Guiloff (Special Rapporteur) said that he would be in favour of a formulation that incorporated the concept of “should have known”.

Ms. Ridings said that perhaps the French version could include the term “constructive knowledge” in English in quotation marks and parentheses, followed by the words “that is, when a person should have known” in all language versions.

Paragraph 59, as amended, was adopted.

Paragraph 60

Paragraph 60 was adopted.

(f) *Draft article 10 (Notification to the State of the official)*

Paragraphs 61–65

Paragraphs 61–65 were adopted.

Paragraph 66

Mr. Jalloh proposed replacing the words “complete removal” in the third sentence with “deletion”.

Paragraph 66, as amended, was adopted.

(g) *Draft article 11 (Invocation of immunity)*

Paragraphs 67–70

Paragraphs 67–70 were adopted.

(h) *Draft article 12 (Waiver of immunity)*

Paragraph 71

Paragraph 71 was adopted.

(i) *Draft article 13 (Requests for information)*

Paragraphs 72 and 73

Paragraphs 72 and 73 were adopted.

(j) *Draft article 14 (Determination of immunity)*

Paragraphs 74–76

Paragraphs 74–76 were adopted.

(k) *Draft article 15 (Transfer of the criminal proceedings)*

Paragraph 77

Paragraph 77 was adopted.

(l) *Draft article 16 (Fair treatment of the State official)*

Paragraph 78

Paragraph 78 was adopted.

(m) *Draft article 17 (Consultations)*

Paragraph 79

Paragraph 79 was adopted.

(n) *Draft article 18 (Settlement of disputes)*

Paragraph 80

Paragraph 80 was adopted.

Paragraph 81

Mr. Galindo, supported by **Mr. Jalloh**, said that, for the sake of consistency with the rest of the chapter, which made no mention of specific States, “Austria” should be replaced with “one State”. Readers would be able to identify the State concerned using the reference contained in footnote 33.

The Chair said that an even simpler solution would be to delete the words “of Austria”.

Paragraph 81, as amended, was adopted.

Paragraph 82

Mr. Jalloh said that the summary contained in the paragraph did not reflect all the observations made by several members about the dispute settlement clause in draft article 18. He proposed inserting two new sentences after the second sentence. The first would read: “Other members expressed concern that the opt-out provision departed from the formulation typically found in widely accepted criminal law treaties adopted by States, and that in any event, it would be unrealistic in the context of allegations of international crimes to first require negotiation.” The second would read: “It was suggested that direct access to the Court should be preferred and that the provision could be aligned with the dispute settlement clause of the Genocide Convention.”

Mr. Forteau said that, as the paragraph concerned the question of whether the Commission should propose a provision under which States could opt out of the jurisdiction of the International Court of Justice, inserting in the middle of the paragraph new language regarding negotiation as a precondition before disputes were submitted to the Court could cause confusion, since that was an entirely separate issue.

Mr. Jalloh said that, under draft article 18 (1), the forum State and the State of the official were required to seek a solution to a dispute concerning the interpretation or application of the draft articles by negotiation prior to submitting the dispute to the International Court of Justice. During the debate, the appropriateness of that provision in the context of the draft articles had been called into question several times, and it was that view that he was trying to convey. The multilevel dispute settlement system created by draft article 18 was different from the dispute settlement clauses found in criminal law treaties and in the Convention on the Prevention and Punishment of the Crime of Genocide; the latter simply provided that disputes should be submitted directly to the Court. The new language that he had proposed was not misplaced because the following sentence addressed the dispute

settlement clause more broadly and observed that it was ultimately a matter for States to decide.

Mr. Forteau said that, for the sake of coherence, the new language proposed by Mr. Jalloh should be inserted elsewhere in the chapter, as paragraph 82 concerned only the question of an opt-out provision.

The Chair said that he wondered whether the first new sentence proposed by Mr. Jalloh could be shortened to end after “adopted by States” to avoid introducing the separate issue of negotiation.

Mr. Jalloh said that, while he could accept the Chair’s proposal to shorten the first new sentence that he had suggested, he wished to point out that the question of whether to add an opt-out provision and the question of negotiation were in fact linked. Draft article 18 (1), by requiring the States concerned to follow a sequence in which they first attempted to resolve a dispute through negotiation, would effectively allow them to opt out of submitting the dispute to the Court.

Mr. Grossman Guiloff (Special Rapporteur) said that the new language proposed by Mr. Jalloh might be better placed after the first sentence of the paragraph, which introduced the idea of “differing views”. The new sentence would convey some members’ disagreement with the idea of an opt-out provision. The start of the current second sentence should then be revised to read “It was noted, however, that such an opt-out provision would allow”.

The Chair said that, if the new language proposed by Mr. Jalloh was inserted after the first sentence, the words “Other members” should be revised to read “Some members”.

Mr. Forteau said he still had the impression that the language proposed by Mr. Jalloh did not address the question of an opt-out provision. The debate summarized in paragraph 82 had concerned the issue of whether draft article 18 should include a provision similar to draft article 15 (3) of the Commission’s draft articles on prevention and punishment of crimes against humanity, under which States could declare that they did not consider themselves bound by the compromissory clause. Mr. Jalloh’s proposal seemed to be focused on the requirement for States to negotiate before submitting a dispute to the International Court of Justice, which, to his mind, was a different matter entirely. The two issues were separate and should not be conflated in paragraph 82.

Mr. Jalloh said that he supported the proposal made by the Special Rapporteur and had no objection to deleting the latter part of the first new sentence that he had proposed, as suggested by the Chair.

The Chair said that the beginning of the paragraph would thus read: “Differing views were expressed as to whether an opt-out provision concerning the jurisdiction of the International Court of Justice should be added. Some members expressed concern that the opt-out provision departed from the formulation typically found in widely accepted criminal law treaties adopted by States. It was noted, however, that such an opt-out provision”.

Paragraph 82, as amended, was adopted.

(o) *Final form*

Paragraph 83

Mr. Grossman Guiloff (Special Rapporteur) proposed replacing the words “A number of” at the start of the paragraph with “Several” to reflect the fact that there had been effectively unanimous agreement among members that draft articles were the most appropriate format for the outcome of the topic.

Mr. Galindo said that the Special Rapporteur had raised a fundamental point and that he supported the proposed amendment.

Mr. Jalloh said that he too supported the proposal put forward by the Special Rapporteur.

Paragraph 83, as amended, was adopted.

Paragraph 84

Mr. Jalloh said that, in the light of the debate on the topic, further details should be added to explain the position taken by some members that the Commission should recommend to the General Assembly that the draft articles should be considered as a basis for the negotiation of a treaty. He proposed inserting, after the first sentence, a new sentence that would read: “That would protect the sovereign right of States and respect the separation of competences between the Commission and the Sixth Committee.” The current second sentence should be revised to read: “The view was expressed that now, when international law was under attack in some quarters, was not the time to recommend the negotiation of such a treaty.”

Mr. Forteau said that “under attack”, at least in French, was a strange choice of wording. He wondered whether “under attack” could be replaced with an alternative expression.

The Chair said that such alternatives might include “challenged” or “questioned”.

Mr. Galindo said that the language “when international law was under attack in some quarters” was too strong and did not add much value to the paragraph, which already provided a general snapshot of the discussion that had taken place. Although he was not in favour of adding such wording, he could support alternative wording if the majority of Commission members wished to include it.

Mr. Jalloh said that he had expressed the view that international law was under attack during the debate on the topic. However, in view of the concerns raised by colleagues, he was not opposed to amending his proposal along the lines suggested by the Chair, provided that the essence of the point was retained.

Mr. Fife said that he had doubts about the usefulness of including such a statement, true as it might be, in the paragraph. International law had been challenged before and would undoubtedly be challenged again in the future.

Mr. Zagaynov said he agreed with Mr. Galindo and Mr. Fife that such an addition was unnecessary and that it would be better to take a more general approach in the paragraphs summarizing the debate.

Mr. Grossman Guiloff (Special Rapporteur) said that incorporating such language could strain the relationship between the Commission and the Sixth Committee and might require the addition of further explanations to the paragraph. The current second sentence was clear without the proposed amendment.

Mr. Jalloh said that, while it was odd that the Commission was negotiating on views that had been expressed by members, as shown by the summary records, he agreed with the Special Rapporteur that it was best not to open new issues. He shared Mr. Fife’s view that it was not the first time in history that international law had been challenged; it was thus important to take a long-term view of the current circumstances.

The Chair said he took it that the Commission wished to adopt the paragraph with the addition of the new second sentence proposed by Mr. Jalloh. The rest of the paragraph would remain the same.

Paragraph 84, as amended, was adopted.

(p) *Future programme of work*

Paragraph 85

Paragraph 85 was adopted.

3. *Concluding remarks by the Special Rapporteur*

Paragraphs 86–88

Paragraphs 86–88 were adopted.

Paragraph 89

Mr. Ouazzani Chahdi said that there appeared to be a few editorial issues in the first and last sentences of the French version of the paragraph. In particular, the reference to States from underrepresented regions was unclear.

Mr. Grossman Guiloff (Special Rapporteur) said that, while he was aware that some States' capacity to comment on the Commission's texts was limited, he had intended to convey the fact that States had been given ample opportunity over the years to do so.

Mr. Galindo said that some Member States had small delegations that were hard-pressed to cover all the Main Committees of the General Assembly. He agreed with Mr. Ouazzani Chahdi's point.

Mr. Grossman Guiloff (Special Rapporteur) proposed that the last sentence should be deleted.

Paragraph 89, as amended, was adopted, subject to minor drafting changes to the French text.

Paragraphs 90–102

Paragraphs 90–102 were adopted.

Paragraph 103

In reply to **Mr. Forteau's** request for clarification of the word "inviolability" in the second sentence, **the Chair** pointed out that the word should read "invalidity".

Paragraph 103, as amended, was adopted.

Paragraphs 104 and 105

Paragraphs 104 and 105 were adopted.

Paragraph 106

Mr. Jalloh said that the summary of the debate contained a number of references to the judgment of the International Court of Justice in *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*. Paragraph 106 referred to paragraph 196 of that judgment but did not mention the object of that paragraph. In paragraph 196, the Court simply discussed the arguments of the parties to the case and the fact that a State that sought to claim immunity for one of its organs assumed responsibility for any internationally wrongful act committed by such organ. However, there was no reference to that point in the summary. An explanation to that effect should perhaps be added to paragraph 106.

Mr. Forteau said that paragraph 106 referred back to a proposal mentioned in paragraph 37, which had already been adopted. The proposal was to include a new draft article based on paragraph 196 of the judgment, to the effect that, when a State invoked immunity, it assumed international responsibility for the acts covered by such immunity. If clarification was needed, as suggested by Mr. Jalloh, it should be made in paragraph 37.

The Chair suggested that footnote 38 should include a cross reference to paragraph 37.

Paragraph 106 was adopted with that amendment to footnote 38.

C. Text of the draft articles on immunity of State officials from foreign criminal jurisdiction provisionally adopted by the Commission on second reading at its seventy-sixth session

1. Text of the draft articles

Paragraph 107

Paragraph 107 was adopted.

The Chair invited the Commission to consider the portion of chapter V of the draft report contained in document [A/CN.4/L.1008/Add.1](#).

2. *Text of the draft articles and commentaries thereto provisionally adopted by the Commission, on second reading, at its seventy-sixth session*

Paragraph xx

The Chair said that the paragraph would be renumbered to follow on from those contained in document [A/CN.4/L.1008](#).

Paragraph xx was adopted.

Commentary to draft article 1 (Scope of the present draft articles)

Paragraph (1)

Mr. Akande said that, in the third sentence, it was misleading to say that “paragraph 2 contains a ‘without prejudice’ clause listing the situations which, under international law, are governed by special regimes”, because paragraph 2 of draft article 1 did not contain a list, but rather provided some examples. Therefore, he proposed that the end of the sentence, after the words “a ‘without prejudice’ clause”, should be replaced with “which excludes from the scope of the draft articles special rules of international law on immunity of State officials”.

The fourth sentence, which began with the words “Paragraph 3 contains a clause referring to international criminal courts and tribunals”, was not accurate. Paragraph 3 was not about international courts and tribunals but rather agreements relating to international courts and tribunals. He proposed that the words “agreements regarding rights and obligations in relation to” should be added before “international criminal courts and tribunals”.

Mr. Grossman Guiloff (Special Rapporteur) said that Mr. Akande’s proposal to eliminate the words “listing the situations” would remove the implicit reference to “special rules ... enjoyed in particular by persons connected with diplomatic missions, consular posts, special missions, international organizations and armed forces of a State” in draft article 1 (2). The proposal was a dramatic change from what the Commission had been discussing over the years and would have serious consequences. The proposed amendment would have been interesting to consider if it had been presented at an earlier stage. Unfortunately, Mr. Akande had not indicated whether States were supportive of his proposal, which would require a drastic revision of the commentary. The proposal would also eliminate the reference to “special regimes”. The purpose of the discussion at the current time was not to introduce such amendments.

Mr. Galindo said that, while he understood Mr. Akande’s concerns, he believed that the best option would be to retain paragraph (1) as it stood. In particular, he was concerned at the proposal to change “special regimes” to “special rules”. It was crucial to maintain the term “regime”, which had been used by the International Court of Justice in the case concerning *United States Diplomatic and Consular Staff in Tehran*. There were many implications, because a regime was much more than a set of rules. The Court had said that the rules of diplomatic law constituted a self-contained regime.

Mr. Akande said that he had no objection to the use of the term “special regimes”. In making his proposal, he had used “special rules” because those words appeared in draft article 1 (2). It should be recalled that paragraph (10) of the commentary to draft article 1 stated that the Commission had used the term “special rules” as a synonym for the words “special regimes”. He thus did not believe that he was proposing any change in substance.

His first proposal related to draft article 1 (2). He opposed the use of the words “listing the situations” in paragraph (1) of the commentary because paragraph 2 did not contain a list. Paragraph (15) of the commentary to draft article 1 explained why the list of special rules described in paragraph 2 was qualified by the words “in particular”. His proposal was meant to make paragraph (1) consistent both with the draft article and with what came later in the commentary to make it clear that draft article 1 (2) did not contain an exhaustive list.

The second proposal, concerning the sentence referring to draft article 1 (3), would require some revision to the commentary, because paragraph 3 was not about international courts and tribunals, but agreements relating to them. That was important because, with regard to international courts and tribunals, the question of immunity of States acting at the request of those courts was separate from the question of immunity before those courts themselves. The commentary should not elide those two things. In his view, some parts of the old commentary did not reflect what had been discussed.

Mr. Grossman Guiloff (Special Rapporteur) said that, in considering the commentaries, the Commission should focus on one paragraph at a time, which was important from a methodological perspective. It was also important to bear in mind that the Commission was considering the text on second reading. Therefore, any substantive changes should be based on opinions expressed by States.

Mr. Jalloh said it appeared that a compromise could be found with regard to Mr. Akande's first proposal, since Mr. Akande did not object to the use of the term "special regimes". Concerning the reference in the commentary to draft article 1 (3), he believed that the proposed amendment mirrored the language of the draft article itself. The Special Rapporteur's concerns could be accommodated if more text from paragraph 3 was incorporated into the commentary. Therefore, he proposed the addition of the words "in relation to the operation of international criminal courts and tribunals" after the phrase proposed by Mr. Akande, "agreements regarding rights and obligations".

Ms. Ridings said that she understood Mr. Akande's point of view and agreed with Mr. Galindo that the reference to "special regimes" should be retained. She also generally supported the way forward suggested by Mr. Jalloh. She wished to raise a broader point concerning second readings. Draft articles 1, 3 and 4 and the commentaries thereto had been adopted in 2013 and the first reading had taken place in 2022. Therefore, the commentaries were already quite old, especially where they had remained unchanged since their initial adoption. She appreciated the Special Rapporteur's view that, on second reading, changes to the commentaries should be made only for explicit reasons, including statements by States in the Sixth Committee. It would be interesting to learn the extent to which States actually suggested changes to the commentaries, as opposed to the draft articles themselves. She regarded commentaries as being particularly important for draft articles because they provided the background and the views of the Commission on those texts. As the draft articles were intended to form the basis for the development of a convention, the Commission's views were very important, particularly when they were relevant to the understanding of the draft articles. She would welcome the views of the Chair and the Special Rapporteur as to what they considered to be the correct procedural approach at the current stage.

Mr. Grossman Guiloff (Special Rapporteur) said that he generally agreed with Ms. Ridings' remarks but wished to make one correction. The commentaries currently being considered by the Commission were not identical to those that had been adopted years earlier. Over the preceding year, he had adapted them in the light of the Commission's discussions at its seventy-fifth session and had incorporated new elements.

He did not understand the remark that paragraph 2 of the draft article contained no list, as the "diplomatic missions, consular posts, special missions, international organizations and armed forces of a State" referred to in that paragraph comprised a list. The decision as to how to proceed was the Commission's, but if it decided to pursue comprehensive amendments to the commentaries, he would appreciate receiving members' proposed changes in advance, in writing, to the extent possible. He would then be able to consider the implications of the proposals in the light of States' comments.

Mr. Galindo said that, while he understood the Special Rapporteur's concerns, in his view, it was important to accommodate the wish that many members had expressed to have their views reflected in the commentaries.

Mr. Forteau said that the Commission's key concern should be to produce a text that was legally correct. The draft commentary to draft article 1 was largely identical to the commentary adopted on first reading except in paragraph (19) and the subsequent paragraphs, which addressed paragraph 3 of the draft article. The Commission should therefore carefully

consider Mr. Akande's proposal regarding what was said in paragraph (1) of the commentary about paragraph 3 of the draft article.

Mr. Jalloh said that, in his experience, the Commission had never reflected minority views in its commentaries adopted on second reading, as Mr. Galindo had appeared to suggest it should do. Such views were, however, reflected at the first-reading stage for the purpose of making States aware of the Commission members' different perspectives.

The Chair said it was true that minority views were not reflected in commentaries adopted on second reading; the views expressed were those of the Commission as a whole. He took it that the Commission wished to amend the third sentence of paragraph (1) as proposed by Mr. Akande, except that "special rules" would be changed to read "special regimes", and, in the fourth sentence, to insert the words "international agreements establishing or relating to the operation of", which were taken directly from the text of paragraph 3 of the draft article, immediately before the words "international criminal courts and tribunals".

Paragraph (1), as amended, was adopted.

Paragraphs (2) and (3)

Paragraphs (2) and (3) were adopted.

Paragraph (4)

Mr. Galindo said that the phrase "those persons who represent or act on behalf of a State", which were used in the first sentence of paragraph (4) and appeared to constitute a definition of "State official", should be replaced with the term "State official". As the Commission had not yet adopted a definition of the term, the inclusion of that phrase could prejudice the issue of the definition.

Mr. Fife, supported by **Mr. Grossman Guiloff** (Special Rapporteur), said that, in the third to last sentence, the phrase "benefit from the immunity" should be replaced with "enjoy the immunity", as it was generally agreed that the purpose of immunity was not to benefit individuals.

The Chair recalled that draft article 2, "Definitions", had been left pending before the Drafting Committee so that the Committee could determine whether further definitions should be added to it. However, draft article 2 (a) as adopted on first reading, which defined a "State official" as "any individual who represents the State or who exercises State functions", seemed to enjoy considerable support.

Mr. Jalloh said that, while he had no objection to the language used by the Special Rapporteur in paragraph (4), the Commission could perhaps address Mr. Galindo's concern by using the wording of draft article 2 (a), which the Chair had quoted, on which there was broad agreement. The use of a definition rather than the words "State official" would be more helpful to readers of the commentary, and the Commission would still have the possibility of altering that definition when it returned to draft article 2.

Mr. Grossman Guiloff (Special Rapporteur) said that the paragraph as worded would in no way prejudice the matter of the definition. As the paragraph explicitly stated that the term "State official" was defined in draft article 2 (a), the term would automatically reflect whatever definition the Commission agreed on when it returned to that draft article.

Mr. Akande, supported by **Mr. Grossman Guiloff** (Special Rapporteur), proposed replacing, in the first sentence, the words "those persons who represent or act on behalf of a State" with the term "State officials" and then inserting what was currently the penultimate sentence, which read "This term has been defined in draft article 2 (a), to whose text and commentary attention is drawn", immediately after the first sentence. In that way, no definition would be needed, and the Commission would, in paragraph (4), simply be referring to whatever draft article 2 (a) would say.

Mr. Galindo said that, while he appreciated Mr. Akande's proposal, he was persuaded by Mr. Jalloh's remarks and wished to withdraw his earlier proposal.

Mr. Forteau said that he supported Mr. Akande's proposal to streamline the paragraph, given the inconsistency between the language used in the first sentence of paragraph (4) and the language used in draft article 2 (a) as adopted on first reading. Acting on behalf of a State was not the same thing as exercising State functions.

Paragraph (4), as amended by Mr. Fife and Mr. Akande, was adopted.

The meeting rose at 6.05 p.m.