

Provisional

For participants only

14 September 2021

Original: English

International Law Commission
Seventy-second session (second part)

Provisional summary record of the 3553rd meeting

Held at the Palais des Nations, Geneva, on Thursday, 29 July 2021, at 11 a.m.

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Present:

<i>Chair:</i>	Mr. Hmoud
<i>Members:</i>	Mr. Argüello Gómez
	Mr. Cissé
	Ms. Escobar Hernández
	Mr. Forteau
	Ms. Galvão Teles
	Mr. Grossman Guiloff
	Mr. Hassouna
	Mr. Jalloh
	Mr. Laraba
	Ms. Lehto
	Mr. Murase
	Mr. Murphy
	Mr. Nguyen
	Ms. Oral
	Mr. Ouazzani Chahdi
	Mr. Park
	Mr. Petrič
	Mr. Ruda Santolaria
	Mr. Saboia
	Mr. Šturma
	Mr. Tladi
	Mr. Vázquez-Bermúdez
	Sir Michael Wood

Secretariat:

Mr. Llewellyn	Secretary to the Commission
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The meeting was called to order at 11 a.m.

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

Chapter IV. Protection of the atmosphere (continued) (A/CN.4/L.944 and A/CN.4/L.944/Add.1)

The Chair invited the Commission to resume its consideration of the portion of chapter IV of the draft report contained in document A/CN.4/L.944/Add.1, beginning with paragraph (2) of the commentary to draft guideline 6, which had been left in abeyance at the previous meeting.

Draft guideline 6 (Equitable and reasonable utilization of the atmosphere)

Paragraph (2)

Mr. Murase (Special Rapporteur) said that, following consultations with members, he wished to propose retaining the words “the principle of” in the first sentence of paragraph (2) and adding, at the beginning of footnote 102, a reference to read “See the judgment of the International Court of Justice in the case concerning the *Continental Shelf (Tunisia v. Libyan Arab Jamahiriya)*, para. 71, 1982”. The words “On equity and its use in international law generally, see” should then be inserted before the reference to J. Kokott, and a reference to paragraphs 27 to 28 and paragraph 149 of the judgment in *Frontier Dispute (Burkina Faso v. Mali)* should be inserted after the mention of that case.

Mr. Murphy said that the words “See, in general” preceding the reference to P. Weil in footnote 102 should be deleted. He wondered whether the reference to the judgment in *Frontier Dispute (Burkina Faso v. Mali)* might not be better placed after “On equity and its use in international law generally, see”, in other words, before the list of academic references.

Mr. Murase (Special Rapporteur) said that he agreed with the changes suggested by Mr. Murphy.

Sir Michael Wood, supported by **Mr. Grossman Guilloff**, said that he agreed with the amendments proposed by the Special Rapporteur and the improvements suggested by Mr. Murphy. To his mind, a reference to a judgment of the International Court of Justice should not appear in the middle of a list of academic articles.

Mr. Jalloh said he agreed with Mr. Murphy that the reference to *Frontier Dispute (Burkina Faso v. Mali)* would be better placed before the list of academic articles.

Mr. Vázquez-Bermúdez said that he found the amendments proposed by the Special Rapporteur after informal consultations agreeable. He proposed adding a reference to paragraph 85 of the judgment of the International Court of Justice in *North Sea Continental Shelf (Federal Republic of Germany/Netherlands)* after the reference to the judgment in *Frontier Dispute (Burkina Faso v. Mali)* in footnote 102.

The Chair said he took it that the Commission wished to adopt paragraph (2) as amended by the Special Rapporteur, Mr. Murphy and Mr. Vázquez-Bermúdez.

Paragraph (2), as amended and with amendments to footnote 102, was adopted.

Paragraph (3)

Mr. Murase (Special Rapporteur) said that, although the Commission had already adopted paragraph (3) of the commentary to draft guideline 6, he wished to inform members that he had sent the reference to the updated article on intergenerational equity by Edith Brown Weiss, which had been referred to by Sir Michael Wood at the previous meeting, to the secretariat so that it could be included in footnote 103.

*Draft guideline 7 (Intentional large-scale modification of the atmosphere)**Paragraph (3)*

Mr. Murase (Special Rapporteur) said that, although the Commission had already adopted paragraph (3) of the commentary to draft guideline 7, in line with the suggestion made by Mr. Park at the previous meeting, he had submitted the text of the footnote on geoengineering contained in his third report ([A/CN.4/692](#), footnote 276) to the secretariat so that it could be inserted in the text, with the footnote indicator to be placed at the end of the first sentence.

Paragraph (4)

Mr. Murase (Special Rapporteur) said that he had considered deleting paragraph (4) and including it as a footnote to paragraph (3). However, the first sentence of paragraph (3) explained that the methods and technologies of geoengineering included carbon dioxide removal and solar radiation management: the examples of carbon dioxide removal activities were provided in the same paragraph, whereas the examples of solar radiation management activities were provided in paragraph (4), thus precluding its deletion. He proposed retaining paragraph (4) in its current form.

Sir Michael Wood said that he supported the proposal made by the Special Rapporteur.

Paragraph (4) was adopted.

Paragraph (5)

Mr. Murase (Special Rapporteur) proposed inserting the words “other rules of” before “international law” in the second sentence of the paragraph.

Mr. Forteau said that he was unsure as to whether that amendment was justified, as it seemed to suggest that the Commission had already referred to rules of international law prohibiting the activities mentioned in draft guideline 7, whereas the draft guideline in question did not prohibit those activities at all. To avoid confusion, he would be in favour of keeping the text as originally drafted.

Mr. Murase (Special Rapporteur) said that he had no strong feelings about the proposed insertion and, if members so wished, was prepared to revert to the original text.

Sir Michael Wood said that the title of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques appearing in paragraph (5) contained an error and should be corrected.

Paragraph (5) was adopted, with that minor editorial amendment.

Paragraph (6)

Mr. Murase (Special Rapporteur) proposed deleting the word “will” from the first sentence of the paragraph.

Mr. Murphy said that the first sentence could be further simplified by replacing the words “continue to be” with “are”.

Paragraph 6, as amended, was adopted.

Paragraph (7)

Paragraph (7) was adopted.

Paragraph (8)

Mr. Murase (Special Rapporteur) proposed deleting the word “also” from the first sentence of the paragraph.

Paragraph (8), as amended, was adopted.

Paragraph (9)

Mr. Murase (Special Rapporteur) proposed replacing the words “prudential and cautionary” in the third sentence of the paragraph with “prudent and cautious”, and deleting the fourth sentence beginning “The addition of a ‘comma’” in its entirety, as it was too detailed.

Ms. Lehto said that, while she recognized that there was some overlap between the fourth sentence and the sentence preceding it, to delete the fourth sentence in its entirety would change the meaning of the preceding sentence by removing the explanation concerning the latter part of the draft guideline. She proposed merging and reworking the third and fourth sentences to read: “The word ‘only’ is intended to further enhance the prudent and cautious manner in which activities aimed at intentional large-scale modification may be undertaken, while the latter part of the guideline makes it clear that such activities are conducted subject to any applicable rules of international law.”

Mr. Grossman Guiloff said that he supported the proposal made by Ms. Lehto for the fourth sentence and wished to propose replacing the words “should be conducted with prudence and caution” in the second sentence with “should only be conducted with the highest degree of prudence and caution”.

Mr. Forteau said that he too supported the amendment proposed by Ms. Lehto and wished to propose deleting the final sentence of the paragraph, which, to his mind, sounded odd.

Mr. Jalloh said that he supported the proposal put forward by Ms. Lehto and agreed that to delete the fourth sentence in its entirety would alter the meaning of the preceding sentence. He was prepared to go along with the amendment proposed by Mr. Grossman Guiloff if other members supported it. The amendments put forward by Ms. Lehto and Mr. Grossman effectively addressed the concerns raised by States and international organizations in relation to geoengineering. He concurred with Mr. Forteau’s observation that the last sentence of the paragraph sounded somewhat strange.

Ms. Oral said that she too supported the proposal made by Ms. Lehto and was not, in principle, against the proposal put forward by Mr. Grossman Guiloff. Mr. Forteau had likewise raised an important issue in relation to the final sentence.

Sir Michael Wood said that he supported the proposal put forward by Ms. Lehto and agreed with Mr. Forteau that the final sentence sounded odd and could be deleted. He did not, however, agree with Mr. Grossman Guiloff’s proposal in its entirety. He could support adding the word “only” so that the text would read “should only be conducted with prudence and caution”, as the language of the text would then mirror that used in the draft guideline. By adding a qualifier such as “the highest degree”, the Commission would, in effect, be modifying the draft guideline, which he could not support.

Mr. Murphy said that he was pleased to support Ms. Lehto’s proposal. He agreed with Mr. Forteau that the final sentence of paragraph (9) sounded odd and should be deleted. As for the proposal put forward by Mr. Grossman Guiloff, he wished to recall that the Drafting Committee had discussed extensively the question of how far the Commission might wish to go in expressing the idea of prudence and caution, given that the whole world of geoengineering had been designed to try to address climate change-related problems. Some of the activities referred to in the draft guideline could potentially be quite helpful in combating climate change. However, such activities needed to be conducted with prudence and caution to avoid causing adverse effects to the environment. Inserting the words “the highest degree” might upset the balance struck by the Drafting Committee. He would be in favour of keeping the original text.

Mr. Grossman Guiloff said that he could go along with the compromise suggested by Sir Michael Wood.

Paragraph (9), as amended, was adopted.

Paragraph (10)

Paragraph (10) was adopted, with a minor editorial amendment.

Paragraph (11)

Mr. Park said that, in his view, the final sentence of the paragraph portrayed projects involving intentional large-scale modification of the atmosphere in a negative light, whereas geoenvironmental activities, especially carbon dioxide removal techniques, were known to have positive as well as negative effects. As little was known about some of the scientific aspects of those activities, he wondered whether it was appropriate to include strong language such as “may well carry an extensive risk of severe damage” in the commentary. He proposed deleting the final sentence of the paragraph.

Mr. Forteau said that the last two sentences of the paragraph contradicted each other: the penultimate sentence stated that an environmental impact assessment was recommended before activities aimed at intentional large-scale modification of the atmosphere were undertaken, whereas the final sentence stated that an assessment was necessary for such activities if there was a risk of damage. He understood such an environmental impact assessment to be mandatory if the relevant conditions were met. He proposed deleting the penultimate sentence of the paragraph.

Ms. Oral said that, in order to address the concern raised by Mr. Park, the beginning of the final sentence of the paragraph could be reformulated to read: “A project involving intentional large-scale modification of the atmosphere may create a risk of significant damage”, which was consistent with the language used in environmental impact assessments. She supported Mr. Forteau’s proposal to delete the penultimate sentence.

Sir Michael Wood said that he could support the compromise solution put forward by Ms. Oral. He proposed replacing “therefore that *a fortiori* an assessment is necessary for such an activity” in the last clause of the final sentence with “in which case an assessment is necessary for such an activity”, which would cover scenarios in which there was a risk of real damage. Taking into account the proposal made by Ms. Oral, the whole sentence would read: “A project involving intentional large-scale modification of the atmosphere may carry a risk of severe damage, in which case an assessment is necessary for such an activity.”

While he recognized that the penultimate and final sentences were somewhat contradictory, he would not be in favour of deleting the former outright, as had been proposed by Mr. Forteau.

Mr. Forteau said that, for consistency, the paragraph should reproduce the language of draft guideline 4, in which the phrase “cause significant adverse impact” was used. That phrase should be incorporated into the revised text proposed by Sir Michael Wood so that the last sentence of the paragraph read: “It is considered that a project involving intentional large-scale modification of the atmosphere may cause significant adverse impact, in which case an assessment is necessary for such an activity.”

Paragraph 11, as amended, was adopted.

*Commentary to draft guideline 8 (International cooperation)**Paragraph (1)*

Mr. Murase (Special Rapporteur) proposed the deletion of the last sentence.

Ms. Lehto said that it did not make sense to delete the sentence; it was a statement of fact that created a link between the description of how the concept of cooperation had changed and the guidelines as a whole.

Mr. Murphy said that the third preambular paragraph did not expressly recognize that the concept of cooperation had changed; for that reason, the proposed deletion might be warranted. An alternative solution would be to rework the sentence so that it read: “It is recalled that the third paragraph of the preamble to the present draft guidelines emphasizes that atmospheric pollution and degradation are a ‘common concern of humankind’.” That text would provide a more accurate factual link.

Sir Michael Wood said that the main problem he saw with the sentence was that it was unclear what the word “this” was referring to, and, thus, what exactly the third paragraph of the preamble recognized. To address that concern, he suggested the addition of the phrase

“in this connection” at the start of the last sentence as amended by Mr. Murphy in order to create a link to the previous sentence. In addition, he saw no need for quotation marks around the phrase “common concern of humankind”, and thought that “atmospheric” should be placed before the word “degradation” as well as before “pollution”.

Mr. Jalloh said that, if the reference to the third paragraph of the preamble was to be retained, then the verb “consider” should be used instead of “recall”, in line with the language used in the preambular paragraph itself. The sentence would thus begin “In this connection, it is considered”.

Mr. Park said that he was in favour of deleting the sentence and wondered why it had been included in the first place. Paragraph (3) of the commentary to the preamble, which addressed the use of the expression “common concern of humankind” in the third preambular paragraph, stated that it was understood that the inclusion of that expression did not create rights and obligations, yet the last sentence, as currently drafted, implied the opposite. Accordingly, it was not logical to mention the third preambular paragraph in connection with draft guideline 8.

Sir Michael Wood said that, while he understood Mr. Park’s concern, it was not justified in the context because the revised text proposed simply recalled the preamble; it was not in any way suggesting that the text of the preamble created rights and obligations. To accommodate Mr. Jalloh’s suggestion to incorporate the word “consider”, the sentence could be adjusted to read: “In this connection, it is recalled that the third preambular paragraph of the present draft guidelines considers that atmospheric pollution and atmospheric degradation are a common concern of humankind.”

Ms. Oral said she agreed that the amended text proposed by Sir Michael Wood did not imply the creation of new rights and obligations; it simply created a link between the established obligation to cooperate and the third preambular paragraph.

Mr. Grossman Guiloff said that, while he supported Sir Michael Wood’s proposal, another possibility would be to incorporate the words “common concern” into the second sentence, to replace the words “common interests”, and then to delete the final sentence and instead include a reference to the third preambular paragraph as a footnote.

Mr. Murphy, seconded by **Mr. Saboia** and **Mr. Petrič**, said that the text proposed by Sir Michael Wood was good. To allay Mr. Park’s concern, he noted that the text was simply stating that, as was explained in the relevant commentary – which had already been adopted – the third preambular paragraph identified a problem that required cooperation from the entire international community; in other words, it identified a need rather than an obligation.

Mr. Jalloh, noting that the word “consider” had not been incorporated in the manner he had proposed, suggested that the word “recognize” used in the original version of the text should be retained in preference to “recall”.

Sir Michael Wood said that it would be odd for the Commission to recognize in a commentary something that it had stated previously in the same document. “Recall” conveyed the intended meaning exactly.

Mr. Jalloh and **Mr. Park** said that they could support the amendment proposed.

Paragraph (1), as amended by Mr. Murphy and Sir Michael Wood, was adopted.

Paragraph (2)

Mr. Murase (Special Rapporteur) proposed the addition of the phrase “and on the applicable rules of international law” at the end of the third sentence.

Mr. Grossman Guiloff said that he supported the Special Rapporteur’s proposal and that, for consistency, the phrase should also be included at some point in the penultimate sentence.

The Chair, speaking as a member of the Commission, suggested that the phrase should be added at the end of the penultimate sentence.

Paragraph (2), as amended, was adopted.

Paragraph (3)

Paragraph (3) was adopted.

Paragraph (4)

Mr. Murase (Special Rapporteur) proposed the addition of a new footnote at the end of the paragraph. The footnote would contain the reference to article 8 of Convention on the Law of the Non-navigational Uses of International Watercourses that was currently included as paragraph (5). He was proposing that amendment since the Convention in question was not related to the atmosphere and had few States parties, and should not, therefore, be given too much prominence.

Paragraph (4), as amended, was adopted.

Paragraph (5)

Mr. Murase (Special Rapporteur) said that paragraph 5 should be moved to the footnotes.

With that change, paragraph (5) was adopted.

Paragraph (6)

Paragraph (6) was adopted, with a minor drafting change.

Paragraphs (7), (8) and (9)

Paragraphs (7) (8) and (9) were adopted.

Paragraph (10)

Mr. Murase (Special Rapporteur) proposed that, in the first line of the paragraph, the words “also includes” should be replaced with “may include” in order to introduce a degree of flexibility to the sentence. That flexibility was implicit but should be stated more clearly.

Mr. Murphy said that the change was a good idea since, in his view, as currently drafted, the sentence lacked flexibility. The use of the term “*inter alia*” did not mean that information might or might not be exchanged; rather, it meant that the exchange of information was just one element of the obligation to cooperate. Thus, the sentence, as currently drafted, appeared to be stating that the obligation to cooperate always included an obligation to exchange information. Although situations might arise in which the exchange of information was obligatory, the sentence should not be so dogmatic; the Convention on Long-range Transboundary Air Pollution, which was mentioned subsequently, was certainly less dogmatic in that respect and the Commission should not adopt text that might be interpreted as being insistent on the necessity of exchanging information.

Ms. Oral, noting that, elsewhere in the commentary, a number of cases were cited in which the obligation to cooperate had very clearly encompassed the exchange of information, said that, on that basis, she would be concerned if, after amendment, the sentence conveyed the message that the exchange of information was discretionary. She was therefore in favour of retaining the original text.

Mr. Forteau, expressing agreement with Mr. Murphy’s reasoning, said that paragraph (7) of the commentary to draft guideline 8 began by stating that “cooperation could take a variety of forms” and that it followed from that statement that the word “may” was required in the first line of paragraph (10).

Ms. Lehto said she appreciated that, as emphasized by Mr. Murphy, the obligation to cooperate might include an obligation to exchange information in certain contexts only, but, in her view, the situations addressed in the draft guidelines constituted precisely such a context. She was therefore also in favour of retaining the original language.

Mr. Grossman Guiloff said that he appreciated Mr. Murphy's point that cooperation might take forms other than the exchange of information, yet that was not the conclusion likely to be drawn from reading the text as currently drafted. On the other hand, if the text was amended as proposed, it would then convey the message that the exchange of information might sometimes be excluded from the obligation to cooperate, and yet all the conventions mentioned in the paragraph established a duty to exchange information. Furthermore, none of those conventions provided examples of other forms of cooperation that did not require the exchange of information. He was therefore against the amendment proposed by the Special Rapporteur. It was possible that an alternative formulation that allayed Mr. Murphy's concern could be found; perhaps a formulation that emphasized that the obligation to exchange information was established in various treaties while also mentioning other forms of cooperation that existed under international law. However, it could be argued that the expression "*inter alia*" already performed that function and, on that basis, despite the limitations of the text as currently drafted, he would be in favour of retaining the original formulation.

The Chair, speaking as a member of the Commission, suggested that a qualifier such as "appropriate" might be attached to the word "information" in order to make the obligation less dogmatic and accommodate the fact that not all information was exchangeable. For example, information related to national security would by its nature necessarily be exempted from any information-sharing obligation.

Mr. Petrič said that he shared the Chair's line of thinking. The Commission could neither establish a general obligation to exchange information in the context of the topic nor state that such an obligation already existed. Of course, there might be relevant treaties that provided for an obligation to exchange information, but they were binding only *inter partes*. The Commission should proceed with caution.

Mr. Saboia said that he preferred the original wording of the sentence, which was in fact the wording adopted on first reading. All environmental instruments with a cooperation component provided for an obligation to exchange information, albeit one that might be subject to certain limits. Moreover, exchange of information was an important element of the Commission's outputs on other topics, for example the draft articles on the protection of persons in the event of disasters. He would prefer to retain the original wording of the sentence, perhaps with the addition proposed by the Chair.

Mr. Ouazzani Chahdi said that, while paragraph (7) of the commentary concerned cooperation as such, paragraph (10) concerned the obligation to cooperate. If the Special Rapporteur's intention was to tone down that obligation, it would be better to draw on the wording of paragraph (7). The first sentence of paragraph (10) could thus be amended to read: "The obligation to cooperate could encompass various forms, including the exchange of information" [*L'obligation de coopérer pourrait englober diverses formes et notamment l'échange d'informations*].

Mr. Šturma said that he could support Mr. Ouazzani Chahdi's proposal. Another option would be to replace the word "also" with "usually" or "generally".

Mr. Jalloh said that, on a point of procedure, it was regrettable that the Commission was being presented with changes proposed by the Special Rapporteur that were not fully motivated. In his limited experience as a member of the Commission, the first-reading text usually served as the starting point for the discussion and the Special Rapporteur could propose amendments to that text, provided that justifications were given. What was currently happening, however, was that an amended text was being presented to the Commission essentially as a *fait accompli*, and members were having to defend the first-reading text. Through an accumulation of small changes that had not been fully motivated, the Commission was changing what had already been agreed.

The sentence in question formed part of the commentary to a fairly weak draft guideline: paragraph 1 of the draft guideline referred to the "obligation to cooperate, as appropriate", and paragraph 2 stated that such cooperation "could include" exchange of information and joint monitoring. His preference would be to retain the original wording of the sentence. The use of the phrase "*inter alia*" was appropriate, since, as shown by the

examples provided in the paragraph, the obligation to cooperate was not limited to exchange of information.

Sir Michael Wood said that he disagreed with Mr. Jalloh's comments on procedure. Regarding the wording of the first sentence, Ms. Lehto had explained that the obligation to cooperate did not always include exchange of information but that, in the context of the draft guideline under consideration, it did. In the light of that explanation, the sentence could be amended to read: "In this context, the obligation to cooperate includes, *inter alia*, exchange of information."

Mr. Park said that, although paragraph (10) consisted of text that had been adopted on first reading, it was rather broad and ambiguous. He agreed with the Special Rapporteur's proposal to replace the words "also includes" with "may include", since the two examples provided in the paragraph were drawn from treaty law rather than customary international law. If the Commission wished to retain the words "also includes", it would be preferable to insert the words "in accordance with the applicable rules of international law" at the end of the sentence. Although it was true that draft guideline 8 (2) stated that cooperation "could include" exchange of information and joint monitoring, paragraph (10) of the commentary concerned not cooperation as such but the obligation to cooperate, which was something different. Nevertheless, the wording used in the second sentence of draft guideline 8 (2), "could include", might point to a solution.

Mr. Tladi said that he would prefer to retain the original wording. One of the two instruments mentioned in the paragraph provided for an obligation to exchange information, which was expressed by the word "shall". He did not agree with the proposal to insert the words "as appropriate" or "in accordance with the applicable rules of international law", as the various limits to the obligation to cooperate were already set out in paragraph (2) of the commentary. He could support Sir Michael Wood's proposal, which offered a good compromise.

Mr. Murphy said that Mr. Jalloh seemed to be implying that it was somehow inappropriate, at the second-reading stage, for a Special Rapporteur to propose any changes to a commentary adopted on first reading. In fact, that was precisely what special rapporteurs were expected to do if they thought that a change would improve the commentary. It was only to be expected that some members of the Commission might not agree with the reasons put forward by the Special Rapporteur, or might not find those reasons convincing.

Regarding the paragraph under consideration, he agreed with the Special Rapporteur's proposal. In their comments in the Sixth Committee, some States had expressed the view that, even in the very qualified way in which draft guideline 8 was worded, it expressed an international obligation that did not exist. According to those States, although there were treaties that provided for a certain obligation to cooperate, the proposition that there was a general obligation to cooperate in the area of atmospheric degradation and atmospheric pollution was simply not true. As for the examples provided in the paragraph, the parties to the West and Central Africa Regional Framework Agreement on Air Pollution had agreed merely to "promote" the exchange of information.

The Commission needed to find some common ground. He did not agree that the phrase "*inter alia*" sufficiently softened the first sentence; that phrase indicated simply that exchange of information was not the only form that cooperation could take. However, if that was how the phrase was understood, a simple solution would be to use the words "may include" and to replace "*inter alia*" with "as appropriate", as in the draft guideline itself.

Mr. Forteau said that it would make sense to use the conditional form, "could include", in the first sentence of paragraph (10) of the commentary, since that was the form used in draft guideline 8 (2). However, the word "may" offered a good compromise, since it would maintain a degree of flexibility.

Ms. Oral said that she agreed with Mr. Tladi. The first sentence of the paragraph set out a general statement. The Commission needed to reflect the fact that there had been cases in which the obligation to cooperate had explicitly included exchange of information. She would be happy to support Sir Michael Wood's proposal as a compromise.

The Chair asked whether the Commission could accept the wording of the first sentence as proposed by Sir Michael Wood.

Mr. Murphy said that he could not accept that wording.

The Chair said he took it that the Commission wished to leave paragraph (10) in abeyance, pending informal consultations.

It was so decided.

Mr. Jalloh said that, in his earlier comments about procedure, he had not intended to suggest that the Special Rapporteur was not entitled to propose improvements to the text at the second-reading stage. His point was that the Special Rapporteur should explain any proposals that he put forward and convince members to support them.

Paragraphs (11) and (12)

Mr. Murase (Special Rapporteur) proposed that the words “For addressing the adverse effects of climate change” should be inserted at the beginning of the second sentence of paragraph (12) and that paragraphs (11) and (12), as amended, should be merged into a single paragraph.

Mr. Tladi said that he would be grateful if the Special Rapporteur could explain the rationale behind the first of his two proposals. Was the intention to make clear that the Paris Agreement did not concern the protection of the atmosphere specifically? If so, it could be argued that all the references to international agreements should be prefaced with similar wording.

Mr. Murase (Special Rapporteur) said that the aim of his proposal was to provide further context in which to frame the reference to the Paris Agreement.

Paragraphs (11) and (12), as amended, were adopted.

Draft guideline 9 (Interrelationship among relevant rules)

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

Mr. Murase (Special Rapporteur) proposed that the word “among” in the second sentence should be deleted and that the words “others including” should be inserted after “also” in the fourth sentence.

Paragraph (2), as amended, was adopted.

Paragraph (3)

Mr. Murase (Special Rapporteur) proposed that the word “norms” should be replaced with “rules” throughout the paragraph and that the last sentence should be deleted, since the process by which rules of customary international law were crystallized was addressed in paragraph (2) of the commentary to draft guideline 11.

Paragraph (3), as amended, was adopted.

Paragraph (4)

Mr. Murase (Special Rapporteur) proposed replacing the words “against the background of” in the last sentence with “taking into account”.

Paragraph (4), as amended, was adopted.

Paragraph (5)

Paragraph (5) was adopted.

Paragraph (6)

Mr. Murase (Special Rapporteur) proposed replacing the word “and” in the last sentence with “or”.

Paragraph (6), as amended, was adopted.

Paragraph (7)

Mr. Murase (Special Rapporteur) proposed that the words “strongly supporting the interpretative principle of harmonization and systemic integration” in the last sentence should be deleted.

Paragraph (7), as amended, was adopted.

Paragraph (8)

Mr. Forteau said that the North American Free Trade Agreement of 1993, which was cited in footnote 141, had since been replaced by a new agreement between the three States concerned. The citation should be amended accordingly.

Paragraph (8) was adopted with that amendment to footnote 141.

The meeting rose at 1 p.m.