

INTERNATIONAL LAW COMMISSION

Sixty-eighth session

Geneva, 2 May – 10 June and 4 July – 12 August 2016

*Check against delivery*

Protection of the environment in relation to armed conflicts

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

9 August 2016

Mr. Chairman,

It gives me great pleasure to introduce the ninth report of the Drafting Committee for the sixty-eighth session of the Commission. This is the second report on the topic “Protection of the environment in relation to armed conflicts” and is contained in document A/CN.4/L.876, which reproduces the text of the draft principles provisionally adopted by the Drafting Committee this year.

You will recall that on 5 August 2016, I presented the first report of the Drafting Committee on the present topic. We adopted the draft principles that the Commission had taken note of last year, following technical revisions made by the Drafting Committee at the present session. Those draft principles were contained in A/CN.4/L.870/Rev.1. The report before you today concerns the draft principles that were referred to the Drafting Committee during the present session, on the basis of the proposals contained in the third report of the Special Rapporteur (A/CN.4/700).

Before addressing the details of the report, let me pay tribute to the Special Rapporteur, Ms Marie Jacobsson, 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 of our work. Furthermore, I also wish to thank the Secretariat for its invaluable assistance.

\*\*\*

Mr. Chairman,

Before introducing in turn draft principles 4, 6, 7, 8, 14, 15, 16, 17 and 18 provisionally adopted by the Drafting Committee, let me draw your attention to the fact that all the draft principles in the report have been renumbered in order to be consistent with the numbering system decided upon for the draft principles that we have already adopted on this topic.

It will be recalled that in the previous report on this topic, I addressed draft principles 1, 2, 5, 9, 10, 11, 12 and 13 . These draft principles have already been adopted by the Commission and are contained in document A/CN.4/870/Rev.1.

My report today covers the draft principles provisionally adopted by the Drafting Committee at this session.

Let me turn first to draft principle 4.

#### **Draft principle 4**

##### **Measures to enhance the protection of the environment**

It will be recalled that the Special Rapporteur initially proposed this draft principle as draft principle I-1 on “Implementation and enforcement”. It is placed in Part One of the draft principles entitled “General principles”. While the original proposal by the Special Rapporteur consisted of one paragraph, the Drafting Committee decided to divide this principle into two paragraphs in order to better reflect the difference in the normative status of the measures proposed therein. The purpose of the draft principle is to ensure that States take effective measures to enhance the protection of the environment in relation to armed conflict. It is intentionally drafted broadly to cover a wide range of measures, from legislative measures to those of a more policy oriented nature.

Paragraph 1 of draft principle 4 reads: “States shall, pursuant to their obligations under international law, take effective legislative, administrative, judicial and other measures to enhance the protection of the environment in relation to armed conflict.” This paragraph serves to remind States that they need to take measures that aim to enhance the protection of the environment in relation to armed conflict in order to fulfil their obligations under international

law. Since the first paragraph refers to measures which States in any event are obliged to take, it was considered appropriate to use the term “shall”. For similar reasons, the term “all necessary” contained in the original proposal by the Special Rapporteur was considered unclear and unnecessary. It was therefore deleted. In order to further clarify the scope of paragraph 1, the words “pursuant to” was inserted in the first line of the sentence. It was considered that this term better reflected the aim of the principle than the phrase “in conformity with” as had originally been proposed. The focus was not on ensuring that the measures were in conformity with international law, but to emphasize the need to fulfil existing obligations. The Drafting Committee decided to suppress the words “steps to adopt” so that the paragraph simply refers to “take effective” measures, as it was considered to better reflect existing obligations under international law.

Paragraph 2 reads: “In addition, States should take further measures, as appropriate, to enhance the protection of the environment in relation to armed conflict.” The purpose of paragraph 2 is to encourage States to take additional measures, which do not necessarily correspond to any legal obligation to do so. These would include, for example, measures of a policy oriented nature, including legislating beyond their obligations or developing programmes, guidelines or codes of practice that aim to enhance the protection of the environment in relation to armed conflict. This paragraph is therefore less prescriptive than paragraph 1 and the word “should” was used to reflect this difference.

It was recognized that the measures contemplated in the draft principle were not limited to preventive measures to be undertaken in the pre-conflict phase, but were equally relevant to the other phases covered by the topic, namely “during armed conflict” and “post-armed conflict”. Consequently, the word “preventive” was deleted. Furthermore, the term “natural” was deleted as a qualifier for the term “environment”, since this term had been used only with regard to those principles that related to the “during armed conflict” phase. This, however, was not intended to prejudice future discussions on whether the term “environment” or “natural environment” would be preferable for all or some of the draft principles.

The wide variety of measures, as well as their different normative statuses, will be explained in the commentaries.

Finally, the Drafting Committee decided to change the title of draft principle 4 from “Implementation and enforcement measures”, as had originally been proposed by the Special Rapporteur, to “Measures to enhance the protection of the environment”. With this revision, the title was considered to better correspond with the content of the draft principle. Thus draft principle 4 is entitled “Measures to enhance the protection of the environment”.

Mr. Chairman,

Since draft principle 5 on Designation of protected zones has already been adopted, I will now turn to draft principle 6.

### **Draft principle 6**

#### **Protection of the environment of indigenous peoples**

It will be recalled that the Special Rapporteur had initially proposed this draft principle as draft principle IV-1 on “Rights of indigenous peoples”. Like draft principle 4, draft principle 6 is placed under Part One of the draft principles, entitled “General Principles”. Draft principle 6 comprises two paragraphs, as originally proposed by the Special Rapporteur.

Paragraph 1 reads: “States should take appropriate measures, in the event of an armed conflict, to protect the environment of the territories that indigenous peoples inhabit.”

As indicated by the Special Rapporteur in her third report, the special relationship between indigenous peoples and the natural environment has been recognized, protected and upheld in the practice of States and in the jurisprudence of international courts and tribunals, as well as in instruments such as the Indigenous and Tribal Peoples Convention of the International Labour Organization (ILO No. 169) and the United Nations Declaration on the Rights of Indigenous Peoples. The purpose of paragraph 1 is to recall the measures of protection that ought to be taken by States in the event of an armed conflict.

Such protection is not temporally limited: it applies generally in the event of an armed conflict. Consequently, the Drafting Committee considered it appropriate to place this draft principle under Part One, addressing the general principles.

The existing instruments setting out this obligation adopt different terminologies to designate their application *ratione loci*. Moreover, the specific rights of indigenous peoples over certain lands or territories may be the subject of different legal regimes in different States. The Drafting Committee has chosen to follow the formulation of article 7 of the Indigenous and Tribal Peoples Convention of the International Labour Organization (ILO No. 169), which refers to the environment of the territories that indigenous peoples inhabit, with the understanding that the terminological differences would be explained in the commentaries.

Paragraph 2 reads as follows:

“After an armed conflict that has adversely affected the environment of the territories that indigenous peoples inhabit, States should undertake effective consultations and cooperation with the indigenous peoples concerned, through appropriate procedures and in particular through their own representative institutions, for the purpose of taking remedial measures.”

The purpose of this provision is to facilitate the taking of remedial measures in the event that an armed conflict has adversely affected the environment of the territories that indigenous peoples inhabit. In such instances, States should undertake effective consultations and cooperate with the indigenous peoples concerned. These two dimensions were underlined in the original proposal made by the Special Rapporteur in her third report. Following a new suggestion by the Special Rapporteur, the Drafting Committee also indicated in paragraph 2 that such consultations and cooperation should be made through appropriate procedures and in particular through the indigenous peoples’ own representative institutions. This clarification has been made to acknowledge the diversity of the existing procedures within different States allowing for the effective consultation and cooperation with indigenous peoples and the diversity of their modes of representation.

The title of draft principle 6 is “Protection of the environment of indigenous peoples”.

Let me now turn to draft principle 7.

### **Draft principle 7**

#### **Agreements concerning the presence of military forces in relation to armed conflict**

It will be recalled that the Special Rapporteur had initially proposed this draft principle as draft principle I-3 on “Status of forces and status of mission agreements”. Like draft principle 4 and 6, it is placed in Part One of the draft principles.

Draft principle 7 consists of one paragraph, which reads: “States and international organizations should, as appropriate, include provisions on environmental protection in agreements concerning the presence of military forces in relation to armed conflict. Such provisions may include preventive measures, impact assessments, restoration and clean-up measures.”

The purpose of draft principle 7 is to reflect an emerging trend whereby States and international organizations have begun addressing matters relating to environmental protection in agreements concerning the presence of military forces concluded with host States. It was recalled that the original proposal by the Special Rapporteur addressed this issue in the specific context of status of forces and status of mission agreements. While it was acknowledged that provisions on environmental protection could be found in such agreements, it was noted that this was not usually the case, since those agreements served a different purpose and did not address conduct of forces. It was also recognized that not all status of forces and status of mission agreements had any relationship with armed conflict. In light of this, the Drafting Committee decided to cast this provision in more general terms, referring instead to “agreements concerning the presence of military forces in relation to armed conflict”. The specific designation and purpose of those agreements could vary, and may, depending on the particular circumstances, include status of forces and status of mission agreements. The phrase “in relation to armed conflict” was added in order to emphasize the clear link between the agreements and situations of armed conflict and to make it clear that not all military activities were intended to be covered in the scope of the draft principle.

Furthermore, in light of the urgency under which these types of agreements are sometimes concluded, the Drafting Committee considered that a more flexible regime was needed and added the words “as appropriate”. This term was intended to reflect both the specific situations under which such agreements were concluded and the fact that the situation at hand may render environmental protection provisions more relevant in certain situations than in

others.. While recognizing that the draft principle did not correspond to any specific obligation under international law, the Drafting Committee nevertheless wanted to signal the desirability of including such provisions in agreements concluded by States and international organizations. The term “should” was chosen to correspond with the wording of other draft principles. For clarity, the term “environmental regulations and responsibilities” as originally proposed by the Special Rapporteur, has been changed to “environmental protection”. It was understood that this term would encompass both measures envisaged. The second sentence of the draft principle, which remained as originally proposed, describes the measures such environmental provisions could address. The commentaries will reflect that the second sentence is not exhaustive and will also provide further illustrations.

Finally, in light of the changes made to the text of the draft principle, the title, which had originally read “Status of forces and status of mission agreements” was changed to correspond to the content of the draft principle.

Consequently, draft principle 7 is entitled “Agreements concerning the presence of military forces in relation to armed conflict”.

### **Draft principle 8**

#### **Peace operations**

I now turn to draft principle 8 addressing peace operations. It will be recalled that the Special Rapporteur had initially proposed this draft principle as draft principle I-4. It is placed in Part One as it was considered to be relevant for all temporal phases of armed conflict.

Draft principle 8 consists of one paragraph, which reads: “States and international organizations involved in peace operations in relation to armed conflict shall consider the impact of such operations on the environment and take appropriate measures to prevent, mitigate and remediate the negative environmental consequences thereof.”

Draft principle 8 reflects the growing recognition on the part of States and international organizations of the need to consider the impact of peace operations on the environment and to take measures to prevent, mitigate and remediate any negative consequences. It focuses on

activities that would negatively affect the environment in a peace operation undertaken in relation to armed conflict.

It was acknowledged that no definition exists for the term “peace operations” and that the term was used by the United Nations to cover a wide range of operations. The term was to be understood from an equally broad perspective in the context of the draft principle, and it was recognized that not all such operations had any direct link to armed conflict. Consequently, the Drafting Committee inserted the words “in relation to armed conflict” after the term “peace operations” in order to delineate the scope of the draft principle in relation to the present topic. Various proposals were made with the aim of specifying that the draft principle related to multilateral operations. Ultimately, the Drafting Committee did not find it necessary to address this expressly in the draft principle. The general understanding of the term “peace operations” was that it concerned multilateral operations. The commentaries will elaborate on the different kinds of operations that the term was intended to encompass.

As originally proposed by the Special Rapporteur, the term “shall” was maintained in the draft principle. This was done in light of the vast practice that existed in this field, in particular within the United Nations. However, taking into account that most practice consisted of policy considerations and did not reflect any existing legal obligation, it was deemed appropriate to render the language less prescriptive. Consequently, it was stressed that the term “shall” had to be read with the term “consider”, which nuanced the obligation. In addition, the Drafting Committee replaced the term “all necessary” with the term “appropriate” in the second part of the sentence to read “and take appropriate measures to prevent, mitigate and remediate the negative environmental consequences thereof.” This also took into account the fact that most of the practice related to the need to consider the impact of peace operations on the environment rather than the need to take measures to prevent, mitigate and remediate the negative environmental consequences. The commentaries will clarify that the appropriate measures to be taken would depend on the context of the operation, in particular whether measures related to the pre-, during, or post-conflict phase were to be taken. The commentaries will also reflect the Drafting Committee’s understanding that the draft principle, by referring to preventive measures, also encompassed reviews of concluded operations for the purpose of seeking to avoid that future

operations negatively affect the environment in a similar way, a so called “lessons-learned” exercise.

The term “international” was added before “organization” to ensure consistency with the other draft principles.

Draft principle 8 is entitled “Peace operations” as originally proposed by the Special Rapporteur.

Mr. Chairman,

I will now turn to draft principle 14.

#### **Draft principle 14**

##### **Peace processes**

It will be recalled that the Special Rapporteur had initially proposed this draft principle as draft principle III-1 on “Peace agreements”. It is placed in Part Three of the draft principles relating to “Principles applicable after an armed conflict”. Whereas the original proposal by the Special Rapporteur consisted of one paragraph, the Drafting Committee decided to add a second paragraph relating to the facilitating role of various actors in peace processes, reflecting views that had been expressed during the Plenary debate. The purpose of the draft principle is to reflect that environmental considerations are, to a greater extent, being taken into consideration in the context of contemporary peace processes, including through the regulation of environmental matters in peace agreements.

Paragraph 1 reads: “Parties to an armed conflict should, as part of the peace process, including where appropriate in peace agreements, address matters relating to the restoration and protection of the environment damaged by the conflict” The formulation reflects the purpose of the draft principle, namely to address the peace process as a whole instead of only referring to peace agreements, as originally proposed. It was recognized that not every armed conflict resulted in the conclusion of a peace agreement and that the outcome of a peace process often involved different steps and the adoption of a variety of instruments. The conclusion of peace agreements represented only one aspect of the peace process, which may take place several years

after the cessation of hostilities, if at all. For this purpose, and to avoid any temporal *lacuna*, the words “as part of the peace process” were employed. However, in order not to lose sight of the importance of peace agreements in this context, it was decided to add the words “including where appropriate in peace agreements”. The words “where appropriate” signalled the fact that, depending on the circumstances of the conflict, if a peace agreement is concluded, it should address environmental considerations.

The use of the term “parties” indicated that the draft principle addressed not only States parties to an armed conflict but also non-State actors. It was recalled that the draft principles covered both international and non-international armed conflicts.

The Drafting Committee considered it important to strengthen the normative value of the obligation, while also recognising that it did not correspond to any existing legal obligation. The words “are encouraged” were thus replaced with “should”. This also ensured consistency with other draft principles. This was also the case with the term “armed” that was inserted before “conflict”, which clarified the scope of the draft principle and ensured consistency throughout the draft principles. Moreover, the word “address” in the sentence “address matters relating to the restoration and protection of the environment” was considered more appropriate than “settle”, which had originally been proposed. It was considered that the latter term may imply the settlement of disputes, which was not the aim of the draft principle.

Several suggestions had been made in the Plenary that the draft principle should emphasize the need to include, in peace agreements, questions concerning the allocation of responsibility and compensation for damage caused to the environment. These were reiterated in the Drafting Committee. It was, however, also observed that the appropriateness of dealing with such questions in a peace process depended heavily on the circumstances surrounding the conflict. In light of the fact that the questions of responsibility and compensation may be relevant for several of the draft principles, it was decided that those issues may be considered separately, once all the draft principles had been agreed upon. The commentaries will nevertheless clarify this matter and specify that the draft principle was without prejudice to the allocation of responsibility and questions of compensation.

Paragraph 2 reads: “Relevant international organizations should, where appropriate, play a facilitating role in this regard.” Paragraph 2 was added by the Drafting Committee in order to take into account the debate in the Plenary. It aims to reflect the important role that international organizations may play in facilitating a peace process and, in this context, in ensuring that environmental considerations are taken into account. Recognizing that a variety of actors may be involved in a peace process, and for different purposes, the Drafting Committee decided to refer to “relevant international organizations” to signal that not all organizations were suited to address this particular issue. In addition, the terms “where appropriate” were employed in order to reflect the fact that the involvement of international organizations for this purpose was not always required, or wanted by the parties.

Finally, in order to reflect the broad purpose of the draft principle, the title of draft principle 14, which had originally read “Peace agreements”, was replaced with “Peace processes”. Draft principle 14 is now entitled “Peace processes”.

Mr. Chairman,

I will now turn to draft principle 15.

### **Draft principle 15**

#### **Post-armed conflict environmental assessments and remedial measures**

It will be recalled that the Special Rapporteur had initially proposed this draft principle as draft principle III-2 “Post-conflict environmental assessments and reviews”. Like draft principle 14, it is placed in Part Three of the draft principles. Whereas the original proposal by the Special Rapporteur consisted of two paragraphs, the Drafting Committee decided to retain only the first paragraph. Having adopted draft principle 8 on Peace operations, it was considered that the elements covered by the envisaged second paragraph of draft principle 15 were part of the encompassed reviews of concluded operations for the purpose of seeking to avoid that future operations negatively affect the environment as envisaged in draft principle 8.

Draft principle 15 reads: “Cooperation among relevant actors, including international organizations, is encouraged with respect to post-armed conflict environmental

assessments and remedial measures.” The original proposal by the Special Rapporteur was redrafted substantially to take into account concerns expressed during the Plenary debate and to ensure clarity. The purpose of draft principle 15 is to encourage relevant actors to cooperate in order to ensure that environmental assessments and remedial measures can be carried out in post-conflict situations. Consequently, the aim is not to identify any wrongdoer or to allocate by responsibility.

The concern raised during the Plenary debate with regard to the stakeholders of this draft principle was reiterated in the Drafting Committee. While it was recognized that the aim of the draft principle was to include both State and non-State actors in its scope, the reference in the original proposal by the Special Rapporteur to “States and former parties” was considered unclear and raised a temporal problem. In order to address these concerns, while maintaining a broad scope, the Drafting Committee decided to formulate the draft principle in passive tense and replace “States and former parties” with “relevant actors”. This term was intended to indicate that not only States had a role to play in relation to environmental assessments and remedial measures, but that a wide range of actors could be involved in such endeavours, including international organizations and non-State actors. In light of the fact that there was scarce practice in this field, the terms “are encouraged”, as had been proposed by the Special Rapporteur, were considered appropriate and were thus retained.

While there was some concern that the term “environmental assessment” may be confused with the concept “environmental impact assessments”, which are to be undertaken as preventive measures, it was acknowledged that the term used in the draft principle was a term of art employed by several international organizations involved in such post-conflict assessments. Based on this understanding, the Drafting Committee decided to retain the term, as originally proposed by the Special Rapporteur. The commentaries will clarify the distinction with regard to environmental impact assessments and further elaborate on the specific meaning of this term in relation to the current context.

In order to align the text with other draft principles, in particular draft principle 2, the Drafting Committee decided to replace the term “recovery” with “remedial”.

The title of draft principle 15 was slightly modified from the one proposed by the Special Rapporteur in order to take into account the modifications made in the text. The word “armed” was inserted before “conflict” to ensure consistency and the term “remedial” was used instead of “recovery”.

Draft principle 15 now is entitled “Post-armed conflict environmental assessments and remedial measures”.

I shall now turn to draft principle 16

## **Draft principle 16**

### **Remnants of war**

It will be recalled that the Special Rapporteur had initially proposed this draft principle as draft principle III-3 on “Remnants of war” to be placed in the Part dealing with the Post-conflict phase. The Drafting Committee proceeded on the basis of a revised proposal by the Special Rapporteur which sought to take into account comments made in the Plenary debate. As adopted, the draft principle now contains three paragraphs.

Paragraph 1 was reformulated in the revised proposal by the Special Rapporteur and as agreed in the Drafting Committee it now reads: “After an armed conflict, parties to the conflict shall seek to remove or render harmless toxic and hazardous remnants of war under their jurisdiction or control that are causing or risk causing damage to the environment. Such measures shall be taken subject to the applicable rules of international law”.

It will be recalled that the original proposal referred to the temporal element by reference to “Without delay after cessation of active hostilities”. This formulation raised concerns, and the revised proposal that contained a reference to “After an armed conflict” was retained by the Drafting Committee as it better reflected the post conflict phase.

Paragraph 1 identifies the scope *ratione personae* as the “parties to the conflict”, unlike the original text which did not explicitly spell out to whom the obligation was addressed.

The obligation contained in paragraph 1 is to “seek to remove or render harmless toxic and hazardous remnants of war”. This has been recast in more general terms than as originally proposed by the Special Rapporteur. The original proposal for paragraph 1 is now covered in paragraph 3. Given that the second sentence provides that such measures shall be taken subject to the applicable rules of international law, it was considered that the commentary would clarify the meaning of the phrases “toxic and hazardous remnants of war” and “to remove and render harmless” in the context of such applicable rules. Moreover, the obligation to “seek to” is one of conduct and was considered preferable as opposed to “attempt to”, contained in the revised proposal, as the latter invited the connotation that the obligation could be optional. The obligation also specified that “toxic and hazardous remnants of war” are those that “are causing or risk causing damage to the environment”.

There was also some discussion in the Drafting Committee as to the understanding of the reference to “jurisdiction or control”. The reference is intended to cover areas within *de jure* and *de facto* control. The draft principle is now formulated in general terms to cover all remnants of war, whether on land or at sea.

Paragraph 2 remains largely the same as contained in the original proposal by the Special Rapporteur. It reads: “The parties shall also endeavour to reach agreement, among themselves and, where appropriate, with other States and with international organizations, on technical and material assistance, including, in appropriate circumstances, the undertaking of joint operations to remove or render harmless such toxic and hazardous remnants of war.”

The Drafting Committee decided to remove the words “At all times necessary” contained in the original proposal as they were considered unnecessary and likely to give rise to confusion regarding the three phases of the topic. The obligation to “endeavour to reach agreement...on the provision of technical and material assistance” has been tempered by the removal of “provision” to give flexibility to the various arrangements that may arise.

Paragraph 3 is based on a text revised by the Special Rapporteur and casts some elements originally proposed in paragraph 1 as a “without prejudice” provision. Paragraph 3 now reads: “Paragraphs 1 and 2 are without prejudice to any rights or obligations under international law to clear, remove, destroy or maintain minefields, mined areas, mines, booby-traps, explosive

ordnance and other devices”. This means that existing obligations under the various legal regimes would continue to prevail. The revised proposal had a reference at the end to “without delay after the cessation of active hostilities”. The Drafting Committee decided to delete it as the reference had legal implications regarding the termination of hostilities. Moreover, it was considered to raise impractical considerations for the parties.

Draft principle 16 is entitled “Remnants of war” as originally proposed by the Special Rapporteur.

### **Draft principle 17**

I shall now turn to draft principle 17.

### **Remnants of war at sea**

The Special Rapporteur had initially proposed this draft principle as draft principle III-4 on “Remnants of war at sea” to be placed in the Part dealing with the post-conflict phase. The proposal had two paragraphs. Paragraph 2 was withdrawn on the understanding that the issues raised therein would be addressed in the context of access to and sharing of information, as proposed by the Special Rapporteur. Accordingly, draft principle 17 has a single sentence which reads: “States and relevant international organizations should cooperate to ensure that remnants of war at sea do not constitute a danger to the environment.”

Unlike the broader draft principle 16, which deals with remnants of war more generally, this draft principle deals with the specific situation of remnants of war at sea, including the long lasting effects on the marine environment.

The draft principle refers to “States and relevant international organizations”. The Drafting Committee discussed whether there should be reference to the phrase “parties to the conflict”, which is used in draft principle 16, but it was decided that this would not be the best choice. It was considered that this draft principle deals with a different situation where the parties to the conflict may no longer exist or the area impacted might belong to or fall under the jurisdiction of a State that was not party to the conflict at the time it took place. The principle

therefore needed to refer to “States” more generally. There was also a discussion on whether the draft principle should be qualified by reference to “jurisdiction or control” as in principle 16. Given the nature of the regime under the law of the Sea, the inclusion was not considered appropriate.

In view of the fact that the issues involved tend to be specialized, the Drafting Committee decided to qualify “international organizations” with “relevant”. The Drafting Committee also elected to use the more hortatory “should cooperate” rather than “shall cooperate”, given that this is an area where practice is still developing. The reference to “at sea” was added in the text to add specificity. Moreover, the Drafting Committee decided to delete the reference to “public health or the safety of the seafarers” to limit the principle within the confines of the scope of the present topic. It was understood that the effects on public health and the safety of the seafarers will be reflected in the commentary.

Draft principle 17 is entitled “Remnants of war at sea” as originally proposed by the Special Rapporteur.

Mr. Chairman,

I shall now turn to draft principle 18.

### **Draft principle 18**

#### **Sharing and granting access to information**

This provision was originally proposed by the Special Rapporteur in her third report as draft principle III-5 “Access to and sharing of information”. It comprises two paragraphs, the Drafting Committee having adopted an additional paragraph as proposed by the Special Rapporteur in light of the debate in Plenary.

Draft principle 18 is closely linked to the duty to cooperate but is formulated to focus on sharing and granting access to information.

Paragraph 1 reads: “To facilitate remedial measures after an armed conflict, States and relevant international organizations shall share and grant access to relevant information in accordance with their obligations under international law.”

This draft principle has been reformulated in order to be more clearly linked to the post-conflict phase. The temporal limitation is signaled by the reference to the “remedial measures” to be taken “after an armed conflict”.

Different views were expressed within the Drafting Committee regarding the subjects of the obligation set out in draft principle 18. After considering the appropriateness of referring exclusively to the parties to the conflict, the Drafting Committee considered it more appropriate to refer generally to States. States that are not parties to a conflict may have relevant information useful for the taking of remedial measures that could be provided to other States or international organizations. Moreover, remedial measures may be taken after a long period of time. In addition, members of the Drafting Committee shared the view that this obligation applied only to States, and that non-State actors that may be parties to an armed conflict were not included within the scope of paragraph 1. The Drafting Committee also decided to retain the reference to international organizations, already present in the original proposal, adding the qualifier “relevant”. International organizations commonly play a role in the context of armed conflicts, notably through peacekeeping operations, and they may provide information to facilitate the taking of remedial measures.

Such information could either be shared by States or international organizations, or access to it may be granted. While the term “share” referred to information provided directly by States and international organizations in their mutual relations, the term “grant access” referred primarily to allowing access by individuals to such information. The expression “in accordance with their obligations under international law” signals the treaties containing obligations relevant in the context of the protection of the environment in relation to armed conflicts, which may be instrumental for the purpose of taking remedial measures after an armed conflict, such as, for instance, keeping a record of the placement of landmines.

Paragraph 2 sets out a new provision proposed by the Special Rapporteur in light of the Plenary debate. It reads: “Nothing in the present draft principle obliges a State or international organization to share or grant access to information vital to its national defence or security.

Nevertheless, that State or international organization shall cooperate in good faith with a view to providing as much information as possible under the circumstances.”

The formulation of this paragraph was inspired by previous work of the Commission, in particular in the topics “Law of the non-navigational uses of international watercourses” and “Shared natural resources (Law of Transboundary Aquifers)”.

Paragraph 2 provides an exception to the obligation set out under paragraph 1, in a situation where the information in question is vital to the national defence or security of a State or an international organization. This exception is not unqualified. The second sentence of paragraph 2 indicates that, within the limits necessary for the protection of such information, States and international organizations shall, nevertheless, do their utmost to provide as much information as possible under the circumstances. This is to be achieved through cooperation in good faith.

The title of draft principle 18 is “Sharing and granting access to information”.

\*\*\*

Mr. Chairman,

This concludes my introduction of the ninth report of the Drafting Committee for the sixty-eighth session. Let me note that the Commission is not, at this stage, being requested to act on the draft principles as they have been presented for information purposes only. It is the wish of the Drafting Committee to have the draft principles provisionally adopted by the Commission at a later stage, once commentaries have been presented to the Commission..

Thank you very much.

---