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*Check against delivery*

**Protection of the environment in relation to armed conflicts**

Statement of the Chairperson of the Drafting Committee, Mr. Ki Gab Park

27 May 2022

Mr. Chairperson,

This morning, it is my pleasure to introduce the second report of the Drafting Committee for the seventy-third 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.968](#) issued on 25 May 2022, contains the texts and titles of the draft preamble and the draft principles provisionally adopted by the Drafting Committee, and which the Drafting Committee recommends for adoption by the Commission on second reading.

Before commencing, allow me to pay tribute to the Special Rapporteur, Ms. Marja Lehto, whose mastery of the subject, guidance and cooperation once again greatly facilitated the work of the Drafting Committee. I would also like to express the deep appreciation of the Drafting Committee for the valuable contribution of Ms. Marie Jacobsson, who served as the Special Rapporteur for the topic from 2014 to 2016. I also would like to thank the other members of the Committee for their active participation, constructive spirit, 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. Chairperson,

The Drafting Committee devoted ten meetings to this topic, from 11 to 19 May, for the consideration of the draft title, the draft preamble, and draft principles 1 to 28, as proposed by the Special Rapporteur in her third report,<sup>1</sup> which were referred to the Drafting Committee by the Commission at the conclusion of the Plenary debate at its 3578th meeting.

I am pleased to report that the Committee was able to complete the second reading of a set of 27 draft principles, together with the text of a draft preamble, on protection of the environment in relation to armed conflicts and decided to submit its report to the Plenary with the recommendation that the draft principles, together with the draft preamble, be adopted by the Commission on second reading.

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Mr. Chairperson,

I will now address the draft preamble and draft principles as contained in document [A/CN.4/L.968](#). Please note that the numbers of the draft principles in the report appearing in square brackets simply denote the corresponding draft principles as adopted on first reading.<sup>2</sup>

At the outset, let me note that the Drafting Committee decided to adopt a draft preamble, following the proposal by the Special Rapporteur in her third report. It bears noting that the first reading text did not contain such draft preamble. The Committee first discussed whether adding a draft preamble on second reading was appropriate, given that States would not have the opportunity to comment on it at this late stage in the process. It was recalled that the Commission, on the topic “The law of transboundary aquifers”,<sup>3</sup> had added a preamble on second reading following a proposal made by a member of the Commission. Against this background, it was

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<sup>1</sup> [A/CN.4/750](#).

<sup>2</sup> See [A/74/10](#), chap. VI.

<sup>3</sup> [https://legal.un.org/ilc/guide/8\\_5.shtml](https://legal.un.org/ilc/guide/8_5.shtml)

agreed that the draft preamble would be general in nature, seek to provide some balance, and not to reflect the detail of specific issues that are covered by the draft principles themselves. As it is the practice, the preamble would be the subject of commentary.

The **draft preamble** comprises seven preambular paragraphs.

The first preambular paragraph contains a general statement on the importance of protection of the environment and is modelled after a preambular paragraph of the [Political Declaration of the Special Session of the United Nations Environment Assembly to commemorate the fiftieth anniversary of the establishment of the United Nations Environment Programme](#).

The second preambular paragraph contains an express reference to international law and the protection of the environment in times of armed conflict. It recalls that [Principle 24 of the Rio Declaration](#) on Environment and Development provides, *inter alia*, that States shall respect international law providing protection for the environment in times of armed conflict and cooperate in its further development.

The third preambular paragraph refers to environmental consequences of armed conflicts, which may be severe and have the potential to exacerbate global environmental challenges, such as climate change and biodiversity loss. The paragraph was considered pertinent when taking into consideration the draft principles as a whole. It is inspired by the judgment of the International Court of Justice in the case concerning the [Gabčíkovo-Nagymaros Project \(Hungary/Slovakia\)](#) in which the Court observed that, in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage.

The fourth preambular paragraph presents a general statement on the importance of the environment and the link between human rights and the human dimension of the draft principles. The paragraph was adopted on the understanding that the commentary will explain its connection with the two resolutions adopted by the United Nations Environment Assembly on the protection

of the environment in areas affected by armed conflict<sup>4</sup> and [resolution 48/13](#) adopted by the Human Rights Council on 8 October 2021.

The fifth preambular paragraph emphasizes the implementation of the principles and rules of the law applicable in armed conflict and borrows language from the Advisory Opinion of the International Court of Justice on [Legality of the Threat or Use of Nuclear Weapons](#). It emphasizes that environmental factors are to be taken into account in the context of the implementation of the principles and rules of the law applicable in armed conflict.

The sixth preambular paragraph seeks to direct the reader to the scope and purpose of the draft principles as contained in draft principles 1 and 2, respectively. It reflects the idea that the draft principles cover different types of armed conflicts and that the intention of the Commission with this topic is to enhance the protection of the environment.

The seventh preambular paragraph also refers to the scope and purpose of the draft principles and focuses on the notion of measures to prevent, mitigate and remediate harm to the environment, which forms an important component of the draft principles. It was considered appropriate to refer to States, international organizations and other relevant actors, in the light of the different draft principles addressed to them.

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Mr. Chairperson,

Let us now turn to the draft principles. The draft principles are divided in five parts, as was the case in the first reading text. I will begin with **Part One**, entitled “Introduction”, as adopted on first reading. Part One comprises two draft principles.

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<sup>4</sup> [UNEP/EA.2/Res.15](#) and [UNEP/EA.3/Res.1](#).

The Drafting Committee adopted **draft principle 1** with a change to the text adopted on first reading, following the proposal by the Special Rapporteur in her third report. The phrase “including in situations of occupation” was added at the end of the provision.

The purpose of this change is to reflect the scope of the entire set of the draft principles, which comprises also draft principles applicable in situations of occupation. It was also understood that the commentary would clarify that situations of occupation were a form of armed conflict and that the law of occupation continued to apply throughout the occupation and until its termination, as per the terms of Additional Protocol I to the Geneva Conventions.

Draft principle 1 is entitled “Scope”, as adopted on first reading.

**Draft principle 2** was adopted by the Drafting Committee with two changes to the first reading text, following comments made by States, proposals by the Special Rapporteur and comments made by members in the Plenary. I will address the changes in turn.

First, the terms “preventive measures for minimizing damage to the environment” and “through remedial measures”, as adopted on first reading, were replaced by the phrase “measures to prevent, mitigate and remediate harm to the environment”. This change, which was proposed by the Special Rapporteur in her third report and was generally accepted in Plenary, aims at harmonizing the text of the draft principles, in particular draft principles 2, 6, 7 and 8.

Second, the phrase “during armed conflict”, as adopted on first reading, was deleted. The Drafting Committee considered that such phrase was misleading, as all temporal phases were adequately reflected in the phrase “in relation to armed conflicts” present at the opening part of the provision. I should note that the Committee also decided to harmonize the text of some draft principles, where appropriate, with the title of the topic. Hence the change of the phrase “in relation to armed conflict” adopted on first reading to the plural “in relation to armed conflicts” in this draft principle. This change was adopted on draft principles 3, 7 and 12.

The Drafting Committee also discussed whether the draft principle should refer to “harm to the environment” or to “environmental harm”. It was felt that the former term was more

appropriate since it made it clear that the object of protection was the environment and was a formulation used in legal instruments that were relevant to the topic. The meaning of the word “enhancing” was also debated, together with the aim of the provision. Some members questioned whether the aim of the draft principles was to improve the protection of the environment, considering the use of the word “*mejorar*” in the Spanish version and “*améliorer*” in the French version of the draft principle. It was highlighted that the fundamental purpose of the draft principles was to enhance the protection of the environment in relation to armed conflicts, including through clarification of existing international law, and that the word “enhancing” did not relate to *lex lata* or *lex ferenda*, nor was intended to have a connotation of an effort to progressively develop international law. These points will be explained in the commentary.

Draft principle 2 is entitled “Purpose”, as adopted on first reading.

Mr. Chairperson,

I shall now move to **Part Two**, entitled “Principles of general application”, as adopted on first reading. Part Two contains nine draft principles.

Concerning **draft principle 3**, except for the change to harmonize the phrase “in relation to armed conflicts”, no other modifications were made by the Drafting Committee to the text adopted on first reading.

Draft principle 3 consists of two paragraphs and recognizes that States are required to take effective measures to enhance the protection of the environment in relation to armed conflict. Paragraph 1 recalls obligations under international law and paragraph 2 encourages States to take further measures, as appropriate. The commentary will elaborate on the obligations under *jus in bello* and other applicable rules, as well as on the relationship between draft principles 3 and 13. It should be noted that, following the debate concerning the meaning of the word “enhancing” on draft principle 2, the Drafting Committee was of the view that the word “enhance” in this draft principle should be retained.

Draft principle 3 is entitled “Measures to enhance the protection of the environment”, as adopted on first reading.

Mr. Chairperson,

I will now turn to **draft principle 4**.

The draft principle was adopted by the Drafting Committee with changes to the first reading text, following comments made by States, international organizations and others, proposals by the Special Rapporteur, and proposals by members in the Plenary. I will address the changes in turn.

First, it was agreed that the phrase “areas of major environmental and cultural importance” contained in the first reading text could be read as containing a cumulative requirement, that is to say, that the area had to be of both environmental and cultural importance. It was considered that that was not the objective of the provision and, thus, it was decided to delete the words “and cultural” and move the reference to “cultural importance” to the end of the sentence. It was understood that the commentary would demonstrate the interconnection between environmental and cultural issues, in particular given that draft principle 4 is under Part Two.

Second, an extensive debate was held pertaining to the qualifier “major”, which was present in the first reading text as I just mentioned. Differing views were expressed by the members of the Drafting Committee. Some members took the view that the word “major” should be deleted because by using both words “major” and “importance”, the provision would be providing for a double qualification and too high of a threshold. It was noted that the treaties cited in the first reading commentary to draft principle 4 only employed the word “importance” or “important” and that the word “major” had the effect of watering down the provision. Other members were of the view that the word “major” ought to be retained. Those members argued that the word “major” had indeed the purpose of providing for a topped-up obligation to States in the event of an armed conflict, in addition to what was already provided for in international humanitarian law. In addition, it was stressed that the aim of draft principle 4 was different from those of the treaties cited in the first reading commentary, since draft principle 4 encourages States

to take certain steps, by agreement or otherwise, which could be different from obligations assumed by States under treaties. The Drafting Committee settled on deleting the word “major,” taking into account that any area can be designated as a demilitarized zone under the law of armed conflict and on the understanding that the commentary would explain the reasons for this change to the first reading text.

Third, the Drafting Committee agreed to add the phrase “in the event of an armed conflict” after “protected zones”. It was pointed out that, since the zones should be designated before an armed conflict, but become protected zones in the event of an armed conflict, adding this new phrase would bring clarity to the provision and connect it better with draft principle 18.

Draft principle 4 is entitled “Designation of protected zones”, as adopted on first reading.

Mr. Chairperson,

Let me turn to **draft principle 5**.

Draft principle 5 consists of two paragraphs. Both paragraphs were adopted by the Drafting Committee with changes to the first reading text, following proposals by States, international organizations and others, by the Special Rapporteur, and by members at the Plenary. The Committee held a rich debate on both paragraphs. I will address each paragraph in turn.

The first change, in paragraph 1, is the mention of “international organizations and others” after “States” at the beginning of the sentence. The Drafting Committee was of the view that adding reference to “international organizations and others” would clarify to whom this paragraph is addressed and align the text of the provision with draft principle 8. This change thus takes into account the role of international organizations, as well as the role that certain non-State armed groups may play, in particular when exercising control over territories.

The second change adopted by the Drafting Committee is the replacement of the word “should” with “shall”. While acknowledging that the word “should” was adopted on first reading



to provide a certain degree of flexibility, the Drafting Committee considered that the word “shall” better reflected existing applicable law, such as article 4 of the ILO Convention 169,<sup>5</sup> as well as the jurisprudence of regional courts and tribunals. This provision expects States, international organizations and other relevant actors to only take measures if they have a connection to a particular environment. As consequence, the Drafting Committee decided that retaining the word “appropriate” when referring to “measures” was necessary to ensure the provision was balanced. The commentary will explain the role of States, international organizations and other relevant actors, as well as the reference to “appropriate measures” after “shall” in paragraph 1.

The third change relates to the reformulation of the phrase “the territories that indigenous peoples inhabit”, as adopted on first reading, to “the lands and territories that indigenous peoples inhabit or traditionally use”. It was considered that the phrase adopted on first reading was not comprehensive enough to capture the meaning of the provision. Inspired by the [United Nations Declaration on the Rights of Indigenous Peoples](#), the Committee decided to add the terms “lands” and “traditionally use” to broaden the provision. These considerations will be made clear in the commentary.

With respect to [paragraph 2](#), the changes to the first reading text are those proposed by the Special Rapporteur in her third report, as well as those necessary to align it with paragraph 1. In her third report, the Special Rapporteur proposed changing the beginning of the sentence to adjust its temporal scope by replacing “after an armed conflict” with “when an armed conflict”. This change was welcomed by members in the Plenary and in the Drafting Committee. The phrase “the territories that indigenous peoples inhabit” was also reformulated to “the lands and territories that indigenous peoples inhabit”. As in paragraph 1, the word “should” was changed to “shall” to reflect the established status of the obligation of consultation. In light of this change and of the discussion held concerning paragraph 1, the Drafting Committee decided to add the word “appropriate” before “effective consultations” to bring balance to paragraph 2.

Draft principle 5 is entitled “Protection of the environment of indigenous peoples”, as adopted on first reading.

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<sup>5</sup> Indigenous and Tribal Peoples Convention, 1989 (No. 169, ILO).

Mr. Chairperson,

Allow me to move to **draft principle 6**.

Draft principle 6 was adopted by the Drafting Committee with changes to the first reading text, as proposed by the Special Rapporteur in her third report. The changes were prompted by comments made by States.

In the first sentence of the draft principle, the phrase “in relation to armed conflict” was moved and is now after the term “environmental protection”. It was recognized that this change would help clarify that said phrase refers to “environmental protection”, and not to “agreements concerning the presence of military forces”. This is also the reason why the phrase has been deleted from the title of the draft principle adopted on first reading. In their comments, States pointed out that there were hardly any agreements concerning the presence of military forces in relation to armed conflict and that the draft principle appeared to be inconsistent with State practice. The Drafting Committee concluded that the draft principle would benefit from this change. This change does not alter the context, nor the scope, of the draft principle. The second sentence of the draft principle was reformulated to make it consistent with the Committee’s decision to consistently use the phrase “prevent, mitigate and remediate harm to the environment”.

The Drafting Committee decided to change the title of draft principle 6, as proposed by the Special Rapporteur in her third report. The draft principle is now entitled “Agreements concerning the presence of military forces”.

Mr. Chairperson,

**Draft principle 7** was adopted by the Drafting Committee with changes to the first reading text. The changes aim at clarifying the scope of the provision.

First, the Drafting Committee decided to add the word “established” before the phrase “in relation to armed conflicts”. It was felt that the phrase “peace operations in relation to armed

conflicts”, as adopted on first reading, was obscure. The Committee considered that adding the word “established” would assist in clarifying that the peace operations referred to in the provision were those established in relation to armed conflicts. It was agreed that the commentary would further explain the concept of peace operations for the purposes of the draft principles. It bears noting that the phrase “in relation to armed conflicts” was adopted to align the provision with the title of the topic.

Second, the Drafting Committee discussed replacing the word “shall” with “should”, in light of comments made by States. As the word “shall” is followed by the word “consider”, the Committee concluded that the word “shall” did not make the provision too onerous. Additionally, the Committee took into account the existing practice to support the use of the word “shall”. The Committee thus decided to retain the word “shall”. That said, the Committee decided to reformulate the phrase “take appropriate measures”, as contained in the first reading text, to read “take, as appropriate, measures”. This reformulation serves to indicate a level of flexibility concerning the types of measures to be taken in different situations. These matters will be reflected in the commentary.

Third, the last part of the draft principle now reads “prevent, mitigate and remediate the harm to the environment resulting from those operations”. The phrase “the negative environmental consequences thereof”, as adopted on first reading, was replaced with “the harm to the environment resulting from those operations”. This change was made to align the draft principle with the Committee’s decision to consistently use the phrase “prevent, mitigate and remediate harm to the environment”.

Draft principle 7 is entitled “Peace operations”, as adopted on first reading.

Mr. Chairperson,

**Draft principle 8** was adopted by the Drafting Committee with changes to the first reading text. The changes originate from the Committee’s decision and discussion regarding the phrase

“prevent, mitigate and remediate harm to the environment” and from the Special Rapporteur’s third report.

The phrase “prevent and mitigate environmental degradation”, contained in the first reading text, was replaced by the phrase “prevent, mitigate and remediate harm to the environment”. As I mentioned, the Drafting Committee deemed that this change was warranted to harmonize the draft principles.

The other modification to the draft principle pertains to the addition of the phrase “or through which they transit”. The Committee discussed whether this new phrase, proposed by the Special Rapporteur in her third report in light of comments by States, international organizations and others, was necessary. Differing views were expressed on this matter. Some members considered that the concept of “located” already included the concept of “transit” and, in particular, that “located” referred to any point in the process of the displacement of persons. Those members preferred retaining the first reading text, with the appropriate explanations in the commentary. Other members were of the view that the proposed change was necessary to capture the geographical scope of the provision and the movement of persons. According to those members, the change would distinguish situations of “located”, as in when displaced persons are stationary, and situations where displaced persons are in movement. The Committee eventually decided to adopt the phrase “or through which they transit” on the understanding that the commentary will explain that the terms “located” and “transit” are not meant to be interpreted in a strict way, but rather should be taken as broadly and comprehensively as possible, encompassing the idea of movement of persons.

Draft principle 8 is entitled “Human displacement”, as adopted on first reading.

Mr. Chairperson,

Let me turn to **draft principle 9**.

The Drafting Committee adopted draft principle 9 with modifications to the first reading text. The draft principle is now composed of three paragraphs. I will address each paragraph in turn.

Paragraph 1 was adopted by the Drafting Committee with no changes to the first reading text. A discussion however took place as to whether paragraph 1 should be changed to refer to *jus ad bellum* by adding a phrase that would explicitly include the violation of the law applicable to the use of force. Some members of the Committee considered that such change was necessary as the aim of the draft principles is to go beyond *jus in bello* and draft principle 9 should be explicit in that regard. They also considered that the change would bring the provision in line with the recently pronounced reparations judgment by the International Court of Justice in the case [\*Armed Activities on the Territory of the Congo \(Democratic Republic of the Congo v. Uganda\)\*](#). Other members cautioned against this change because (a) it could be interpreted as precluding other areas of international law, and (b) it could be interpreted in such a way as to mean that the draft principles with no explicit mention to *jus ad bellum* did not, in fact, cover *jus ad bellum*. The Special Rapporteur highlighted that paragraph 3 of the first reading commentary to draft principle 9 dealt with the question to a certain extent. As I mentioned, paragraph 1 was adopted with no changes. It was agreed that the commentary will be further enriched to reflect these considerations and align it with recent jurisprudence. Additionally, it was noted that the commentary will further elaborate on “full reparations” contained in paragraph 1, taking into consideration the comments made by States requesting further clarification.

With respect to paragraph 2, the Drafting Committee adopted it with changes to the first reading text, following an extensive debate. It should be recalled that the Special Rapporteur in her third report presented a proposal to delete paragraph 2, as adopted on first reading, and replace it with a new paragraph 2 which covered, and I quote from the third report, “the existing or evolving rules of international responsibility of non-State actors, including individual criminal responsibility and the responsibility of international organizations”.

The Drafting Committee first discussed whether paragraph 2 present in the first reading text should be deleted. Differing views were expressed by the members of the Committee, but it was eventually agreed that having a “without prejudice” clause on responsibility of States was important to accompany paragraph 1. It was pointed out that such a “without prejudice” clause would demonstrate that the draft principles were not deviating from the [2001 articles on](#)

[responsibility of States for internationally wrongful acts](#) and would direct the reader to those articles, in particular provisions such as article 39 on contribution to the injury. Further, it was considered that adopting paragraph 2 as proposed by the Special Rapporteur in her third report could lead to *a contrario* interpretation.

Second, the Committee recalled that States had highlighted the importance of addressing the issue of responsibility of non-State actors, which had prompted the Special Rapporteur to propose a new paragraph 2 in her third report. While the Committee acknowledged the importance of the issue, it was felt that the provision, as proposed in the third report, could benefit from being reformulated and restructured to provide for the “without prejudice” clause from the first reading text, as well as address elements on the responsibility of non-State actors. In that connection, the Committee concluded that having two separate paragraphs was more appropriate. Since not only the responsibility of States but also of international organizations for internationally wrongful acts is the object of previous work by the Commission, it was considered that the two bodies of law could be addressed in the same provision. As a result, the Committee added the phrase “or of international organizations” after the word “States” in paragraph 2.

By the same token, it was considered that the issues of responsibility of non-State armed groups and individual criminal responsibility, while not as closely related, could be addressed in another provision. Accordingly, the Drafting Committee decided to adopt a new paragraph to cover these issues, providing that the present draft principles are also without prejudice to: (a) the rules on the responsibility of non-State armed groups; (b) the rules on individual criminal responsibility. I should point out that a view was expressed that the scope of the provision could have been expanded to include measures that States should take to hold individuals criminally responsible for crimes that lead to the destruction of the environment.

Lastly, Mr. Chairperson, I would like to mention that a debate ensued in the Committee as to whether the term “existing or evolving” before the word “rules”, as proposed by the Special Rapporteur in her third report, should be retained. The Committee considered that reference to the term “existing or evolving” was not appropriate because the work of the Commission on the topic was meant to endure and be relevant in the years to come. The Committee concluded that using such term in the provision itself could create confusion; the commentary will explain that the applicable rules can evolve and develop over time.

Draft principle 9 is entitled “State responsibility”, as adopted on first reading. It was decided to retain the title as this remained the substantive focus of the text.

Mr. Chairperson,

I will now move to **draft principle 10**.

Draft principle 10 was adopted with changes to the first reading text. The changes are aimed at streamlining and clarifying the provision. I will address the changes in turn.

First, the opening clause of the draft principle was reformulated to delete the words “legislative and other” before the word “measures”, so it reads “States should take appropriate measures”. The use of the word “legislative” was questioned by some members, mainly because (a) in view of the different legal systems of States, States may be able to achieve the desired impact of the draft principle without legislation, and (b) some States may already have legislation in place that covers the relevant issues. The view was expressed that explicit reference to legislative measures was important because the purpose of the provision was to enhance existing obligations of States. The Committee eventually decided to delete the word “legislative”. It was understood that the commentary will elaborate on what is meant by “appropriate measures”, which encompasses a variety of measures States can take, such as legislative, administrative and judicial.

Second, the first reading text referred to “corporations and other business enterprises”. Reference to “corporations” was deleted, as proposed by the Special Rapporteur in her third report in light of comments by States. The purpose of this change is to make the provision simpler and align it with the [United Nations Guiding Principles on Business and Human Rights](#), which uses the term “business enterprises”.

Third, the phrase “or territories under their jurisdiction” was added after the phrase “from their territories”. The text of this new phrase is consistent with previous work of the Commission

on other topics and takes into account that States may have obligations under international law to ensure the observance of certain rights of persons under their jurisdiction.

Fourth, the phrase contained in the first reading text “an area of armed conflict or in a post-armed conflict situation” was replaced with “an area affected by an armed conflict”. This change was also proposed by the Special Rapporteur in her third report, taking into account comments by States. The phrase “of armed conflict or in a post-armed conflict situation” was deemed unclear and ambiguous. The Committee considered the new phrase “an area affected by armed conflict” was broader and more appropriate. The new phrase is inspired by the terms used in, *inter alia*, the United Nations Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

And fifth, the word “otherwise” was added before the word “obtained”. The Drafting Committee discussed whether the word “obtained” was broad enough so as to make the word “purchased” superfluous. It was concluded that specific reference to the word “purchased” was necessary to highlight situations where resources were being paid for. As a consequence, to clarify the text, the Committee decided to add the word “otherwise” before “obtained” to make the reference more comprehensive.

The title of draft principle 10 was adopted with changes to the first reading text to align it with the changes to the principle itself. It now reads: “Due diligence by business enterprises”.

Mr. Chairperson,

The Drafting Committee modified **draft principle 11** as adopted on first reading to harmonize it with draft principle 10, as amended. Accordingly, the words “legislative or other” were deleted from the opening clause, so as to now read “States should take appropriate measures”. Moreover, reference to corporations was deleted and the draft principle now only refers to business enterprises. The phrase “or territories under their jurisdiction” was also added after the phrase “from their territories”. Lastly, the phrase “in an area of armed conflict or in a post-armed conflict situation” was replaced with “in an area affected by an armed conflict”.



Similar to draft principle 10, the title of draft principle 11 has been changed and now it reads “Liability of business enterprises”.

Mr. Chairperson,

I shall now address **Part Three**, entitled “Principles applicable during armed conflict”, as adopted on first reading. There are seven draft principles in Part Three.

Before addressing the draft principles in this Part, allow me to make a few remarks about the debate that ensued in the Drafting Committee concerning the use of the terms “natural environment” and “environment”. At the outset, allow me to clarify that the Drafting Committee agreed to delete the word “natural” when referring to the environment in draft principles 13, 14 and 15 [16]. It should be emphasized that the comments and observations by States, international organizations and others were taken into account, as well as the comments made by members in the Plenary debate.

It will be recalled that draft principles 13, 14 and 15 [16] were adopted on first reading with the term “natural environment”. It will also be recalled that differing views regarding the use of the terms “environment” and “natural environment” in the draft principles have been expressed by members of the Commission throughout the years that the Commission has worked on this topic. At the present session, the differing views were reiterated by members in the Plenary debate. I shall refrain from repeating the arguments that members made during Plenary. Those are appropriately reflected in the summary records of the Plenary meetings.<sup>6</sup> I should also draw your attention to the statements of the Chairperson of the Drafting Committee at the sixty-seventh, sixty-eighth and seventy-first sessions.<sup>7</sup>

I will limit myself to highlight that some members continued to be opposed to the deletion of the word “natural” in the Drafting Committee, while others continued to prefer the deletion of such word. Nevertheless, members who continued to oppose deletion of the word “natural” agreed to its deletion on the understanding that, by deleting this word, the Commission did not intend to

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<sup>6</sup> Meetings 3571<sup>st</sup> to 3577<sup>th</sup>.

<sup>7</sup> [https://legal.un.org/ilc/guide/8\\_7.shtml](https://legal.un.org/ilc/guide/8_7.shtml)

alter the scope of the existing conventional and customary international humanitarian law, nor was the Commission attempting to expand the scope of what is meant by “natural environment” in international humanitarian law. It was agreed that the commentary will explain this understanding.

Bearing this in mind, I first turn to **draft principle 12**, which was adopted by the Drafting Committee without modifications or further comments from the Drafting Committee. The title of draft principle 12 as adopted on first reading was changed to harmonize the phrase “in relation to armed conflict” with the title of the topic. It now reads “Martens Clause with respect to the protection of the environment in relation to armed conflicts”.

I shall now move to **draft principle 13**.

The draft principle consists of 3 paragraphs. I will address each paragraph in turn.

Paragraph 1 was adopted by the Committee with only one change to the first reading text. The word “natural” before the word “environment” was deleted, in the light of the understanding mentioned earlier.

Paragraph 2 was reformulated to encapsulate the Special Rapporteur’s proposal in her third report for a new provision inspired by article 35, paragraph 3, of Additional Protocol I to the Geneva Conventions, that is, a provision addressing the use of methods and means of warfare. This proposal by the Special Rapporteur was prompted by comments made by States, international organizations and others. It was considered appropriate to combine the text of paragraph 2 as adopted on first reading with such new proposed provision under a common *chapeau*. The text of paragraph 2, and the text of the new provision, are now sub-paragraphs of the new paragraph 2. This reformulation provides more clarity on the normative nature of the provision. The *chapeau* explicitly states that the sub-paragraphs are subject to applicable international law. This explicit reference to applicable international law strengthens the argument that both sub-paragraphs are also relevant to situations of non-international armed conflict. The commentary will reflect the different views regarding the customary status of the provision. Sub-paragraph (a) mirrors the text of paragraph 2 as adopted on first reading, except for the deletion of the word “natural” before the word “environment”. The text of sub-paragraph (b), as I mentioned, is inspired by article 35,

paragraph 3, of Additional Protocol I. The sub-paragraphs thus cover both obligation of care and prohibition. Therefore, subject to applicable international law, (a) care shall be taken to protect the environment against widespread, long-term and severe damage; (b) the use of methods and means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the environment is prohibited.

With respect to paragraph 3, the only change made to the first reading text was to delete the word “natural” before the word “environment”.

Draft principle 13 is entitled “General protection of the environment during armed conflict”. The title was adopted with one change to the first reading text, that is, the word “natural” before the word “environment” was deleted.

Mr. Chairperson,

**Draft principle 14** was adopted by the Committee with the changes as proposed by the Special Rapporteur in her third report, which were suggested by States, international organizations and others. The changes were aimed at making the provision more consistent with the law of armed conflict. The Committee agreed that the notion of military necessity did not belong to the same order of generality as the other principles mentioned in the provision. It was also agreed that referring to military necessity but not referring to the principle of humanity raised questions and could have adverse implications. Therefore, the Committee agreed to delete the words “military necessity” after the word “proportionality”. Furthermore, it was considered that the words “in attack” after “precautions” should be deleted to encompass the broader scope of the principle of precautions under the law of armed conflict, including the obligation of precautions in military operations and passive precautions. I should also mention that the word “natural”, present in the first reading text, was deleted before the word “environment”.

Draft principle 14 is entitled “Application of the law of armed conflict to the environment”. It was adopted with one change to the first reading text, that is, the deletion of the word “natural” before the word “environment”.

Mr. Chairperson,

Draft principle 15, entitled “Environmental considerations”, as adopted on first reading, was deleted by the Drafting Committee. The deletion of the draft principle was proposed by the Special Rapporteur in her third report considering comments made by States, international organizations and others. It was felt that draft principle 15 was closely linked to draft principle 14, creating some overlap between the two provisions and making draft principle 15 redundant. The Drafting Committee agreed to delete the draft principle and to incorporate the relevant parts of its accompanying commentary, adopted on first reading, into the commentary to draft principle 14.

Due to the deletion of draft principle 15, the Drafting Committee has renumbered what were previously draft principles 16 to 28 as draft principles 15 to 27.

Mr. Chairperson,

No changes were made to the first reading text of **draft principle 15 [16]**, except for the deletion of the word “natural” before the word “environment”.

The complexities concerning this draft principle were acknowledged by the Committee and, in that connection, the statement of the [Chairperson of the Drafting Committee at the sixty-seventh session](#) was recalled. I will not restate what the Chairperson of the Drafting Committee stated on that occasion, but I would like to draw the Commission’s attention to it. It was understood that the commentary will clarify the legal status of this provision, in particular in light of Additional Protocol I to the Geneva Conventions and the differing views expressed by States on that regard. The commentary will also explain that, by adopting this draft principle, the Commission was not qualifying in any way, nor seeking to change, the scope and meaning of this provision under either conventional or customary international law.

Draft principle 15 [16] is entitled “Prohibition of reprisals”, as adopted on first reading.

Mr. Chairperson,

No changes were made to **draft principles 16 [18] and 17 [19]** as adopted on first reading. The title of draft principle 16 [18] remains “Prohibition of pillage” and the title of draft principle 17 [19] remains “Environmental modification techniques”, as adopted on first reading. The Special Rapporteur proposed no changes to these draft principles in her third report.

**Draft principle 18 [17]** was adopted by the Drafting Committee with several changes to the first reading text, some of which were proposed by the Special Rapporteur in her third report. Additionally, some of the changes were made taking into account the modifications made to draft principle 4. I will address the changes in turn. Allow me also to mention that this draft principle was moved to the end of Part Three. This move was motivated by a wish to group the two draft principles on prohibition together, that is, draft principles 15 [16] and 16 [18].

Turning to the changes to the text, the first change relates to the deletion of the word “major” qualifying the word “environmental”, as adopted on first reading. The Drafting Committee was of the view that this change was warranted to align the provision with draft principle 4.

Second, the opening clause was restructured to move the reference to cultural importance. As it was the case under draft principle 4, the intention of the Committee with this change was to clarify that the phrase “an area of major environmental and cultural importance”, present in the first reading text, did not contain a cumulative requirement. Third, the last clause of the draft principle adopted on first reading, which read “as long as it does not contain a military objective” was reformulated. The Drafting Committee was concerned that the first reading text did not take account of the relative size of the military objective compared to the size of the protected zone. To address this concern, the last clause now reads “except insofar as it contains a military objective”. The commentary will explain these issues.

In her third report, the Special Rapporteur proposed an additional final clause to the draft principle on the basis of comments by States, international organizations and others. Such final clause refers to additional agreed protections and aims at clarifying the relationship between the draft principle and other applicable draft principles, in particular draft principles 4 and 13, as well

as other relevant international obligations. It was considered that a reference to additional agreed protections would strengthen the provision so as it was not interpreted to lower the general level of protection. The Drafting Committee agreed that such a reference to additional agreed protections was warranted and decided to adopt it as a separate sentence to simplify the text and make it clearer. Accordingly, such protected zone shall benefit from any additional agreed protections.

Draft principle 18 [17] is entitled “Protected zones”, as adopted on first reading.

Mr. Chairperson,

I shall now move to **Part Four**, entitled “Principles applicable in situations of occupation”, as adopted on first reading. It comprises three draft principles

**Draft principle 19 [20]** comprises three paragraphs.

Since paragraphs 1 and 3 were adopted by the Drafting Committee without modifications to the first reading text, and without further comments from the Committee, I shall focus my remarks on paragraph 2.

The Drafting Committee adopted paragraph 2 with changes to the first reading text proposed by the Special Rapporteur in her third report. The purpose of the changes was twofold: first, to clarify that the opening clause did not contain a cumulative requirement, and second to strengthen the provision, bringing it more closely to the law of occupation and international human rights law. To address the first issue, the Committee decided to add the term “including harm” before the phrase “that is likely to prejudice the health and well-being”. It was considered that adding an including clause would clarify that “significant harm to the environment” and “likely to prejudice the health and well-being” were not cumulative. The commentary will go into further detail to explain what is meant by “significant harm”, following comments made by States on this aspect.

Mr. Chairperson,

Allow me at this juncture to make a few remarks regarding a debate that took place in the Drafting Committee pertaining to the terms “population” and “protected persons”. My remarks are also relevant to draft principle 20 [21]. The Special Rapporteur, in her third report, had proposed to replace the word “population”, as adopted on first reading, with the term “protected persons”. It bears noting that the word “population” on first reading was modelled after article 55, paragraph 1, of Additional Protocol I. Some States suggested that the term “protected persons” was more appropriate to ensure consistency with article 4 of Geneva Convention IV and its negotiating history. In the Drafting Committee, it was pointed out that the term “population” was a more general and broader term. In that regard, it was noted that the concept of “population” included individuals other than the occupied territory’s population. Nevertheless, it was also noted that the intent of the provision was to refer to protected persons of the occupied territory, within the meaning of article 4 of Geneva Convention IV. Concerns were expressed that, by using the term “population”, the provision could conceivably afford protection to individuals transferred by the Occupying Power to the occupied territory. It will be recalled that the Special Rapporteur in her third report proposed to add a reference to violation of rights at the end of the sentence to expand the scope of the provision to expressly include human rights and the rights of protected persons under the law of occupation. In that connection, it was stressed that the term “protected persons” signalled a focus on individuals, which would be in line with the proposed addition of the reference to violation of rights. The Committee decided that the term “protected persons” was more appropriate for the draft paragraph to signal the focus on individuals.

It should be noted that the Committee was mindful of comments made by States regarding the use of the same term “population” in the first reading text of draft principles 19 [20] and 20 [21], but with different meaning. The Committee decided that it would be appropriate for the two draft principles not to use the same terms considering the comments made by States, as well as those of the members in Plenary and in the Drafting Committee.

Draft principle 19 [20] is entitled “General environmental obligations of an Occupying Power”. The title of the draft principle was modified by the Drafting Committee, as proposed by the Special Rapporteur in her third report. The word “environmental” was added to qualify the word “obligations”. This modification was adopted to specify that the draft principle is limited to

general environmental obligations and does not concern all general obligations of an Occupying Power.

Mr. Chairperson,

The text of **draft principle 20 [21]** adopted by the Drafting Committee on second reading contains two changes to the first reading text: first, the word “protected” was added before the words “population of the occupied territory”; and second, the term “environmental harm” was replaced with “harm to the environment” as part of the harmonization with the use of this phrase throughout the draft principles.

With respect to the phrase “protected population of the occupied territory”, the Committee decided to retain the word “population”, as adopted on first reading. The word “population” was considered appropriate because draft principle 20 [21] refers to natural resources, which typically benefit a population as a whole, and is primarily centred on the concept of usufruct contained in article 55 of the Hague Regulations. Further, adding the word “protected” was deemed necessary to clarify that the population this provision refers to is the protected population of the occupied territory. The term “protected population” is to be understood in the context of article 4 of Geneva Convention IV. In the light of the comments made by States, the Committee felt appropriate to use different terms in draft principles 19 [20] and 20 [21]. Nevertheless, I should stress that the Committee took the view that the terms “protected persons” and “protected population” can be used interchangeably. It was understood that the commentary will explain the importance of the phrase “of the occupied territory” when referring to “protected population” to emphasise the requirement that the administration and use of the natural resources should be to the extent that it is lawful under international law.

Draft principle 20 [21] is entitled “Sustainable use of natural resources” as adopted on first reading.

Mr. Chairperson,

I now turn to **draft principle 21 [22]**. Draft principle 21 [22], and its title, were adopted by the Drafting Committee with changes to the first reading text after an extensive debate. It will



be recalled that in her third report, the Special Rapporteur proposed to reformulate this draft principle to make it more consistent with the previous work of the Commission on [prevention of transboundary harm from hazardous activities](#), as well as with international instruments such as the Stockholm Declaration and the Rio Declaration on Environment and Development. The Special Rapporteur also clarified that the draft principle addressed primarily transboundary harm.

With respect to the substance of the provision, the Committee agreed with the Special Rapporteur's proposal to replace "exercise due diligence" with "take appropriate measures", considering that due diligence obligations were triggered by the word "ensure", which was already present in the first reading text. The jurisprudence of the International Court of Justice and of the Inter-American Court of Human Rights was recalled in that regard.

The central question confronting the Drafting Committee was the proposal of the Special Rapporteur to replace the first reading text that read "areas beyond the occupied territory" with the phrase "other States or areas beyond national jurisdiction". It was understood that the provision intended to capture three situations: (a) any non-occupied part of the territory of the State being occupied; (b) territory of third States, that is, neither the occupying State, nor the State being occupied; and (c) areas beyond national jurisdiction. A concern was raised that, by adopting the proposal of the Special Rapporteur, an argument could be made that the first situation was not covered by the provision. It was noted that the draft principle addressed transboundary harm and the proposed change, if adopted, could suggest that the occupation of a territory created a boundary between the occupied territory and the portion of the occupied State that was not occupied. It was felt that the change proposed by the Special Rapporteur was modelled after international environmental law instruments, not the law of occupation and, thus, a distinction had to be made. The Committee settled for a text which is intended to capture all three situations that I mentioned. The phrase "the environment of other States or areas beyond national jurisdiction, or any area of the occupied State beyond the occupied territory" is intended to reflect this understanding. It bears noting that the Committee considered appropriate to use the terms "occupied territory" and "occupied State", since they are also used in article 56 of Geneva Convention IV.

Mr. Chairperson, I should also mention that the commentary will explain what is meant by the term "significant harm", in particular taking into account the [2001 articles on prevention of transboundary harm from hazardous activities](#) and the jurisprudence of the International Court of

Justice in *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* and in *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*.

Regarding the title of the draft principle, the Drafting Committee decided that changing the title to “Prevention of transboundary harm”, as proposed by the Special Rapporteur in her third report, would better reflect the substance of the provision.

Mr. Chairperson,

Let us now move to **Part Five**, entitled “Principles applicable after armed conflict” as adopted on first reading. Part Five contains six draft principles.

**Draft principle 22 [23]** comprises two paragraphs. Paragraph 1 was adopted with one change to the first reading text, while paragraph 2 was adopted without changes.

I will focus my remarks on paragraph 1. The phrase “damaged by the conflict” now reads “damaged as a result of the conflict”. The Drafting Committee considered pertinent to replace the word “by” with the words “as a result of” to better demonstrate the causal link between the damage and the armed conflict. It was also considered that this change would encompass damage that was directly caused by the armed conflict, as well as damage caused in connection with it.

Draft principle 22 [23] is entitled “Peace processes”, as adopted on first reading.

**Draft principle 23 [24]** consists of two paragraphs. Both paragraphs were modified by the Drafting Committee.

Regarding paragraph 1, the first change I will address is the replacement of the words “remedial measures”, as adopted on first reading, with the phrase “measures to remediate harm to the environment”. The Committee considered this change appropriate to harmonize the provision

with other draft principles, which have adopted the term “harm to the environment”, as I explained above.

Second, the word “after” before the words “an armed conflict” was replaced with the phrase “resulting from”. This change was adopted to broaden the temporal scope of the provision, given that remedial measures can also be taken during armed conflict and in situations of occupation. The phrase “resulting from” also makes clear the causal link between the harm to the environment and the armed conflict.

It should be noted that the Committee discussed the implications of the use of the word “shall”, taking into account comments made by States on that regard. It was deemed necessary to clarify that by using the word “shall”, the intention of the Commission was to allude to the international obligations of the States concerned and not to a general obligation under customary international law. As a result, the last part of the paragraph adopted on first reading, which read “in accordance with their obligations under international law”, was modified by the Committee to address this matter. The word “applicable” was added to qualify “international law”. It was understood that the commentary will explain what is meant by the phrase “in accordance with their obligations under applicable international law”.

Regarding paragraph 2, the Drafting Committee thoroughly discussed whether the paragraph should be deleted, as proposed by the Special Rapporteur in her third report. The Committee concluded that it was important to expressly envisage a savings clause to preserve the balance of the provision. It was considered, however, that the text of paragraph 2, as adopted on first reading, was not suitable to capture the complexities and nuances of all relevant considerations that may be taken into account, or exceptions that may exist, when sharing or granting access to information. The Drafting Committee settled on a text that accommodated a savings clause envisaging the right to invoke the grounds for refusal to share or grant information, with express reference to applicable international law. Further, the second sentence of paragraph 2 was retained as adopted on first reading. It bears noting that the commentary will explain that, in the second sentence, the word “shall” ought to be read together with the phrase “under the circumstances”, emphasising the flexibility afforded by the provision. It was agreed that the commentary will further detail the types of grounds for refusal the provision seeks to capture and explain the complexities regarding this issue.

Draft principle 23 [24] is entitled “Sharing and granting access to information”, as adopted on first reading.

Mr. Chairperson,

I now turn to **draft principle 24 [25]**. The draft principle was modified by the Drafting Committee as it deemed appropriate to expressly specify that States and international organizations are among the relevant actors to which the provision was addressed. The commentary will further explain the meaning of the words “relevant actors”. Moreover, the phrase “is encouraged”, present in the first reading text, was found to be ambiguous. The Committee thus decided, in line with the proposal of the Special Rapporteur reflecting the comments of States, international organizations and others, that its replacement with the word “should” would bring clarity to the provision. The commentaries will further explain that the use of the word “should” is without prejudice to existing obligations regarding remediation that are embodied in treaties or under customary international law.

The title of draft principle 24 [25] is “Post-armed conflict environmental assessments and remedial measures”, as adopted on first reading.

With regard to **draft principle 25 [26]**, the Drafting Committee modified the provision. Like draft principle 24 [25], the first reading text was modified to replace the phrase “are encouraged to” with the word “should” with a view to clarifying the provision. In addition, reference to relevant international organizations was added given their role in providing relief and assistance. It was agreed that the commentary will explain what is meant by the phrase “reparation is unavailable” and that this provision is without prejudice to existing obligations States may have regarding reparations.

The draft principle is entitled “Relief and assistance” as adopted on first reading.

Mr. Chairperson,

I shall now move to **draft principle 26 [27]**. The draft principle comprises three paragraphs. I will address each in turn.

Paragraph 1 was adopted with modifications by the Drafting Committee. The Committee felt appropriate to reformulate the opening phrase as adopted on first reading, which read “after an armed conflict, parties to the conflict shall seek”, to read “parties to an armed conflict shall seek”. As the Special Rapporteur outlined in her third report, this change was necessary to adjust the temporal scope of the draft principle and bring specificity to the provision, as the first reading phrase seemed to require a formal end to the conflict. Regarding the phrase “as soon as possible”, which was added by the Drafting Committee after the words “shall seek”, it was considered appropriate to introduce the concept of a timeframe for the removal or rendering harmless toxic or other hazardous remnants of war. The phrase “as soon as possible” is found in several treaties relevant to the draft principles, such as the [Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction](#) and the [Cluster Munitions Convention](#). It was noted, however, that other treaties, such as the [Protocol on Explosive Remnants of War \(Protocol V\)](#) to the Convention on Certain Conventional Weapons use different terminology. Lastly, the words “or other” were added between the words “toxic” and “hazardous” and the word “and”, which used to connect these two words, was deleted. It was understood that toxic is by definition hazardous and, therefore, this modification aimed at ensuring that the provision also covers non-toxic hazardous remnants.

With respect to paragraph 2, the only change adopted by the Drafting Committee was the addition of the words “or other” before the word “hazardous”, for the reasons I just explained.

Paragraph 3 was adopted without modifications or further comments from the Drafting Committee.

Draft principle 26 [27] is entitled “Remnants of war”, as adopted on first reading.

Finally, Mr. Chairperson, I will turn to **draft principle 27 [28]**, entitled “Remnants of war at sea”, as adopted on first reading. This draft principle was adopted by the Drafting Committee without modifications or further comments from the Drafting Committee. The Special Rapporteur proposed no changes to this draft principle in her third report.

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Mr. Chairperson,

This concludes my introduction of the second report of the Drafting Committee for the seventy-third session. As I stated at the beginning of my statement, the Drafting Committee recommends that the Commission adopt on second reading the draft principles on protection of the environment in relation to armed conflicts for the topic “Protection of the environment in relation to armed conflicts”.

Thank you, Mr. Chairperson.