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Check against delivery

Protection of the environment in relation to armed conflicts

Statement of the Chair of the Drafting Committee

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8 July 2019

Mr. Chair,

Today it is my pleasure to introduce the third report of the Drafting Committee for the seventy-first session of the International Law Commission, which concerns the topic “Protection of the environment in relation to armed conflicts”. The report, which is to be found in document A/CN.4/L.937, contains the texts and titles of the draft principles on the topic, which have been provisionally adopted by the Drafting Committee, and which the Drafting Committee recommends for adoption by the Commission on first reading.

Before addressing the details of the report, I wish to pay tribute to the Special Rapporteur, Ms Marja Lehto, who once again demonstrated a constructive approach and whose guidance and cooperation greatly facilitated the work of the Drafting Committee. I also thank the other members of the Committee for their active participation and significant contributions to the successful outcome. Furthermore, I wish to thank the Secretariat for its invaluable assistance. As always, and on behalf of the Drafting Committee, I am pleased to extend my appreciation to the interpreters.

Mr. Chair,

The Drafting Committee devoted seven meetings to this topic, from 27 May to 4 June. It discussed the draft principles presented by the Special Rapporteur in her second report (A/CN.4/728), together with reformulations that were proposed by the Special Rapporteur to the Drafting Committee in response to suggestions made, or concerns raised, during the debates in Plenary and in the Drafting Committee. The Drafting Committee provisionally adopted, at the present session, a total of eight draft principles.

Following the adoption of the eight new draft principles, the Drafting Committee discussed the overall structure, and undertook a *toiletage final*, of the entire set of the draft principles. As a result, changes were made to the placement and titles of certain Parts of several draft principles, thereby affecting their overall numbering. Altogether, the Drafting Committee has adopted a set of 28 draft principles on first reading. The text as a whole now has five Parts: Part One – “Introduction”, Part Two [One] – “Principles of general application”, Part Three [Two] – “Principles applicable during armed conflict”, Part Four – “Principles applicable in situations of occupation”, and Part Five [Three] – “Principles applicable after armed conflict”.

Mr. Chair, it also bears recalling that the Commission has already provisionally adopted twenty draft principles on this topic. Accordingly, the present statement should be read in conjunction with the previous statements of the Chair of the Drafting Committee, which were delivered at the sixty-seventh, sixty-eighth, and seventieth sessions. All statements are available online on the website of the Commission.

In the written text of my statement, when the number of a specific draft principle, or Part, already adopted by the Commission at a previous session is affected, the original number where it has changed is indicated in square brackets. In the interest of time, I shall refrain from reading the square brackets numbering while delivering my oral statement.

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Mr. Chair,

In my introduction of this report, I will address the draft principles in their numeric order. I draw your attention to the fact that the eight new draft principles provisionally adopted by the Drafting Committee at the present session are: draft principles 8 to 12, draft principles 18 and 19, and draft principle 26.

Part One – Introduction

Draft principles 1 and 2

I will begin with draft principles 1 and 2, which remain as they were previously adopted by the Commission. The only change is that these two draft principles were placed under a new Part One, titled “Introduction”. I should note that the statement of the Chair delivered at the sixty-seventh session addresses these two draft principles.

Part Two [One] – Principles of general application

Draft principles 3 [4] to 7 [8]

No changes were made to draft principles 3 [4] to 7 [8] and thus they remain as previously adopted. These draft principles are under Part Two [One]. The title of Part Two [One] was changed by the Drafting Committee from “General principles” to “Principles of general application”. The Drafting Committee considered that this new title better reflected the applicability of the draft principles thereunder. I should mention that the draft principles under this Part do not necessarily apply in all phases: pre-armed conflict, during armed conflict, post-armed conflict, and situations of occupation. As emphasised by the Special Rapporteur, these draft principles are those that apply to more than one of the phases. It was agreed that this will be clarified in the commentary.

It will be recalled that the statements of the Chair delivered at the sixty-seventh and at the sixty-eighth sessions address these draft principles.

Draft principle 8 – Human displacement

Mr. Chair,

I will now move to draft principle 8,¹ which is placed in Part Two [One] and is titled “Human displacement” as originally proposed by the Special Rapporteur.

This draft principle relates to the environmental effects of human displacement due to armed conflict. As the Special Rapporteur highlighted in her second report, human displacement is a typical consequence of the outbreak of an armed conflict, and one that may give rise to significant human suffering as well as environmental damage.

Draft principle 8 contains a recommendation to States, international organizations and other relevant actors. They are to take appropriate measures to prevent and mitigate environmental degradation in areas where persons displaced by armed conflict are located, while providing relief and assistance for such persons and local communities.

The Drafting Committee modified draft principle 8 as originally proposed by the Special Rapporteur. Specific reference to “international organizations” was added after the word “States” to clarify the addressees of this draft principle. It was understood that the commentary will explain that the phrase “other relevant actors” includes, for example, non-governmental organizations and development agencies. The word “armed” was added before the word “conflict” to align this draft principle with the scope of the present topic and with the language used in the other draft principles. The words “and assistance” were added after the word “relief” to clarify the extent of the recommendation contained in draft principle 8. It should be recalled that the Commission in relation to the topic “Protection of persons in the event of disasters”, uses the term “relief assistance”. In the present instance, the expression “relief and assistance” has been used to capture the kind of assistance involved where human displacement occurs. The terms are not intended to convey any different meaning than as understood in humanitarian work generally.

¹ Originally proposed by the Special Rapporteur as draft principle 14*bis* in her second report.

Draft principle 9 – State responsibility

Mr. Chair,

I will now turn to draft principle 9, which is also placed in Part Two [One]. The Drafting Committee reformulated draft principle 9, which was originally proposed by the Special Rapporteur as draft principle 13^{quater} in her second report. Draft principle 9 contains two paragraphs, which I will address shortly.

First, allow me to make a clarification regarding the use of the words “responsibility” and “liability”. As you recall, in her second report, the Special Rapporteur proposed draft principle 9 employing the words “responsibility”, “liability”, and “liable”. Following views expressed by several members, the Drafting Committee agreed that the provision should only deal with the responsibility of States and should address any form of liability in the context of the present topic elsewhere. Therefore, references to “liability” and “liable” were deleted.

That said, I will now move to paragraph 1. The Drafting Committee added a new paragraph 1 to this draft principle, which contains a general rule on responsibility of States for internationally wrongful acts in connection with environmental damage for the purposes of the present topic. Paragraph 1 also serves as an introduction to paragraph 2.

Paragraph 1 reads: “[a]n internationally wrongful act of a State, in relation to an armed conflict, that causes damage to the environment entails the international responsibility of that State, which is under an obligation to make full reparation for such damage, including damage to the environment in and of itself.”

The purpose of paragraph 1 is to reflect a general obligation of States. It sets out that an internationally wrongful act of a State, which causes damage to the environment and which is attributable to that State, entails that State’s international responsibility to make full reparation for such damage. Paragraph 1 also makes clear that the internationally wrongful act must be in relation to an armed conflict. In addition, paragraph 1 envisages that the obligation of the responsible State

to make full reparation for the environmental damage caused includes damage caused to the environment *per se*.

The language used in paragraph 1 is modelled on articles 1 and 31, paragraph 1, of the Articles on Responsibility of States for Internationally Wrongful Acts. Paragraph 1 is also inspired by the judgment of the International Court of Justice in the *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) Compensation Owed by the Republic of Nicaragua to the Republic of Costa Rica*, where the Court found that: “it is consistent with the principles of international law governing the consequences of internationally wrongful acts, including the principle of full reparation, to hold that compensation is due for damage caused to the environment, in and of itself”.²

This paragraph was adopted on the understanding that the commentary will explain that, in order for this provision to apply, two elements need to be present: (a) the act that caused the damage to the environment must be internationally wrongful, in the sense that it violates one or more of the rules of the law of armed conflict providing protection to the environment, or other applicable rules of international law, and (b) such a rule or rules are binding on the State in question. It was understood that this provision is to be applied in accordance with the rules on the responsibility of States for internationally wrongful acts. It was also understood that the commentary will explain the meaning of the expression “in and of itself”. Finally, it was agreed that environmental damage may be difficult to quantify and define and, thus, the non-exhaustive list identified by the United Nations Compensation Commission, which was established by the Security Council in 1991 to deal with claims concerning the Iraqi invasion and occupation of Kuwait, will be included in the commentary.³

Paragraph 2 contains a “without prejudice” clause. The purpose of paragraph 2 is to clarify that the draft principles are without prejudice to the rules on the responsibility of States for internationally wrongful acts. Paragraph 2 corresponds to paragraph 1 as originally proposed by

² *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, judgment of 2 February 2018, para. 41.

³ S/AC.26/1991/7/Rev.1, para. 35.

the Special Rapporteur, but was adopted by the Drafting Committee with some modifications. First, the word “existing” before “rules”, as originally proposed by the Special Rapporteur, was deleted. The Drafting Committee found the word “existing” to be superfluous and that it would misleadingly place the provision in a specific point of time, and the word was thus deleted. Second, the term “rules of international law on responsibility and liability of States”, as originally proposed, was replaced with “rules on the responsibility of States for internationally wrongful acts”. This change was introduced in order to align the provision with previous language used by the Commission when dealing with the responsibility of States, in particular with the Articles on Responsibility of States for Internationally Wrongful Acts. With respect to the placement, it was determined that this “without prejudice” clause should become paragraph 2, following the substantive text of paragraph 1.

Draft principle 9 is titled “State responsibility”. The Drafting Committee concluded that this title better reflected the substance of the provision.

Mr. Chair, paragraph 2 of draft principle 9, as proposed by the Special Rapporteur in her second report, was reformulated as a stand-alone draft principle 26. The content of paragraph 3 of draft principle 9, as proposed by the Special Rapporteur in her second report, restating the compensability under international law of damage to the environment in and of itself, was included in paragraph 1. After discussing the matter, the Drafting Committee concluded that this concept, including references to ecosystem services, would be explained in the commentary.

Draft principle 10 – Corporate due diligence

Mr. Chair,

Allow me to move to draft principle 10,⁴ which is also placed in Part Two [One]. This draft principle is titled “Corporate due diligence”, as originally proposed by the Special Rapporteur.

⁴ Originally proposed by the Special Rapporteur as draft principle 6*bis* in her second report.

Draft principle 10 contains a recommendation for States to take appropriate legislative and other measures aimed at ensuring that corporations and other business enterprises operating in or from their territories exercise due diligence with respect to the protection of the environment, including in relation to human health, when acting in an area of armed conflict or in a post-armed conflict situation. This draft principle also explains that such measures include those aimed at ensuring that natural resources are purchased or obtained in an environmentally sustainable manner.

An extensive debate took place in the Drafting Committee regarding several aspects of draft principle 10. Without prejudice to all issues that were discussed in the Drafting Committee, and the commentaries to this draft principle, I will set out the main issues that were subject to debate.

First, members discussed the meaning of the expression “appropriate legislative and other measures”. The word “appropriate” replaced the word “necessary” proposed by the Special Rapporteur, in order to give States flexibility when deciding which measures should be taken in this context at the national level. It was also understood that the commentary will explain that “other measures” could be wide ranging. Judicial and administrative measures are encapsulated in the concept of the words “other measures”.

Second, some members of the Drafting Committee were in favour of retaining the term “to ensure” after “legislative and other measures”, as originally proposed by the Special Rapporteur, rather than replacing it with “aimed at ensuring” adopted by the Drafting Committee. It was determined, however, that draft principle 10 should provide a purposive orientation and, as a recommendation for States, the term “aimed at ensuring” was more appropriate.

Third, the Drafting Committee considered it necessary to add the expression “other business enterprises” after “corporations”. It was felt that only referring to “corporations” would limit the scope of the provision and would not capture other business enterprises that may be acting in an area of armed conflict or in a post-armed conflict situation. In this connection, it was

understood that the commentary will explain that it depends on the national law of a State to determine what corporations and other business enterprises are.

Fourth, it will be recalled that the Special Rapporteur had originally proposed reference to “precaution” after “due diligence”. The Drafting Committee deleted the reference to “precaution” since it was seen as inherent in the notion of “due diligence”. It was also concluded that, since such reference was not related to the precautionary principle under environmental law, deleting it was appropriate to avoid misunderstandings as to its meaning in the context of the present draft principle.

Fifth, there were differing views regarding the reference to “human health” in the draft principle. Some members of the Drafting Committee were of the view that such reference should be deleted, as “human health” was outside the scope of the present topic, which concerns the protection of the environment in relation to armed conflicts. Other members expressed the view that the protection of the environment and human health were intrinsically linked and thus the reference should be retained. The Drafting Committee found that the expression “with respect to the protection of the environment, including in relation to human health” was a sufficient compromise to confine the draft principle to the scope of the topic. It was understood that the commentary will explain that the reference to “human health” in the draft principle is human health in the context of the protection of the environment.

Sixth, members discussed whether the phrases “area of armed conflict” and “post-armed conflict situation” were precise enough for the purposes of the draft principle, since they were not defined nor used elsewhere in the draft principles. In particular, some members raised the concern that such phrases were unclear, as they could relate either to a geographical notion or to a period in time. It was concluded, however, that the phrases should be retained given that the commentary will explain their meaning for the purpose of this draft principle.

Lastly, a debate ensued on the second sentence of the draft principle and the use of the word “equitable”, as originally proposed by the Special Rapporteur. Some members took the view that the word “equitable” should be deleted, as it was too general and could give the impression of

imposing a fair trade obligation on States. The view was also expressed that if the word “equitable” was deleted, the word “environmentally” should also be deleted, since the term “environmentally sustainable” does not accurately capture the concept of sustainability. Other members expressed the view that the word “equitable” should be retained, as the term was commonly used in the context of corporate responsibility. The Drafting Committee settled on deleting the word “equitable”, it being understood that using the phrase “environmentally sustainable manner” was not meant as deviating from the established concept of sustainability that encompasses ecological, economical, and social aspects.

In this vein, draft principle 10 was adopted on the understanding that the commentary will address the concerns raised by members of the Drafting Committee on several issues, such as reference to “human health”, reference to “area of armed conflict” and “post-armed conflict situation”, and the deletion of the word “equitable”.

Draft principle 11 – Corporate liability

Mr. Chair,

I will now move to draft principle 11,⁵ which is also placed in Part Two [One].

Allow me first to make a further clarification regarding the use of the words “responsibility” and “liability”. As you recall, in her second report, the Special Rapporteur proposed draft principle 11 employing the word “responsibility”. Following views expressed by several members, the Drafting Committee agreed that the provision should only deal with “liability” of corporations and other business enterprises in the context of the present topic. Therefore, references to “responsibility” were deleted.

The Drafting Committee modified draft principle 11 as originally proposed by the Special Rapporteur.

⁵ Originally proposed by the Special Rapporteur as draft principle 13 *quinquies* in her second report.

This draft principle contains a recommendation to States. It has three components. First, it encourages States to take appropriate legislative and other measures aimed at ensuring that corporations and other business enterprises operating in and from their territories can be held liable for harm caused by them to the environment, including in relation to human health, when acting in an area of armed conflict or in a post-armed conflict situation. It also explains that such measures should, as appropriate, include those aimed at ensuring that a corporation or other business enterprise can be held liable to the extent that such harm is caused by its subsidiary acting under its *de facto* control. It further explains that, for these purposes, as appropriate, States should provide adequate and effective procedures and remedies, in particular for the victims of such harm.

The first sentence of draft principle 11 borrows language from draft principle 10 and contains a general recommendation to States on the subject of corporate liability.

Secondly, the second sentence addresses the relationship between the parent company and its subsidiary. It aims at clarifying the scope of the general recommendation contained in the first sentence. Some members expressed concern that the second sentence would go into the realm of application of extraterritorial jurisdiction. According to those members, the second sentence should be deleted and its contents should be addressed in the commentary. Other members were in favour of keeping the second sentence, as its focus on the relationship between the parent company and its subsidiary provided an added value. The Drafting Committee concluded that the second sentence should be maintained, on the understanding that the various elements therein would be carefully explained in the commentary. The Drafting Committee also debated the use of the expression “acting under its *de facto* control” and its meaning for the purpose of draft principle 11. It was suggested that a distinction should be drawn between *de facto* control over a corporation and *de facto* control over a particular act. The Drafting Committee concluded that *de facto* control is to be interpreted in accordance with the requirements of each national jurisdiction. It was agreed that the commentary will explain the meaning of the expression “*de facto* control” for the purpose of draft principle 11.

Thirdly, with respect to the third and last sentence of draft principle 11, it was agreed that such sentence refers to both the first and the second sentences of draft principle 11. It was

considered that the expression “adequate and effective procedures and remedies” was a general formulation, allowing States to exercise flexibility when applying this provision at the national level. On the reference to “victims”, it was understood that the concept of “victims” is not limited to that of “human health”, as “victims” would be a broader concept, including individuals who make a living from the environment itself. It was agreed that the commentary would address this matter.

Mr. Chair, as I mentioned, the language of draft principle 11 is aligned with the language of draft principle 10. For this reason, the explanations I gave regarding the commentaries to draft principle 10, in particular in relation to “human health” and to “area of armed conflict” and “post-armed conflict situation”, also apply to draft principle 11.

The title of draft principle 11 is “Corporate liability”. The only change the Drafting Committee made to the original proposal of the Special Rapporteur was to replace the word “responsibility” with “liability”, for the reasons I already stated.

Part Three [Two] – Principles applicable during armed conflict

Draft principle 12 – Martens Clause with respect to the protection of the environment in relation to armed conflict

Mr. Chair,

Let me now turn to draft principle 12,⁶ which is placed in Part Three [Two].

The text of this draft principle is inspired by the text of the Martens Clause as contained in the Hague Convention (II) with Respect to the Laws and Customs of War on Land, in the Geneva Conventions, and in Additional Protocol I to the Geneva Conventions.

⁶ Originally proposed by the Special Rapporteur as draft principle 8*bis* in her second report.

According to draft principle 12, in cases not covered by international agreements, the environment remains under the protection and authority of the principles of international law derived from established custom, from the principles of humanity, and from the dictates of public conscience.

The Drafting Committee discussed several aspects of this draft principle, in particular the phases in which it should be applicable, the reference to “the principles of humanity”, and the reference to “present and future generations” as originally proposed by the Special Rapporteur.

With respect to its applicability, draft principle 12 is placed in Part Three [Two] of the draft principles, namely “Principles applicable during armed conflict”. Members of the Drafting Committee discussed whether this draft principle would be applicable during all phases of an armed conflict, only during an armed conflict, or during an armed conflict and in post-armed conflict situations. Differing views were expressed in this respect. It was finally agreed that draft principle 12 would be placed at the beginning of Part Three [Two] and that the commentary will explain that this draft principle also applies in situations of occupation.

A debate also took place in the Drafting Committee on whether the reference to “principles of humanity” should be included, since “principles of humanity” specifically serve human beings. The Drafting Committee concluded that retaining the expression “the principles of humanity” was appropriate to preserve the integrity of the text of the original Martens Clause and to demonstrate the intrinsic link between the survival of people and the state of the environment in which they live.

Further, it will be recalled that the Special Rapporteur had originally proposed a reference to “present and future generations” at the end of this draft principle. Differing views were expressed during the Drafting Committee whether or not to retain the reference. Some members underlined that in order not to distort the text of the original Martens Clause, the reference should be deleted. Other members expressed the view that this draft principle applies to all phases of an armed conflict and, therefore, the reference should be retained. The view was also expressed that the term “public conscience” encompasses the notion of “present and future generations”, so

reference to the latter could be deleted. The Drafting Committee found that the matter would be better addressed in the commentary and hence the reference to “present and future generations” was deleted.

The draft principle, as originally proposed by the Special Rapporteur, was also modified to add the word “from” in two places: (a) before the words “the principles of humanity”, and (b) before the words “the dictates of public conscience”. The Drafting Committee agreed that these additions would bring clarity to the text and align it with the text of the Martens Clause contained in paragraph 2 of Article 1 of Additional Protocol I to the Geneva Conventions.

With regard to the title of draft principle 12, it will also be recalled that the Special Rapporteur had initially proposed the title as “Martens Clause”. The Drafting Committee concluded, however, that in order to bring clarity to the provision, and in light of the scope of the present topic, there was reason to expressly qualify this draft principle as a clause with respect to the protection of the environment in relation to armed conflict. In this respect, the title of this draft principle is “Martens Clause with respect to the protection of the environment in relation to armed conflict”.

Draft principle 12 was adopted on the understanding that its inclusion does not mean, nor imply, that the Commission is taking a position on the various possible interpretations regarding the legal consequences of the Martens Clause. It was agreed that this would be explained in the commentary.

Draft principles 13 [II-1, 9] to 17 [II-5, 13]

Draft principles 13 [II-1, 9] to 17 [II-5, 13] remain as previously adopted by the Commission. These draft principles remain under Part Three [Two]. It bears noting that the statement of the Chair of the Drafting Committee delivered at the sixty-seventh session addresses these draft principles.

Draft principle 18 – Prohibition of pillage

Mr. Chair,

I will now turn to draft principle 18,⁷ which is placed in Part Three [Two].

This provision focuses on the prohibition of the worst forms of misappropriation of resources in armed conflict, which can be characterized as pillage. The prohibition of pillage is enshrined in the Fourth Geneva Convention, in Additional Protocol II, in national legislation, as well as in military manuals. A provision on the prohibition of pillage of natural resources that can be subject to ownership and constitute property was thus deemed useful for the purposes of the present topic. The text of draft principle 18 was adopted by the Drafting Committee as proposed by the Special Rapporteur in her second report. It was understood that the commentary will explain the meaning of the word “pillage” for the purpose of this draft principle. The commentary will also refer to the broader context of illegal exploitation of natural resources which underscores the application of the prohibition of pillage to natural resources. The commentary will also explain that, due to the scope of the present topic, this draft principle only pertains to the pillage of natural resources.

You will recall that the title of draft principle 18, as proposed by the Special Rapporteur in her second report, was “Pillage”. The Drafting Committee concluded, however, that changing the title to “Prohibition of pillage” would better reflect the substance of the provision.

Draft principle 19 – Environmental modification techniques

Mr. Chair,

I will now move to draft principle 19, which is titled “Environmental modification techniques”, as originally proposed by the Special Rapporteur, and is placed in Part Three [Two].

⁷ Originally proposed by the Special Rapporteur as draft principle 13^{ter} in her second report.

The text of this draft principle, as originally proposed by the Special Rapporteur, was adopted by the Drafting Committee with changes. It was agreed that the changes were appropriate in order to better align the text of this provision with that of article 1 of the 1976 Convention on the prohibition of military or any hostile use of environmental modification techniques (the ENMOD Convention).

This draft principle now states that “[i]n accordance with their international obligations, States shall not engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State.” The purpose of this draft principle is to have a specific provision on the prohibition of deliberately manipulating the environment for its use as a weapon.

In the view of some members, the expression “in accordance with their international obligations” only encompasses treaty obligations. It was agreed that the commentary will explain the meaning of the expression “environmental modification techniques”; notably, that this term has the same meaning as the one contained in article 2 of the ENMOD Convention. It was also agreed that the commentary will address the issue of environmental modification techniques in the context of non-international armed conflicts.

Mr. Chair, allow me to make a few remarks regarding a debate that ensued in the Drafting Committee as to whether a draft principle covering weapons that have serious impacts on the environment should be added. The view was expressed that a comprehensive treatment of the topic would necessarily include consideration of weapons, in particular biological and chemical weapons. In this connection, a proposal was made to include a draft principle on the use of biological and chemical weapons. The Drafting Committee concluded that such draft principle was not necessary for the purposes of the present topic and could be misleading. It was agreed that the commentary will clarify that the work on the topic is without prejudice to existing rules on specific weapons.

Part Four – Principles applicable in situations of occupation

Draft principles 20 [19] to 22 [21]

No changes were made to draft principles 20 [19] to 22 [21] and they remain as previously adopted by the Commission. They remain under Part Four – Principles applicable in situations of occupation. It should be recalled that the statement of the Chair of the Drafting Committee delivered at the seventieth session addresses these draft principles. I alluded to the restructuring at the beginning of my statement, but allow me to recall that Part Four – Principles applicable in situations of occupation now precedes “Principles applicable after armed conflict”, which is now Part Five [Three].

Part Five [Three] – Principles applicable after armed conflict

Mr. Chair, before entering into the substance of the draft principles in Part Five [Three], I should say that the title of Part Five [Three] has been changed by the Drafting Committee. The word “an” before the expression “armed conflict” has been deleted for consistency purposes, since the title of Part Three [Two] does not contain such word before the expression “armed conflict”.

Draft principles 23 [14] to 25 [15]

No changes were made to draft principles 23 [14] to 25 [15] and they remain as previously adopted by the Commission. They remain in Part Five [Three]. I should mention that draft principle 24 [18], titled “Sharing and granting access to information”, was moved by the Drafting Committee and now it is immediately after draft principle 23 [14], titled “Peace processes”. I should also mention that the statement of the Chair of the Drafting Committee delivered at the sixty-eighth session addresses these draft principles.

Draft principle 26 – Relief and assistance

I will now move to draft principle 26, titled “Relief and assistance”. This draft principle is placed in Part Five [Three].

Draft principle 26 is closely linked with draft principle 25 on “Post-armed conflict environmental assessment and remedial measures” and addresses situations where damage has been caused to the environment. It encourages States to take appropriate measures so that environmental damage does not remain unrepaired or uncompensated, when the source of environmental damage in relation to armed conflict is unidentified or reparation is unavailable. This draft principle also encourages States to consider establishing special compensation funds or providing other forms of relief or assistance.

It was agreed that this draft principle only applies in a post-armed conflict situation and is therefore located in Part Five (Three).

Moreover, a debate ensued in the Drafting Committee regarding the meaning of the words “reparation”, “unrepaired”, and “uncompensated”, as well as their connection with the term “remedial measures” contained in draft principle 25. It was understood that the commentary will explain their meaning, as well as the link between draft principle 25 and draft principle 26.

With respect to the title of draft principle 26, the Drafting Committee found that the ultimate objective of the provision was to regulate relief and assistance in situations where the source of environmental damage is unidentified or reparation is not available. Therefore, the title as adopted is “Relief and assistance”.

Draft principles 27 [16] and 28 [17]

No changes were made to draft principles 27 [16] and 28 [17] and they remain as previously adopted by the Commission. They remain under Part Five [Three]. I should note that the statement

of the Chair of the Drafting Committee delivered at the sixty-eighth session addresses these draft principles.

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Mr. Chair,

Before concluding, I wish to clarify an issue that was discussed in the second report of the Special Rapporteur and debated in the Plenary, namely, the use of the terms “natural environment” and “environment”. The Drafting Committee found appropriate to keep the language as has been provisionally adopted by the Commission, on the understanding that the commentary will explain that this issue will be discussed during the second reading.

Mr. Chair, this concludes my introduction of the third report of the Drafting Committee for the seventy-first session. As noted earlier in my introduction, some of the draft principles were previously provisionally adopted by the Commission during the sixty-seventh, sixty-eighth, and seventieth sessions. Since the Commission has completed its work, I now recommend the adoption, on first reading, of the entire set of draft principles on protection of the environment in relation to armed conflicts.

Thank you.