

Provisional

For participants only

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Seventy-sixth session

Provisional summary record of the 3726th meeting

Held at the Palais des Nations, Geneva, on Thursday, 29 May 2025, at 3 p.m.

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Present:

Chair: Mr. Paparinskis

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

Secretariat:

Mr. Pronto Secretary to the Commission

The meeting was called to order at 3.10 p.m.

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

Chapter VI. General principles of law (continued) (A/CN.4/L.1009)

The Chair invited the Commission to resume its consideration of chapter VI of its draft report (A/CN.4/L.1009), beginning with paragraph 58, which had been left in abeyance at the previous meeting.

Paragraph 58 (continued)

Mr. Vázquez Bermúdez (Special Rapporteur) said that, on the basis of his informal consultations with members since the previous meeting, he wished to propose a new version of paragraph 58, which would read:

Members generally supported draft conclusion 9 as presented in the fourth report. With respect to that draft conclusion, members welcomed the necessity of representativeness when assessing teachings. Members emphasized the need to maintain consistency with the treatment in this topic of the Commission's ongoing work on subsidiary means for the determination of rules of international law. It was suggested that no modification be introduced to the text, in this topic, considering the current stage of the work of the Commission on subsidiary means for the determination of rules of international law, since the work on the latter was still ongoing. The view was expressed that draft conclusion 9 should be formulated in the same terms as in the subsidiary means topic.

Paragraph 58, as amended, was adopted.

Paragraph 59

Mr. Grossman Guiloff proposed that, for the sake of clarity, the comma after the word "law" should be replaced with a full stop. The rest of the sentence would become a new sentence that would read: "That was to indicate that teachings could constitute subsidiary means for the determination of general principles of law, especially those generally reflecting the coinciding views of persons with competence in international law from the various legal systems and regions of the world."

Mr. Jalloh proposed that the phrase "the developments in the study of subsidiary means" should be amended to read "the formulation used in the draft conclusions on subsidiary means". As for Mr. Grossman Guiloff's proposal to rearrange the clauses in what would become the second sentence, he was concerned that the new structure would depart from that of draft conclusion 5 of the draft conclusions on subsidiary means and could imply that there was some doubt as to whether teachings could constitute subsidiary means for the determination of general principles of law.

Mr. Grossman Guiloff said that he had no objection to the substance of the paragraph, but had simply wished to improve its readability. If the Commission preferred not to rearrange those clauses, he would withdraw that part of his proposal.

Paragraph 59, as amended, was adopted.

Paragraph 60

Mr. Savadogo said that the words "for the determination of rules of international law" should be inserted after the words "subsidiary means".

Paragraph 60, as amended, was adopted.

Paragraph 61

Paragraph 61 was adopted, subject to minor drafting changes to the French text.

(k) *Draft conclusion 10 (Functions of general principles of law)*

Paragraph 62

The Chair said that Mr. Lee had proposed a new sentence to be added at the end of the paragraph, to read: “It was pointed out whether the distinction between the two categories of general principles of law as provided for in draft conclusion 3 was properly reflected in draft conclusion 10, which appeared to erode the significance of the second category of general principles of law by according the gap-filling role to both categories of general principles of law.”

Paragraph 62, as amended, was adopted with a minor editorial correction to the French text.

Paragraphs 63–65

Paragraphs 63–65 were adopted.

Paragraph 66

Mr. Galindo proposed that, in the first sentence, the phrase “which had not been referred to before in the context of the present topic” should be replaced with “in the body of the draft conclusions, since such distinction was only referred to in the commentaries of previous work of the Commission”.

Paragraph 66, as amended, was adopted with minor drafting changes.

Paragraph 67

Paragraph 67 was adopted.

(l) *Draft conclusion 11 (Relationship between general principles of law and treaties and customary international law)*

Paragraph 68

Mr. Jalloh proposed that the phrase “under Article 38, paragraph 1 (a) to (c), of the Statute of the International Court of Justice” should be inserted at the end of the second sentence and that the word “operation” should be changed to “application” in the last sentence.

Paragraph 68, as amended, was adopted.

Paragraph 69

Mr. Jalloh said that the paragraph, especially the phrase “as those derived from national legal systems might fall under a hierarchy”, was confusing; he proposed that it should be deleted in its entirety.

Mr. Akande, noting that the phrase highlighted by Mr. Jalloh referred to a point that he himself had made, said that paragraph 69 elaborated on the points made about hierarchy in paragraph 68. He suggested, for the sake of clarity, that the words “With regard to the question of hierarchy” should be inserted at the beginning of the first sentence.

Mr. Jalloh said that, while he did not object to Mr. Akande’s proposed amendment, it did not clarify the meaning of the entire paragraph. The second sentence referred to the idea that general principles of law formed within the international legal system were not in a hierarchical relationship with treaties and customary international law, but the first sentence said only that general principles of law derived from national legal systems “might fall under a hierarchy”, without specifying the elements relative to which such a hierarchy might exist.

Mr. Akande suggested that, in the first sentence, in addition to his previously proposed amendment, the phrase “as those derived from national legal systems might fall under a hierarchy” should be deleted, since the point was made clear in the remainder of the paragraph.

Paragraph 69, as amended, was adopted.

Paragraph 70

Paragraph 70 was adopted.

Paragraph 71

Mr. Lee proposed amending footnote 12 to refer to the 1984 judgment on jurisdiction and admissibility in the case cited in the footnote, with a specific reference to paragraph 73 of that judgment.

Mr. Asada said that it was he who had referred to the 1986 judgment on the merits in the case cited in footnote 12. Paragraph 175 of that judgment concerned the issue of coexistence of the same norm in different sources.

The Chair suggested that the footnote should include references to both judgments, with the specific paragraph number added to the citation of the 1986 judgment.

Paragraph 71 was adopted with those amendments to footnote 12.

Paragraph 72

Paragraph 72 was adopted.

Paragraph 73

The Chair said that Mr. Asada had submitted a proposal to redraft the second and third sentences to read: “The view was expressed that it might be difficult to envisage the circumstances in which the persistent objector rule was applied to a general principle of law, but it was acknowledged that such a rule would be applicable to a subsequent customary rule emerging with a similar content. In that respect, concern was voiced that the persistent objector rule would face conceptual difficulties if a State could object to the formation of a customary rule, but not to a general principle of law with the same content.”

Mr. Jalloh said that the paragraph seemed to amplify an issue that had been raised by only one State. It was a substantive issue that would require broader discussion by the members if it was to be included in the Commission’s report. He was concerned that, given the current international environment, the Commission was playing into a particular view of international law.

The Chair, noting that he, Mr. Zagaynov and Mr. Akande had raised the issue of the persistent objector rule during the plenary debate on the topic, said that the third sentence of the paragraph accurately reflected language that he himself had used in his statement.

Mr. Akande said he recalled that at least four members had expressed the concern referred to in the third sentence of the paragraph.

Mr. Lee said that, while he was sympathetic to Mr. Jalloh’s concerns in substantive terms, the task before the Commission was to ensure that the report reflected the debate on the topic accurately and in a balanced manner. The fact that the persistent objector rule was mentioned in no fewer than three paragraphs of the draft report attested to the importance attributed to the matter.

Mr. Asada, echoing the points made by Mr. Akande and Mr. Lee, said that he had proposed changes to the paragraph in order to better reflect what he had said in the plenary debate regarding the persistent objector rule.

Mr. Galindo said that the draft report should accurately reflect the Commission’s discussion during the plenary debate. Substantive issues, including the persistent objector rule, would be addressed in the commentaries to the draft conclusions.

Mr. Jalloh said that he was grateful to members for recalling their statements regarding the persistent objector rule, although he took a different view on that point. He could support the changes proposed by Mr. Asada, with the exception of the replacement of the phrase “would be difficult to envisage” with “might be difficult to envisage”. He would

also propose a new sentence, to be added to the end of the paragraph, which would read: “The view was expressed that the persistent objector rule, as known in customary international law, had no bearing on general principles of law.” That sentence captured his own view and that of a number of other members.

Mr. Vázquez-Bermúdez (Special Rapporteur) said that he supported the proposals made by Mr. Jalloh.

Paragraph 73, as amended, was adopted.

Paragraph 74

Paragraph 74 was adopted.

Paragraph 75

Mr. Lee proposed that the last sentence of the paragraph, whose meaning was identical to that of the second sentence of paragraph 74, should be deleted.

Paragraph 75, as amended, was adopted.

Paragraph 76

Mr. Savadogo proposed that, in the penultimate sentence, the word “established” should be deleted from the phrase “the established hierarchy of norms”.

Paragraph 76, as amended, was adopted, subject to minor editorial changes to the French text.

Draft conclusion 12 (General principles of law with a limited scope of application)

Paragraph 77

Paragraph 77 was adopted.

Paragraph 78

Mr. Jalloh said that the last phrase of the paragraph was an inaccurate reflection of a view that had been expressed by several members during the plenary debate. He proposed that the phrase “that could also be the case for general principles of law” should be replaced with “the same could not be said of general principles of law, which might admit of a more limited or context-specific scope”.

Paragraph 78, as amended, was adopted.

Paragraph 79

Mr. Lee proposed that, in the second sentence, the word “subregional” should be changed to “regional”, in line with the reference to regional international organizations in the third sentence.

Mr. Forteau said that the word “subregional” should be retained if it had been used in the plenary debate. It was possible that States had commented on the existence of regional general principles of law but not on the existence of subregional general principles of law.

Mr. Ouazzani Chahdi said that the phrase “new category” in the third sentence was not appropriate in the context, as it could be understood to mean that an additional category of principles beyond those mentioned in draft conclusion 7 already existed. Moreover, the following phrase stated that principles belonging to such a category would not be principles universally recognized by the community of nations. He therefore proposed that the word “new” should be deleted or that a new formulation should be found to refer to such principles.

Mr. Forteau said that the members who had expressed the view reflected in the third sentence doubted the existence of such a category and it was for that very reason that the Special Rapporteur had qualified it with the word “new”, in a phrase formulated in the conditional tense. To address the concern expressed by Mr. Ouazzani Chahdi, he suggested

that the first part of the third sentence should be amended to read “*D’aucuns ont relevé qu’une telle catégorie de principes ne serait contraignante que*” [It was noted that such a category would only bind].

Mr. Vázquez-Bermúdez (Special Rapporteur) said that, although “subregional” general principles of law had been referred to, he agreed that the word “subregional” in the current paragraph created some ambiguity and should be replaced with “regional”.

Paragraph 79, as amended, was adopted.

Paragraph 80

Mr. Sall proposed that, in the first sentence, the phrase “was limited to the respective region or subregion and should not transgress peremptory norms of general international law (*jus cogens*)” should be replaced with “was limited to one region”. He was not sure of the value of the second sentence; however, if it was to be retained, he suggested that the words “regional, bilateral or local” should be deleted.

Mr. Vázquez-Bermúdez (Special Rapporteur) said that the expression “the respective region” had been used in the first sentence to signal that the Commission was referring to a region in which a general principle of law had arisen. The second sentence referred to the doubts expressed during the plenary debate as to whether the term “limited” could take into account all the complexities of regional, bilateral or local general principles of law. In his view, both sentences were sufficiently clear in English and should remain as drafted.

Mr. Forteau said that he agreed with the Special Rapporteur. In the second sentence, he understood the modifiers “regional, bilateral or local” to indicate that there were subcategories within the category of general principles of law with a limited scope of application, which was why the term “limited” could be seen as reductionist.

Mr. Sall said that he was willing to withdraw his proposed amendments in the light of the Special Rapporteur’s explanations.

Paragraph 80 was adopted.

Paragraph 81

Paragraph 81 was adopted.

(n) *Final form*

Paragraphs 82 and 83

Paragraphs 82 and 83 were adopted.

(o) *Future programme of work*

Paragraphs 84 and 85

Paragraphs 84 and 85 were adopted.

3. *Concluding remarks of the Special Rapporteur*

Paragraph 86

Paragraph 86 was adopted.

Paragraph 87

Mr. Vázquez-Bermúdez (Special Rapporteur) proposed amending the second sentence of the paragraph to read: “He agreed that a rigorous and careful approach was essential, given the systemic implications for the sources of international law.” At the end of the last sentence, the words “as developed by States over the years” should be added.

Paragraph 87, as amended, was adopted.

Paragraphs 88–92

Paragraphs 88–92 were adopted.

Paragraph 93

Mr. Vázquez-Bermúdez (Special Rapporteur) proposed amending the second sentence to read: “He acknowledged that several members affirmed that the second category was not *lex ferenda*, and it was firmly rooted in the intellectual and legal history of international law.” A new third sentence should be added, which would read: “The Special Rapporteur reiterated his conviction that general principles of law falling within the second category existed and there was sufficient practice and teachings to support their inclusion in the draft conclusions.”

Mr. Forteau said that, while paragraph 93 accurately reflected what the Special Rapporteur had said in summing up the debate, he wished to place on record his disagreement with the Special Rapporteur’s understanding of the conclusions to be drawn from the plenary debate. The first sentence of paragraph 93 referred to “general support” for maintaining the two-category structure set out in draft conclusion 3, which distinguished between general principles of law derived from national legal systems and those formed within the international legal system. However, during the debate, several members had expressed doubts or disagreement regarding the existence of a second category of general principles of law, as noted in paragraphs 36 to 39 of chapter VI. Consequently, it was not accurate to state that there was “general support” for draft conclusion 3 and for the existence of a second category of general principles of law.

Paragraph 93, as amended, was adopted.

Paragraphs 94–99

Paragraphs 94–99 were adopted.

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

Chapter X. Prevention and repression of piracy and armed robbery at sea
([A/CN.4/L.1013](#))

The Chair invited the Commission to begin its consideration of chapter X of its draft report ([A/CN.4/L.1013](#)).

Mr. Savadogo (Special Rapporteur) said that he had, on several occasions, drawn the Commission’s attention to the fact that the use of the singular form “*vol à main armée*” [armed robbery] in the title of the topic in French was inconsistent with the relevant texts of the Security Council, regional organizations and the International Maritime Organization, which used the plural form “*vols à main armée*” in French. While he believed that the use of the singular form in French was incorrect, he would not oppose its retention if the Commission preferred not to change it.

The Chair said that amending the title of the topic in French could have significant implications across the different languages. He wondered whether the Special Rapporteur might consider raising that issue in his next report, providing an explanation and putting forward a proposal for discussion during the plenary debate.

Mr. Savadogo (Special Rapporteur) said that the Chair’s suggestion was acceptable.

*A. Introduction**Paragraph 1*

Mr. Savadogo (Special Rapporteur) proposed ending the current second sentence, which was excessively lengthy, after the words “*vues exprimées par les États*” [views expressed by States] and beginning a new third sentence with the words “*L’étude devrait également tenir compte de la doctrine*” [The memorandum would also concern writings].

Paragraph 1, as amended, was adopted.

Paragraph 2

Paragraph 2 was adopted.

Paragraph 3

Mr. Savadogo (Special Rapporteur) proposed ending the first sentence in the French version of the text, which was also excessively lengthy, with the words “*analysait le droit international applicable à la piraterie et au vol à main armée en mer en relevant ses lacunes*” and beginning a new second sentence with the words “*Il examinait la législation*”.

Paragraph 3 was adopted with those amendments to the French text.

Paragraphs 4 and 5

Paragraphs 4 and 5 were adopted.

B. Consideration of the topic at the present session

Paragraph 6

Mr. Forteau proposed, for the sake of coherence, replacing the words “Working Group” in the final sentence of the paragraph with “Commission”, as the decision to establish the Working Group had not been taken until after the submission of the note by the Special Rapporteur.

Paragraph 6, as amended, was adopted.

Paragraphs 7–9

Paragraphs 7–9 were adopted.

C. Report of the Chair of the Working Group

The Chair said that the title of the section would be amended to read “Report of the Working Group” in line with the changes made in other chapters of the Commission’s draft report.

Paragraph 10

Paragraph 10 was adopted.

Paragraph 11

Mr. Savadogo (Special Rapporteur) proposed reformulating the first sentence of the paragraph to read “*Les membres du Groupe de travail ont accueilli la note ainsi que l’annexe contenant des références à des instruments juridiques nationaux, ainsi que des instruments juridiques internationaux, universels et régionaux. L’annexe comportait également des lois et règlements, ainsi que la jurisprudence, ainsi que des références à la jurisprudence des cours et tribunaux internationaux et nationaux*” [Members of the Working Group welcomed the note and the annex containing references to national legal instruments, as well as international, universal and regional legal instruments. The annex also included laws and regulations, as well as references to the case law of international and national courts and tribunals].

Mr. Sall said that it would be useful to receive the Special Rapporteur’s proposal in writing.

Paragraph 11 was left in abeyance.

Paragraph 12

Mr. Savadogo (Special Rapporteur) proposed revising the first sentence of the paragraph to read “*Des membres du Groupe de travail ont rappelé les discussions tenues lors de la session précédente au sujet des relations entre le thème à l’étude et la Convention des Nations Unies sur le droit de la mer*” [A number of members of the Working Group recalled

the discussions at the previous session on the subject of the relationship between the topic and the United Nations Convention on the Law of the Sea].

Paragraph 12, as amended, was adopted.

Paragraph 13

Paragraph 13 was adopted with a minor drafting change to the French text.

Paragraph 14

Mr. Savadogo (Special Rapporteur) proposed replacing the word “*examiner*” in the first sentence of the French text with “*traiter*” to avoid repetition.

The Chair suggested replacing the word “examine” in the first sentence of the English text with “discuss”.

Paragraph 14, as amended, was adopted.

Paragraph 15

Ms. Mangklatanakul proposed inserting the words “rescue of victims and” before “humanitarian assistance” in the first sentence.

Paragraph 15, as amended, was adopted.

Paragraph 16

Mr. Galindo proposed replacing the words “a number of” in the fourth sentence with “some” to reflect the fact that only one or two regional human rights courts had jurisprudence on the prevention and repression of piracy and armed robbery at sea.

Paragraph 16, as amended, was adopted.

Paragraph 17

Paragraph 17 was adopted with minor drafting changes to the French text.

Paragraph 18

Paragraph 18 was adopted with a minor drafting change to the French text.

Paragraph 19

Paragraph 19 was adopted with minor drafting changes.

Paragraph 11 (continued)

Mr. Savadogo (Special Rapporteur) proposed reformulating the first sentence of the paragraph to read “*Les membres du Groupe de travail ont positivement accueilli la note ainsi que l’annexe contenant des références à des instruments juridiques internationaux : accords universels et régionaux, lois et règlements des États, jurisprudence des cours et tribunaux internationaux et nationaux*” [Members of the Working Group welcomed the note, including the annex containing references to international legal instruments: universal and regional agreements, laws and regulations of States, and international and national case law].

Paragraph 11, as amended, was adopted.

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

Chapter XI. Succession of States in respect of State responsibility (A/CN.4/L.1014)

The Chair invited the Commission to begin its consideration of chapter XI of its draft report ([A/CN.4/L.1014](#)).

A. *Introduction*

Paragraphs 1–6

Paragraphs 1–6 were adopted.

B. *Consideration of the topic at the present session*

Paragraphs 7–9

Paragraphs 7–9 were adopted.

C. *Report of the Chair of the Working Group*

The Chair said that the title of the section would be amended to read “Report of the Working Group” in line with the changes made in other chapters of the Commission’s draft report.

Paragraph 10

Mr. Savadogo proposed that, in the third sentence, the word “*complet*” [full] in the French text should be replaced with “*approfondi*” [in-depth].

Paragraph 10, as amended, was adopted.

Paragraphs 11–17

Paragraphs 11–17 were adopted, subject to minor editorial amendments.

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

Chapter VII. Subsidiary means for the determination of rules of international law
([A/CN.4/L.1010](#))

The Chair invited the Commission to begin its consideration of chapter VII of its draft report ([A/CN.4/L.1010](#)).

A. *Introduction*

Paragraphs 1–5

Paragraphs 1–5 were adopted.

B. *Consideration of the topic at the present session*

Paragraphs 6–72

Mr. Jalloh (Special Rapporteur) said that, for the sake of efficiency, he would circulate a revised version of paragraphs 6 to 72 to be considered at a future meeting.

Paragraphs 6–72 were left in abeyance.

Chapter III. Specific issues on which comments would be of particular interest to the Commission ([A/CN.4/L.1007](#))

The Chair invited the Commission to begin its consideration of chapter III of its draft report ([A/CN.4/L.1007](#)).

A. *Settlement of disputes to which international organizations are parties*

Paragraph 1

Paragraph 1 was adopted.

B. Non-legally binding international agreements

Paragraph 2

Mr. Forteau (Special Rapporteur) proposed deleting the words “reiterates that” from the second half of the sentence.

Ms. Okowa, supported by **Mr. Jalloh**, proposed replacing the word “competent” with “relevant” in subparagraph (a).

Mr. Galindo said that, in subparagraph (a), reference should also be made to other authorities, such as State agencies, that were competent to sign inter-institutional agreements. He wondered whether referring solely to “guidelines” on non-legally binding international agreements in subparagraph (b) might be too restrictive and proposed replacing “guidelines” with “other relevant materials” to cover cases where, for example, the opinions of legal advisers were particularly instructive for the conclusion of non-legally binding agreements.

Mr. Forteau (Special Rapporteur) said that subparagraphs (a) and (b) were reproduced from the Commission’s original request for information, contained in paragraph 54 of its report on the work of its seventy-fifth session (A/79/10), and should not be amended unnecessarily. To accommodate the concerns raised, he proposed inserting the words “in particular” between “examples” and “of” in the *chapeau* of the paragraph. The expression “competent ministries” had been included in subparagraph (a) in 2024 at the request of Mr. Oyarzábal.

Ms. Okowa said that the Commission’s 2024 request for information on the topic had not elicited the desired information from States. The phrase “at the national level” in subparagraph (b) was, to her mind, too narrow, and should be revised to read “at the national, regional and subregional levels”.

Mr. Forteau (Special Rapporteur) said that “at the national level” qualified “guidelines” and not “agreements”. What was being requested were guidelines adopted at the national level on non-legally binding international agreements. He proposed, for the sake of clarity, placing the phrase “adopted at the national level” after “guidelines” in subparagraph (b).

Mr. Jalloh said that any additional information that States could provide on their practice in relation to non-legally binding international agreements would be of use to the Commission. Mr. Galindo had thus raised an important point regarding subparagraph (b). He wondered whether the words “or other relevant materials” could be inserted after “any guidelines”.

Ms. Okowa said that, in the light of the explanation provided by the Special Rapporteur, she wished to withdraw her proposal to amend “at the national level”.

Mr. Forteau (Special Rapporteur) said that he was unsure as to what other materials, in addition to the practice of competent ministries, the decisions of national courts and guidelines adopted at the national level, might be of use to the Commission. His preference would be to retain the text as it stood, since it was intended to reiterate the request made the previous year.

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

Paragraph 2, as amended, was adopted.

C. Prevention and repression of piracy and armed robbery at sea

Paragraph 3

Mr. Savadogo (Special Rapporteur) said that the word “relevant” in the expression “relevant international organizations” should be replaced with “competent”. During the debate on the topic, some members had suggested that, in his next report, he should refer to the use of modern means to perpetrate or repress acts of piracy, including sea and air drones. Bearing that in mind, he proposed adding a new sentence to the paragraph, which would read

“La Commission souhaiterait également recevoir des lois et règlements visant l’utilisation de drones maritimes et aériens” [The Commission would also like to receive laws and regulations on the use of sea and air drones].

Mr. Galindo proposed, for the sake of internal consistency, replacing the phrase “case law” with “decisions of national courts”.

Mr. Akande proposed deleting the words “concerning the” from the paragraph.

Paragraph 3 was left in abeyance.

The meeting rose at 6.05 p.m.