

INTERNATIONAL LAW COMMISSION

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Identification of customary international law

Statement of the Chairman of the Drafting Committee, Mr. Pavel Šturma

2 June 2016

Mr. Chairman,

It gives me great pleasure to introduce the first report of the Drafting Committee for the sixty-eighth session of the Commission, which concerns the topic “Identification of customary international law”. This report should be read together with the interim report and the report of the Chairman of the Drafting Committee respectively dated 7 August 2014 and 29 July 2015, which described the work of the Drafting Committee on the topic at the sixty-sixth and sixty-seventh sessions of the Commission.

It will be recalled that the Drafting Committee provisionally adopted a set of 16 draft conclusions in 2014 and 2015, which the Commission took note of at the last session.

Before addressing the details of the report, let me pay tribute to the Special Rapporteur, Mr. Michael Wood, whose mastery of the subject, guidance and cooperation greatly facilitated the work of the Drafting Committee. I also thank the members of the Drafting Committee for their active participation and valuable contributions to the successful outcome. Furthermore, I also wish to thank the Secretariat for its invaluable assistance.

I draw your attention to document A/CN.4/L.872, which for convenience reproduces the text of all the draft conclusions provisionally adopted by the Drafting Committee.

At the present session, the Drafting Committee devoted one meeting, on 27 May 2016, to its consideration of the draft conclusions relating to this topic. It considered the amendments to

the draft conclusions presented in the fourth report by the Special Rapporteur (A/CN.4/695), in light of the suggestions and reformulations made by the Special Rapporteur. In order to respond to suggestions made, or concerns raised, during the debate in Plenary, the Special Rapporteur suggested that the Drafting Committee confine itself to the changes proposed in his fourth report that were uncontroversial. He indicated that a number of suggestions made in his fourth report probably needed more thorough discussions and would best be addressed at the stage of the second reading.

The only amendments made by the Drafting Committee this year to the draft conclusions provisionally adopted by the Drafting Committee in 2014 and 2015 concern draft conclusion 3, paragraph 2, as well as the title of this draft conclusion. This paragraph now reads: “Each of the two constituent elements is to be separately ascertained. This requires an assessment of evidence for each element”.

The text of draft conclusion 3, paragraph 2, provisionally adopted by the Drafting Committee in 2014 referred to “Each element”. The text now adopted by the Drafting Committee refers to “Each of the two constituent elements”. The change is of a purely editorial character and does not affect the substance of this provision. The purpose of referring to “Each of the two constituent elements” is to clarify the link between draft conclusions 2 and 3. The same amendment has been made in the title of draft conclusion 3, which accordingly reads “Assessment of evidence for the two constituent elements”.

This concludes my introduction of the first report of the Drafting Committee for the sixty-eighth session. It is my sincere hope that the Plenary will be in a position to adopt the draft conclusions on the identification of customary international law on first reading, as set out in document A/CN.4/L.872.

Thank you very much.