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Summary record of the 3230th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
2014, **vol. I**

in relation to armed conflicts, rather than repeating general principles of environmental law some of which, such as sustainable development, might well not apply to armed conflicts. In that respect, the preliminary report kept the Commission on tenterhooks. That was particularly true of chapter X of the report. Only once the relevant material had been gathered on the extent to which existing rules on environmental law applied to armed conflicts would it be possible to decide what codification, or progressive development, could be contemplated. Moreover, the Special Rapporteur should specify which of those exercises was expected of the Commission.

36. Mr. PETRIČ said that the main problem posed by the topic under consideration was that of points of convergence between international environmental law and the law of armed conflict. It was regrettable that the States particularly concerned by current or recent armed conflicts had hardly responded to the Commission's request for information on their practice and case law in that sphere.[261] He therefore supported the Special Rapporteur's proposal to renew the invitation that had been addressed to them and, perhaps, to make the request more specific.

37. With regard to the first phase of protection of the environment in relation to armed conflicts, defence and preparations for international conflicts on the one hand and military interventions abroad on the other were usually the two chief concerns of States, above all those in the West, and for that reason there was abundant legal material on those matters. That was not the case with regard to preparations for potential internal armed conflicts, whether or not they involved Governments, for States were reluctant to contemplate their occurrence. There was therefore little practice in that area, hence thinking in terms of progressive development would be warranted.

38. The three-phase approach was the right way to address the topic and he supported the idea of devoting an initial report to the first phase. He believed that, notwithstanding that methodology, the Special Rapporteur had basically opted for a comprehensive approach to the topic—the only one that was suitable bearing in mind the long-lasting nature of some conflicts—for she recognized that there was no clear-cut division between those phases. While the Special Rapporteur rightly excluded the causes of conflict from the scope of the topic, it was regrettable that she also excluded the cultural heritage. The question of the use of certain weapons that had a critical impact on the environment should not be completely ignored, and the matter of refugees and displaced persons should not be neglected either, since human rights were a dimension of the topic.

39. In principle and on a provisional basis, he approved of the proposed definition of the term "armed conflict" and endorsed Mr. Hassouna's comments with regard to the criteria of the intensity and duration of conflicts between armed groups within a State. The legal consequences of those conflicts, especially responsibility for any damage caused, should be examined. The definition of the term "environment" was acceptable, but it would be wise to clarify the link between characteristic aspects of the countryside and the cultural heritage.

40. With regard to chapter X, he agreed with the members of the Commission who considered that it would be inadvisable to enter into a discussion of the legal status or the nature of principles and concepts related to the environment as such, and that it would be wiser to study the manner in which they applied and their role in the event of an armed conflict, because they were really designed for peacetime. The same was true of human rights, which played a crucial role in the event of a conflict although they had also been formulated for normal circumstances. In that respect, it was regrettable that the Special Rapporteur mentioned only indigenous peoples without paying any attention to other minorities, especially as she excluded refugees and displaced persons from the scope of the topic. It did not seem advisable for the Special Rapporteur to deal with the very extensive subject of the protection of the marine environment in her second report. He would welcome some clarification on that point.

The meeting rose at 1 p.m.

3230th MEETING

Thursday, 24 July 2014, at 10.05 a.m.

Chairperson: Mr. Kirill GEVORGIAN

Present: Mr. Candioti, Mr. Comissário Afonso, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Gómez Robledo, Mr. Hassouna, Ms. Jacobsson, Mr. Kamto, Mr. Kittichaisaree, Mr. Laraba, Mr. Murase, Mr. Murphy, Mr. Niehaus, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Sir Michael Wood.

Cooperation with other bodies (*concluded*)*

[Agenda item 14]

STATEMENT BY REPRESENTATIVES OF THE AFRICAN UNION COMMISSION ON INTERNATIONAL LAW

1. The CHAIRPERSON welcomed the representatives of the African Union Commission on International Law (AUCIL) and invited them to present developments in the work of AUCIL in areas of common interest.

2. Mr. THIAM (African Union Commission on International Law) said that the establishment of AUCIL had been prompted by the objectives and principles set forth in articles 3 and 4 of the Constitutive Act of the African Union, which underscored the importance of accelerating the African continent's socioeconomic development by promoting research in all fields. One of the chief aims of AUCIL was to strengthen and consolidate the principles of international law and to work out common approaches to its development, while constantly endeavouring to maintain high standards in major fields of international law.

[261] See *Yearbook … 2013*, vol. II (Part Two), p. 15, para. 28.

* Resumed from the 3228th meeting.

3. Its principal mandate as an independent advisory organ of the African Union, as set out in articles 4, 5 and 6 of its statute, was to promote the codification and progressive development of international law in Africa, to assist in the revision of existing treaties, to identify areas where new treaties were required and to prepare drafts thereof, to conduct studies on matters of interest to the African Union and its member States and to encourage the teaching, study, publication and dissemination of literature on international law, in particular on the laws of the African Union and the peaceful resolution of conflicts.

4. AUCIL held two ordinary sessions a year and could convene for extraordinary sessions at the request of its Chairperson or of two thirds of the membership. It published the AUCIL *Yearbook* and the AUCIL *Journal of International Law* and was preparing to publish a digest of the case law and practice of member States, international legal texts regarding the regional economic communities, the case law of regional courts, the *travaux préparatoires* of African Union treaties and such diplomatic correspondence as could be made public.

5. It was currently undertaking studies on the juridical bases for reparation for slavery, the delimitation and demarcation of borders in Africa, the harmonization of ratification procedures within the African Union, international environmental law in Africa, the principle of the intangibility of borders in Africa, comparative mining law and the law regarding the oil industry.

6. At the request of the African Union, it had also supplied opinions on Security Council resolutions 1970 (2011) of 26 February 2011 and 1973 (2011) of 17 March 2011, the definition of the crime of unconstitutional change of Government, relations with the International Criminal Court and the establishment of an international constitutional court.

7. Every year, AUCIL organized a two-day forum on international law, with the participation of eminent experts, offering an opportunity to exchange views, to heighten an awareness of African Union law and to identify suitable means of accelerating regional integration throughout the continent. The theme of the first forum had been international law and African Union law, while the second forum had examined the law of regional integration in Africa and the role of the regional economic communities as forerunners of a genuine African Economic Community. While not all the latter entities had achieved the same level of integration, they were all striving towards that goal. The theme of the third forum would be the codification of international law at the regional level.

8. Article 25 of its statute enjoined AUCIL to engage in close collaboration with the Commission. A draft memorandum of understanding presented to the Commission at its sixty-fifth session was meant to be the basis for discussion on how to deepen cooperation between the two commissions through exchanges of views, publications and information and a multifunctional database that could be consulted by both commissions and their members.

9. Mr. KAMTO welcomed the news of the forthcoming publication of an AUCIL digest, which would provide the Commission with information about African practice. He wished to know whether AUCIL had been consulted with regard to the revision of article 46A *bis* of the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, which was the article on immunity, or if it intended to provide an opinion thereon in order to guide the African Union in that field.

10. Mr. KITTICHAISAREE asked whether AUCIL had engaged in analysis of a new international economic order like the one proposed in the 1970s, which would put Africa equitably on the economic and political map. He also wished to know whether African Union States were now strictly enforcing the prohibition of female genital mutilation in the wake of the African Union's decision to support a General Assembly resolution on that subject.[262]

11. Mr. WAKO said that the Commission and AUCIL would greatly benefit from cooperation in the progressive development and codification of international law. He therefore commended the idea of the digest as a source of information about State practice in Africa. He wished to know whether, in the context of its work on mining law, AUCIL would seek to ensure that African countries benefited from the rich resources with which they were endowed. He also wished to know how AUCIL stood on giving the African Court of Justice and Human and Peoples' Rights wider jurisdiction to deal with the types of crimes that currently fell within the jurisdiction of the International Criminal Court. Would the competence of AUCIL to provide opinions conflict with the mandate of the African Court of Justice and Human and Peoples' Rights to render advisory opinions?

12. Mr. THIAM (African Union Commission on International Law) said that AUCIL had not been formally consulted about the revision of article 46A *bis* of the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights. The question of the immunity of Heads of State and State officials had been raised at a recent meeting held in Kenya in order to review the African Union's relationship with the International Criminal Court. The Chairperson of AUCIL was looking into the immunity of State officials under the Rome Statute of the International Criminal Court. His studies would result in the publication of a report setting out the position of AUCIL on that matter.

13. The erosion of Africa's strength on the international scene currently made it unthinkable to discuss a new international economic order in the terms in which it had been conceived in the 1970s. Any fresh debate of the subject, encompassing the aspirations of what had once been called the "non-aligned countries", would have to rest on new parameters and would have a different thrust.

14. Despite the fact that female genital mutilation met with growing international condemnation, few national legislatures in Africa had dared to establish and enforce

[262] Decision on the support of a draft resolution at the Sixty-sixth Ordinary Session of the General Assembly of the United Nations to ban female genital mutilation in the world (Assembly/AU/Dec. 383(XVII)); available from the website of the African Union: https://au.int.

a ban on that practice. Senegalese courts applied criminal law to severely punish individuals or groups who engaged in the practice, but they did so with little enthusiasm. Attempts were being made, with the support of the international community, to create an awareness of the fact that female genital mutilation was a crime and to help its practitioners to find another occupation. Nevertheless, African States still had much to do regarding the prohibition and punishment of female genital mutilation.

15. In 2013, at the Second Forum of the African Union on International Law and African Union Law, which focused on the law of regional integration in Africa, the Chairperson of the African Union Commission had expressed regret that Africa was still ill equipped to protect its own heritage and resources, including energy resources, and was inclined to turn to private international entities for assistance. Lack of experience in preparing regulations and the defence by private entities of their interests meant that domestic legislation was frequently weak. The Chairperson had asked AUCIL to work on the matter, so that Africa could start to use its own human resources to manage its energy resources and other natural assets. AUCIL had begun to consider the topic and would make proposals in the near future, highlighting the need to protect the natural resources of Africa, particularly in the mining and energy sectors. Legislation across Africa varied widely, often having different objectives; improved coordination among countries might yield more coherent results.

16. The proposed amendments to the Protocol on the Statute of the African Court of Justice and Human and Peoples' Rights concerning the issue of immunity for high-level State officials were certainly controversial, and likely to remain so. As to the International Criminal Court, opinion among States parties to the Rome Statute on the International Criminal Court was divided concerning immunity from criminal jurisdiction for Heads of State.

17. Establishing close collaboration between AUCIL and the Commission was mentioned as an obligation in the AUCIL statute and formed a fundamental part of its work. Africa was not seeking to strike out on its own in the field of international law, but rather to contribute to international efforts. The International Law Commission paved the way for the work of regional bodies such as AUCIL; concerted action would help to achieve the objectives of general and regional international law.

18. Mr. EL-MURTADI SULEIMAN GOUIDER asked whether there were any plans to create a specific mechanism to channel cooperation with the Commission and what impact the guidelines produced by AUCIL had on the work of the African Union and the other bodies to whom they were addressed.

19. Mr. HASSOUNA asked whether the four weeks for which AUCIL met each year were sufficient to discuss all the topics on its agenda; whether all of its reports and other documentation were available on its website or could be sent directly to the Commission; and whether there were plans for cooperation with other regional and national bodies within Africa that worked in the field of international law.

20. Sir Michael WOOD, welcoming the proposed digest of African State practice, emphasized the costly nature of such a project and expressed the hope that sufficient human and financial resources would be made available. He requested further information on the forthcoming forum on codification, including what themes it might tackle, and suggested that AUCIL might make more information on its work available on its website.

21. Mr. SABOIA said that the issue of reparations for slavery had been hotly debated at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which had concluded that the slave trade was equivalent to a crime against humanity.[263] Most countries in the Americas had been both victims and perpetrators of slavery. He requested further information on the direction that the work being done by AUCIL on the subject was taking.

22. Mr. THIAM (African Union Commission on International Law) said that, in cases where AUCIL and the Commission were working on related or overlapping topics, it would be useful for their respective special rapporteurs to exchange views as a means of coordinating the work and avoiding duplication, while maintaining the specific aspects of each and achieving the best result possible. A permanent mechanism for that purpose was urgently required.

23. Significant demands were made of the 11 members of AUCIL: not only did they meet for a relatively short time each year, but in addition to international law topics, they also had to discuss administrative, technical and financial matters. Extraordinary sessions had been considered as a means of increasing the time available, but there were budgetary implications. AUCIL was constantly seeking contributions from donors to facilitate its work. The complex and wide-ranging topics it covered entailed a heavy workload.

24. Acknowledging that the AUCIL website could be made more informative, he said that it had recently been decided to update it on a continual basis. AUCIL reported regularly to the organs of the African Union. Although those reports did not contain detailed accounts of the legal content of its discussions, they gave a useful overview of its work. AUCIL had not yet established close cooperation with all the new international law bodies that were emerging in Africa, but a growing number of interested organizations, including universities and research institutes, were involved in its work every year. It was hoped that this trend would continue. Support from more experienced bodies working in the sphere of international law would be very beneficial to AUCIL as it embarked on its project to create a digest of African State practice, and he welcomed the comments made by Sir Michael in that respect.

25. The issue of slavery was extremely delicate. Frankness and transparency were vital to constructive discussions. The AUCIL Special Rapporteur on the subject had chosen to focus on reparations, exploring that aspect of the

[263] See the Declaration of the Conference, Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/CONF.189/12), chap. I, para. 13.

topic in detail. There were many factors to be taken into account, especially as the attribution of responsibility was not always straightforward. After three years, work was still being done on the topic; the members of AUCIL were keen to ensure the most rigorous possible outcome. Some countries in Africa were firmly opposed to the notion of financial compensation, but were prepared to consider reparations in a range of symbolic forms. Others espoused different views. The issue was complex and must be approached carefully, but also boldly and transparently.

Protection of the environment in relation to armed conflicts (*continued*) (A/CN.4/666, Part II, sect. F, A/CN.4/674)

[Agenda item 10]

PRELIMINARY REPORT OF THE SPECIAL RAPPORTEUR (*continued*)

26. The CHAIRPERSON invited the Commission to resume its consideration of the preliminary report of the Special Rapporteur on protection of the environment in relation to armed conflicts (A/CN.4/674).

27. Mr. PETER said that it was too early in the Commission's consideration of the topic to discuss what form the output of its work should take; the Special Rapporteur should be granted plenty of leeway in that regard. The first paragraph of the report captured the essence of the topic and provided an excellent starting point. On the other hand, in her discussion of the environmental policy of United Nations peacekeeping missions in paragraphs 43 and 44 of her preliminary report, the Special Rapporteur failed to mention an incident in Haiti, where, following the 2010 earthquake, a cholera outbreak that had taken thousands of lives and infected hundreds of thousands had been attributed to the presence of the peacekeeping forces.

28. In chapter X of the preliminary report, which concerned human rights and the environment, the Special Rapporteur unduly emphasized the individual enjoyment of rights and disregarded the dynamic nature of rights and the emergence of new concepts within human rights. The denial of the close connection that existed between the environment and human rights and the rejection of the right to a clean environment as a human right reflected an old school of legal thought. For the Commission to adopt that thinking would guarantee its irrelevance in international circles, given that the tide was moving in a different direction. Many linkages had, in fact, been made between the protection of human rights and the protection of the environment. The Stockholm Declaration was one example. It stated that: "Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights—even the right to life itself."[264]

29. He was surprised at the Special Rapporteur's assertion in paragraph 157 of her preliminary report that there had to be a customary law rule establishing an individual human right to a clean environment, in the absence of which such a right did not exist. As a matter of fact, the right to a clean environment had been codified in several international conventions, including the African Charter on Human and Peoples' Rights (art. 24). In Europe, the right to a clean environment had been recognized on the basis of an indirect interpretation by the European Court of Human Rights of article 8 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms.

30. He was surprised, too, at the Special Rapporteur's conclusion in paragraph 163 that references to principles of environmental law in human rights were "uncommon" and "fleeting". That seemed to contradict the footnote to paragraph 157, where she listed two important legal instruments, the African Charter on Human and Peoples' Rights and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights: "Protocol of San Salvador", which established a link between a clean environment and the enjoyment of human rights. Surely such efforts to incorporate environmental law into human rights discourse counted for more than fleeting references. Those instruments reflected a new way of thinking in human rights circles, which could be characterized as a movement towards the enjoyment by the individual of collective rights, and that trend also deserved further consideration by the Special Rapporteur.

31. Mr. KAMTO said that the three-phase temporal approach was perhaps instructional, but there were two reasons why it was unsuitable for addressing the subject in a rational manner. First, as Mr. Forteau had rightly noted, there were many rules that were applicable during all three phases, and second, the temporal approach would cause the Commission to stray outside the scope of the topic in some areas of its work. If, as indicated by the Special Rapporteur, phase I addressed obligations that were applicable in peacetime, then that phase clearly fell outside the scope of the topic. Accordingly, the Commission should underscore the fact that phase I was relevant only insofar as it was closely linked to the core of the topic, which was presented in the preliminary report as phase II, and on which the Commission should focus its efforts.

32. By the same token, phase III, which concerned post-conflict measures, was pertinent to the topic only to the extent that it addressed the consequences of the harm caused to the environment during an armed conflict. For that matter, the definition of armed conflict reproduced in paragraphs 69 and 70 of the preliminary report showed that it was pointless to draw a distinction between the three phases, since it was difficult to ascertain where the first phase ended and the second began. A more effective approach would be to focus on identifying the principles and rules that applied to the protection of the environment in relation to armed conflicts, rather than on the particular point in time during which a given rule should be applied.

33. There were two substantive points he wished to raise. The first concerned the use of terms. With regard to "armed conflict", he concurred with the Special Rapporteur's proposal in paragraph 70 of her preliminary report

[264] *Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972* (United Nations publication, Sales No. E.73.II.A.14), Part One, chap. I, para. 1.

to reproduce, in its entirety, the definition employed by the International Tribunal for the Former Yugoslavia in the *Prosecutor* v. *Duško Tadić a/k/a "Dule"* decision. It differed from the one used in the articles on the effects of armed conflicts on treaties[265] in that, at the end of the sentence, it contained the phrase "or between such groups within a State". With regard to the present topic, the obligation to protect the environment, even in the event of an armed conflict, was not derived exclusively from international treaties and was generally imposed on other actors besides States. Non-international armed conflicts were not solely those that pitted armed groups against the State; they could also be those that pitted armed groups against each other. Such groups were also required to apply the rules concerning the protection of the environment in relation to an armed conflict. As to the use of the term "environment", he concurred with the definition proposed by the Special Rapporteur in paragraph 79 of her preliminary report, since it contained all the generally accepted components and had been drawn from the Commission's previous and relatively recent work.

34. The second substantive point concerned issues that either should or should not be included in the scope of the present topic. The Special Rapporteur had proposed to exclude the following: situations where environmental pressure, including the exploitation of natural resources, caused or contributed to the outbreak of armed conflict; the protection of cultural property; the effect of particular weapons on the environment; and refugee law. In his own view, the following issues should also be excluded: human rights in relation to the protection of the environment; the rights of indigenous peoples; and sustainable development.

35. On the other hand, the Commission could not, in its work on the present topic, allow itself not to address the question of methods and means of warfare. Although he concurred with Commission members who were in favour of excluding the issue of weapons from the topic, the Commission could not do less than the International Court of Justice in that regard. After analysing certain provisions of the law of armed conflicts in its advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the Court had recalled the prohibition of the use of methods or means of warfare that were intended, or might be expected, to cause widespread, long-term and severe damage, indicating that this rule was applicable in the context of the protection of the environment in relation to armed conflicts (para. 31 of the advisory opinion).

36. In addition, the Commission might wish to consider addressing the criminalization of acts committed in relation to armed conflicts that significantly harmed the environment, in particular when such acts caused deliberate, severe or irreversible damage. Specifically, it should analyse whether those offences could be considered war crimes. The question had been discussed at length during the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court.

37. Given that the Commission was at the preliminary stage of its consideration of the topic, he wished to propose three questions that might help to restructure or guide its analysis. The first was: Which principles and rules of general international law and international environmental law, if any, were applicable to the protection of the environment in relation to armed conflicts? He had in mind, for example, the principle of the permanent sovereignty of the State over its natural resources, which had not arisen as a principle of international environmental law but which could be applied, particularly during wartime occupation, when the occupying Power exploited the natural resources of the occupied State. The second question was: Which rules of the law of armed conflict were applicable or adaptable to the protection of the environment in relation to armed conflicts? The third question was: What were the legal consequences of serious damage to the environment caused in relation to armed conflicts?

38. With regard to the non-exhaustive list of principles and rules on which the Commission might base its future work on the topic, he suggested the inclusion of the principles of necessity, proportionality, due diligence, permanent sovereignty of the State over its natural resources, and cooperation with a view to the reparation of ecological damage caused in relation to an armed conflict. He also proposed including the following rules or obligations: the obligation to take ecological considerations into account in implementing the principles and rules of law applicable to armed conflicts; the obligation to protect the natural environment against widespread, long-term and severe damage in relation to armed conflicts; the prohibition of the employment of methods or means of warfare that were intended or might be expected to cause widespread, long-term and irreversible damage to the environment; and the obligation to make reparation for widespread, long-term, severe or irreversible damage to the environment in relation to armed conflicts.

39. Mr. VÁZQUEZ-BERMÚDEZ said that he agreed with the Special Rapporteur's proposal to approach the topic in three phases, but that such an approach did not preclude the application of specific rules or principles in more than one of the phases. In order to ensure the protection of the environment, it was necessary to identify and systematize the set of rules and principles of international law that would be applicable throughout the three phases. The application of the law of armed conflict in that regard did not, of course, exclude the application of other rules of international law.

40. There was a growing awareness and conviction within the international community concerning the need to ensure the legal protection of the environment in general, and in relation to armed conflicts, in particular. General Assembly resolution 56/4 of 5 November 2001 stated that damage to the environment in times of armed conflict impaired ecosystems and natural resources long beyond the period of conflict, and often extended beyond the limits of national territories and the present generation. In order to raise awareness of that situation, the resolution proclaimed 6 November as the International Day for Preventing the Exploitation of the Environment in War and Armed Conflict.

[265] General Assembly 66/99 of 9 December 2011, annex. The draft articles adopted by the Commission and the commentaries thereto are reproduced in *Yearbook … 2011*, vol. II (Part Two), pp. 107 *et seq.*, paras. 100–101.

41. In light of the foregoing, it was best not to jump to the conclusion that the Commission had no intention of modifying the law of armed conflict, as was stated in paragraph 62 of the preliminary report. It was inevitable that the Commission would analyse the rules in the law of armed conflict in relation to the protection of the environment and clarify their content and scope and their parallel application with other rules of international law. It would adapt those rules to the current reality of the international community—including, but not limited to, the increased number of non-international armed conflicts—and to the technological developments that had fostered the proliferation of weapons of mass destruction, the use of which could have catastrophic consequences for the environment. In that connection, he shared the view expressed by Mr. Kamto about including within the scope of the topic the methods and means of warfare.

42. There had been important developments with regard to the protection of the environment in the national laws of certain South American countries where the ancestral world view of the indigenous peoples encompassed not only respect for Mother Nature—or "Pacha Mama" in the Quechua language—but also living in harmony with nature (art. 71). The Constitution of Ecuador went so far as to recognize nature as a subject of rights. Recognition of the rights of nature was also included as a cross-cutting theme in other constitutional provisions, such as those relating to a nation's overall development.

43. In the first sentence of paragraph 106 of her preliminary report, the Special Rapporteur referred to the "presumption" that the existence of an armed conflict did not *ipso facto* terminate or suspend the operation of treaties, as provided for in the articles on the effects of armed conflicts on treaties (art. 3). He agreed with Sir Michael that the reference was not to a presumption; rather it was to a general principle, as evidenced by the fact that the title of article 3 was "General principle". Some items on the indicative list of categories of treaties whose subject matter implied that they continued in operation during armed conflict, included in the annex to the articles on the effects of armed conflicts on treaties, were illustrative for the purposes of the current topic. Also relevant were article 10 (Obligations imposed by international law independently of a treaty) and aspects relating to the law of armed conflict to be found in article 14 (Effect of the exercise of the right to self-defence on a treaty) and article 15 (Prohibition of benefit to an aggressor State).

44. The definition of "armed conflict" proposed by the Special Rapporteur was appropriate, and he agreed with adding the phrase "or between such groups within a State" at the end. The definition of "environment" should be broad enough to refer not only to transboundary harm but also to the environment in general. The Commission's previous definition[266] provided a good starting point and would enable the protection of the natural heritage to be included in the scope of the topic. That would align the Commission's approach with the Convention for the protection of the world cultural and natural heritage which, with 191 States parties, had achieved near universal ratification. Among the serious threats that could have permanent effects on cultural and natural heritage sites, the Convention listed the outbreak or the threat of an armed conflict. He agreed that the scope of the present topic should not include cultural property, however.

45. The Special Rapporteur had done a good job in identifying the various concepts and principles relevant to the topic. The special relationship that indigenous peoples had with the environment was particularly susceptible to the effects of armed conflict and justified the need for granting them special legal status, as rightly noted by the Special Rapporteur in paragraph 165 of her preliminary report. In that regard, he drew attention to paragraph 147 of the judgment of 25 May 2010 handed down by the Inter-American Court of Human Rights in the well-known *Case of Chitay Nech* at al. v. *Guatemala*, in which the Court had considered that the forced displacement of indigenous peoples from their communities could place them in a special situation of vulnerability and create a clear risk of extinction, and that it was therefore indispensable for States to adopt specific measures of protection to prevent and reverse the effects of such situations.

The meeting rose at 1.05 p.m.

3231st MEETING

Friday, 25 July 2014, at 10.05 a.m.

Chairperson: Mr. Kirill GEVORGIAN

Present: Mr. Caflisch, Mr. Candioti, Mr. Comissário Afonso, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Gómez Robledo, Mr. Hassouna, Ms. Jacobsson, Mr. Kamto, Mr. Kittichaisaree, Mr. Laraba, Mr. Murase, Mr. Murphy, Mr. Niehaus, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Sir Michael Wood.

Protection of the environment in relation to armed conflicts (*concluded*) (A/CN.4/666, Part II, sect. F, A/CN.4/674)

[Agenda item 10]

PRELIMINARY REPORT OF THE SPECIAL RAPPORTEUR (*concluded*)

1. The CHAIRPERSON invited the Special Rapporteur to summarize the debate on her preliminary report on the protection of the environment in relation to armed conflicts (A/CN.4/674).

2. Ms. JACOBSSON (Special Rapporteur) said that she would address only some of the specific issues raised during the debate, but that all the comments made by the members of the Commission would be duly reflected in her second report. The objective of the preliminary report had been to seek the views of colleagues on the matters

[266] *Yearbook … 2006*, vol. II (Part Two), p. 58, para. 66, principle 2 (*b*).