

Document:-  
**A/CN.4/3287**

**Summary record of the 3287th meeting**

Topic:  
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-  
**2015, vol. I**

*Downloaded from the web site of the International Law Commission  
(<http://legal.un.org/ilc/>)*

wording of paragraph (5), in which he had attempted to reflect the careful balance that had been achieved in the Drafting Committee. He could agree to the following proposals: to replace the word “certain” with “some”; to replace the words “the relevant treaty practice” with “a number of treaties”; to delete the words “so much” and “more”; and to replace the word “designation” with “statement”.

69. Mr. NOLTE said that the formulation “as such” was an important element of the balance that had been achieved in the Drafting Committee. He regretted that the Special Rapporteur had agreed so readily to the deletion of the words “so much” and “more”, because they were another way of expressing what had been conveyed by the words “as such”. He could live with either maintaining “so much” and “more”, or adding “as such”, but not with seeing both of them fall by the wayside.

70. The CHAIRPERSON suggested that the paragraph be left in abeyance so as to allow time for consultations in order to find suitable wording.

*Paragraph (5) was left in abeyance.*

Paragraphs (6) and (7)

*Paragraphs (6) and (7) were adopted.*

*Commentary to draft guideline 1 (Use of terms)*

Paragraph (1)

*Paragraph (1) was adopted.*

Paragraph (2)

71. Mr. MURPHY said that the definition of the term “atmosphere” in draft guideline 1 (a) was extremely simple, and primarily a legal definition. It was therefore an exaggeration to state that it reflected the characteristics of the atmosphere as identified in the scientific findings, or that it was inspired by the definition of the Intergovernmental Panel on Climate Change (IPCC), which was much more complex. He proposed that the words “For a scientific definition, see” should be inserted in the footnote to the paragraph, before the existing text.

72. Mr. MURASE (Special Rapporteur) suggested that paragraph (2) refer to the report of the Working Group of the IPCC from which the Commission’s definition had been taken, without using the word “inspired”. He also suggested that the third sentence be moved to the beginning of paragraph (3), which provided details of the scientific findings to which that sentence referred.

73. Sir Michael WOOD said that the Commission’s definition was so simple that the only explanation it required, if any at all, was the text of the first and second sentences of paragraph (2) and that of the footnote to the paragraph.

74. Mr. McRAE proposed that, in the third sentence, the phrase “as identified in the scientific findings” be deleted and that the word “scientific” be inserted between “reflect the” and “characteristics of the atmosphere”. He supported the Special Rapporteur’s suggestion to move that sentence to paragraph (3), since it corresponded to the part

of that paragraph which was about atmospheric gases. He had no problem with the word “inspired”, which appeared in the fourth sentence, as it accurately described the process that the Commission had undertaken in devising its definition, and he saw no need to delete that sentence.

75. The CHAIRPERSON suggested that the paragraph be left in abeyance to afford additional time for its review.

*Paragraph (2) was left in abeyance.*

*The meeting rose at 1.05 p.m.*

## 3287th MEETING

*Wednesday, 5 August 2015, at 3 p.m.*

*Chairperson: Mr. Narinder SINGH*

*Present:* Mr. Caffisch, Mr. Candioti, Mr. Comissário Afonso, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kamto, Mr. Kittichaisaree, Mr. Kolodkin, Mr. Laraba, Mr. McRae, Mr. Murase, Mr. Murphy, Mr. Niehaus, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Sir Michael Wood.

### **Programme, procedures and working methods of the Commission and its documentation (concluded)\* (A/CN.4/678, Part II, sect. I, A/CN.4/L.868)**

[Agenda item 11]

#### REPORT OF THE PLANNING GROUP

1. The CHAIRPERSON invited Mr. Šturma to introduce the report of the Planning Group (A/CN.4/L.868) in the absence of its Chairperson, Mr. Wako.

2. Mr. ŠTURMA said that the Planning Group had held three meetings during the current session, completed its work on Thursday, 30 July and that its report was now available and contained in document A/CN.4/L.868. The Planning Group had considered: section I (entitled “Other decisions and conclusions of the Commission”) of the topical summary by the Secretariat of the discussion held in the Sixth Committee of the General Assembly during its sixty-ninth session (A/CN.4/678); General Assembly resolution 69/118 of 10 December 2014 on the report of the International Law Commission on the work of its sixty-sixth session; and General Assembly resolution 69/123 of 10 December 2014 on the rule of law at the national and international levels. Generally speaking, he had no particular comments on the report of the Planning Group. However, it should be noted that the Working Group on the long-term programme of work

\* Resumed from the 3274th meeting.

had been reconstituted during the current session and had been chaired by Mr. McRae, who had made an oral progress report at the Planning Group's third meeting. The Working Group on the long-term programme of work would endeavour to complete its work at the next session, which would be the last one of the quinquennium.

3. The Planning Group had recently drafted a text on the rule of law at the national and international levels in response to a request by the General Assembly. In 2014, the General Assembly had invited Member States to submit comments on "The role of multilateral treaty processes in promoting and advancing the rule of law",<sup>342</sup> which was of particular relevance to the Commission. The Planning Group had therefore recommended the addition of the text contained in paragraph 10 of its report. In the text, the Commission recalled the work it had done on different topics, which had become subject to multilateral treaty processes, on the basis of proposals under articles 16 and 23 of its statute, and drew attention to its recent work on different topics.

4. He also wished to draw members' attention to two further issues in the report. First, it should be noted that paragraphs 12 to 14 dealt with the consideration of paragraphs 10 to 13 of General Assembly resolution 69/118, in particular concerning the request that the Commission deliberate thoroughly the feasibility of holding part of its sixty-eighth session in New York. The outcome of the Planning Group's consideration of that request was set out in paragraph 14, namely its conclusion that it would not be feasible for the Commission to hold part of its sixty-eighth session in New York without causing undue disruptions. The Planning Group nevertheless affirmed the wish of the Commission that consideration should be given to the possibility of holding one half session in New York in the next quinquennium; provision ought to be made for such a possibility when planning the Commission's future sessions for the next quinquennium. The Planning Group noted that, taking into account the estimated costs and relevant administrative, organizational and other factors, provision could be made for such an arrangement during the first segment of a session, either during the first (2017) or second (2018) year of the next quinquennium. Based on the information available to it, the Planning Group had recommended that preparatory work and estimates should be carried out on the assumption that the Commission would convene the first segment of its seventieth session (2018) at the United Nations Headquarters in New York. Accordingly, the Planning Group had requested the Secretariat to go ahead and make the necessary arrangements for that purpose so as to facilitate the appropriate decision being taken by the Commission at its sixty-eighth session in 2016. Second, after deliberations, the Planning Group had decided to recommend that the sixty-eighth session of the Commission be held in Geneva from 2 May to 10 June and from 4 July to 12 August 2016, namely for 12 weeks.

5. The Planning Group's other recommendations were the usual ones, although some specific comments prepared by the Codification Division of the Office of Legal Affairs had been added to the sections concerning documentation and publications to highlight the importance

that the Commission attached to those publications and websites, and to express its gratitude to the Secretariat for the design of the new website. The Planning Group's recommendations would be incorporated, with the necessary amendments, in the last chapter of the report of the Commission on the work of its sixty-seventh session entitled "Other decisions and conclusions of the Commission".

6. The CHAIRPERSON said he took it that the Commission wished to take note of the report of the Planning Group.

*It was so decided.*

### **Draft report of the International Law Commission on the work of its sixty-seventh session (continued)**

#### **CHAPTER V. Protection of the atmosphere (continued) (A/CN.4/L.858 and Add.1)**

7. The CHAIRPERSON invited the members of the Commission to resume their consideration, paragraph by paragraph, of documents A/CN.4/L.858 and Add.1, starting with paragraph (5) of the commentary to the preamble and paragraph (2) of the commentary to draft guideline 1 (Use of terms), contained in document A/CN.4/L.858/Add.1, which had been held in abeyance at the previous meeting.

#### **C. Text of the draft guidelines on the protection of the atmosphere, together with preambular paragraphs, provisionally adopted so far by the Commission (continued)**

2. TEXT OF THE DRAFT GUIDELINES TOGETHER WITH PREAMBULAR PARAGRAPHS, AND COMMENTARIES THERETO PROVISIONALLY ADOPTED BY THE COMMISSION AT ITS SIXTY-SEVENTH SESSION (continued)

*Commentary to the preamble (concluded)*

Paragraph (5) (concluded)

8. Mr. MURASE (Special Rapporteur) proposed that, at the beginning of the second sentence, the words "the relevant treaty practice" be replaced with "a number of treaties", and that the words "of humankind" should be added after the expression "common concern" on second occurrence. He also proposed the deletion of the word "more" and the addition of the words "as such" after "normative statement" in the third sentence.

9. Sir Michael WOOD proposed that the phrase "may not be as clear as they should be" be replaced with "remain unclear" in the second sentence.

*Those proposals were adopted.*

*Paragraph (5), as amended, was adopted with editorial corrections to the English text.*

*The commentary to the preamble, as amended, was adopted.*

*Commentary to draft guideline 1 (Use of terms) (continued)*

Paragraph (2) (concluded)

10. Mr. MURASE (Special Rapporteur) proposed that the second and third sentences be merged into one sentence to read: "The Commission, however, considered it

<sup>342</sup> General Assembly resolution 69/123, para. 20.

necessary to provide a working definition for the present draft guidelines, and the definition given in paragraph (a) is inspired by that given by the Intergovernmental Panel on Climate Change (IPCC).”

11. Mr. MURPHY, noting that the definition proposed in paragraph (a) was inspired not by the IPCC but by one of its working groups, proposed, for the sake of clarity, that the end of the last sentence be amended accordingly.

*Paragraph (2), as amended, was adopted, with editorial corrections to the English text.*

Paragraph (3)

12. Mr. MURASE (Special Rapporteur) proposed that the beginning of the paragraph be amended to read: “The Commission considered it necessary that its legal definition be consistent with the approach of scientists. According to scientists, the atmosphere exists in what is called ‘the atmospheric shell’.”

*That proposal was adopted.*

13. Following a discussion in which Mr. MURPHY, Mr. PARK, Sir Michael WOOD, Mr. VÁZQUEZ-BERMÚDEZ, Mr. ŠTURMA, Ms. ESCOBAR HERNÁNDEZ, Mr. PETRIĆ and Mr. FORTEAU took part, the CHAIRPERSON suggested the addition of the adjective “dry” before the word “atmosphere” in the third sentence. He also suggested the addition of the word “exosphere” in the sixth sentence, at the end of the list of the layers of the atmosphere and, in the last sentence, the insertion of the words “in the exosphere” after “above the mesopause”.

14. Sir Michael WOOD said that he was not certain that the sentence would be correct if the words “in the exosphere” after “above the mesopause” were added. He proposed that the issue of the extension of the atmosphere could be resolved by simply saying “the atmosphere has no well-defined upper limit”.

*All the proposals were adopted with the exception of the Chairperson’s proposal to add “in the exosphere” after “above the mesopause”.*

*Paragraph (3), as amended, was adopted.*

Paragraph (4)

*Paragraph (4) was adopted with a minor editorial amendment.*

Paragraph (5)

15. Mr. MURPHY, referring to the second sentence, proposed the words “transcontinental transport” be replaced with “long-range transboundary movement” and that the part of the sentence beginning “with the Arctic” be amended to read “with the Arctic as one depository of deleterious pollutants, becoming a region seriously affected”.

16. Mr. PARK observed that the phrase Mr. Murphy had just mentioned already appeared in paragraph (4) of the commentary to the preamble. He therefore proposed its deletion.

17. Mr. KOLODKIN said that he was in favour of deleting the phrase unless it needed to be repeated for a particular reason.

18. Mr. MURASE (Special Rapporteur) proposed that the phrase be retained to emphasize the importance of transboundary movements of pollutants.

19. The CHAIRPERSON suggested that the paragraph should be held in abeyance to allow the Special Rapporteur to consult with the members concerned.

*Paragraph (5) was held in abeyance.*

Paragraph (6)

20. Sir Michael WOOD proposed that the paragraph be shortened and simplified by deleting the third to fifth sentences and the beginning of the sixth sentence, which would then begin with “The focus on human activity”.

*That proposal was adopted.*

21. Mr. NOLTE proposed the insertion of the words “States and” after “taken by” in the last sentence.

22. Mr. MURPHY proposed, for the sake of clarity, that the first sentence be amended to read: “Paragraph (b) defines ‘atmospheric pollution’ and addresses transboundary air pollution, whereas paragraph (c) defines ‘atmospheric degradation’ and refers to global atmospheric problems.” He further proposed that the end of the paragraph be reworded to read: “is a deliberate one as the present guidelines seek to provide guidance to States and the international community to protect the atmosphere”.

*Those proposals were adopted.*

*Paragraph (6), as amended, was adopted.*

Paragraph (7)

*Paragraph (7) was adopted.*

Paragraph (8)

23. Mr. NOLTE proposed the addition of the words, “including” by contributing to endangering them” at the end of the last sentence to make it clear that the release of substances alone was very unlikely to endanger human life and health or the natural environment, but that it contributed to endangering them. He took the view that the purpose of the commentary was to avoid all misunderstandings.

*That proposal was adopted.*

24. Mr. MURPHY proposed the deletion of the second sentence since the definition in question appeared only in the 1979 Convention on long-range transboundary air pollution and the United Nations Convention on the Law of the Sea.

*That proposal was adopted.*

*Paragraph (8), as amended, was adopted.*

Paragraph (9)

25. Mr. PARK said that the choice of references relating to radioactive emissions cited in the footnote to the paragraph seemed to indicate a certain bias on the part of the Special Rapporteur towards the view that nuclear energy was harmful and dangerous. While he had no objection to the reference to the IAEA document on the consequences of the Chernobyl accident, he also considered it important to refer to the normal operations of nuclear installations, such as the IAEA report entitled *Climate Change and Nuclear Power 2014*,<sup>343</sup> which stated that nuclear power plants produced virtually no greenhouse gas emissions or air pollutants during their operation and only very low emissions over their entire life cycle. Moreover, he proposed the addition of the following sentence at the end of paragraph (9): “However, this does not affect the activities or policies concerning the peaceful uses of nuclear energy which are duly regulated by the IAEA and the relevant national laws.”

26. Mr. MURASE (Special Rapporteur) endorsed Mr. Park’s proposals.

27. Mr. KAMTO said that although it was customary not to go back on an amendment approved by a Special Rapporteur, he considered that the insertion of the sentence proposed by Mr. Park at the end of paragraph (9) would not follow the logic of the preceding sentence and that it would be preferable to insert it in the footnote to the paragraph.

28. Mr. MURPHY proposed that, in the first sentence, the words “that term” be replaced with “the term ‘energy’”, and that, in the second sentence, the words “for the purposes of these draft guidelines” should be added after “It is the understanding of the Commission that”. With regard to the footnote to the paragraph, he had doubts about the relevance of some of the sources cited in relation to radioactive emissions, in particular the references to the statement made by the Government of Austria during the negotiations on the Convention on long-range transboundary air pollution and to the IAEA report of 2006, which he considered should be deleted or otherwise supplemented by other references. He was in favour of inserting the sentence proposed by Mr. Park in the footnote.

29. Mr. MURASE (Special Rapporteur) said that he endorsed the editorial amendments proposed by Mr. Murphy to paragraph (9). He agreed with Mr. Kamto that it would be more appropriate to add the sentence proposed by Mr. Park at the end of the footnote to the paragraph. Regarding the reference to the IAEA report that Mr. Murphy wished to delete, he considered, on the contrary, that the document contained an objective and very in-depth analysis and should be cited.

30. The CHAIRPERSON suggested that there be a brief suspension to allow the Special Rapporteur to hold consultations with those members who had proposed amendments to paragraph (5), which had been held in abeyance, as well as paragraph (9) and its related footnote.

*The meeting was suspended at 4.50 p.m.  
and resumed at 5.10 p.m.*

<sup>343</sup> IAEA, *Climate Change and Nuclear Power 2014*, Vienna, 2014.

31. The CHAIRPERSON invited the Special Rapporteur to report to the Commission on the outcome of his consultations on paragraph (5), which had been held in abeyance, and on paragraph (9).

*Commentary to draft guideline 1 (Use of terms) (continued)*

Paragraph (5) (concluded)

32. Mr. MURASE (Special Rapporteur) said it had been agreed that, in the second sentence, the words “transcontinental transport” should be replaced with “transboundary long-range movement” and that the phrase “, with the Arctic as one depository of deleterious pollutants, becoming the region most seriously affected” should be deleted. It had also been agreed that the last sentence—which began with “The Commission has decided, as noted earlier”—should be inserted in paragraph (4), after “There is also a ‘functional’ aspect, which involves the large-scale movement of air”.

*Paragraph (5), as amended, was adopted.*

Paragraph (9) (continued)

33. Mr. MURASE (Special Rapporteur) said that it had been agreed to redraft paragraph (9) in accordance with Mr. Murphy’s proposals. With regard to the footnote to the paragraph, it had been decided to refer to the IAEA report entitled *Climate Change and Nuclear Power 2014* in a new paragraph, with a commentary indicating the positive aspects of the peaceful uses of nuclear energy. Lastly, a sentence, whose exact wording had not yet been decided, would be added to the end of the footnote stressing that the draft guidelines were without prejudice to national policies on nuclear energy.

34. Mr. MURPHY said that although, in principle, he endorsed the way in which the Special Rapporteur intended to recast the footnote in question, he wished to know the exact wording of the sentence to be added at end of the footnote before the Commission adopted the paragraph.

35. The CHAIRPERSON suggested that the adoption of paragraph (9) be held in abeyance until the members of the Commission had seen the amended text of the footnote to the paragraph.

*Paragraph (9) was held in abeyance.*

Paragraph (10)

*Paragraph (10) was adopted.*

Paragraph (11)

36. Mr. MURPHY proposed the addition of the words “by means of a different definition” at the end of the first sentence.

*That proposal was adopted.*

37. Mr. TLADI said it was important to make it clear in the fourth sentence that what was being discussed was the alteration of atmospheric conditions globally.

38. Mr. MURASE (Special Rapporteur) said the idea was rather that the global atmosphere was being altered.

39. Mr. TLADI proposed in that case to say “the alteration of the global atmospheric conditions caused by humans, whether directly or indirectly”.

*That proposal was adopted.*

*Paragraph (11), as amended, was adopted.*

Paragraph (12)

40. Mr. MURPHY said that, in the English version, some quotation marks seemed to be missing from the Commission’s quotation, which appeared in the third sentence.

41. Mr. NOLTE said that the source of the quotation in question should be indicated in a footnote.

42. The CHAIRPERSON said that the Secretariat would do the necessary checking and amend the paragraph accordingly.

*Paragraph (12) was adopted, subject to the necessary checking and corrections by the Secretariat.*

Paragraph (13)

43. Sir Michael WOOD said that, in the English version, a verb seemed to have been omitted in the first sentence after the words “alteration of atmospheric conditions” and proposed that it should be rectified by adding the words “must have”.

*That proposal were adopted.*

44. Mr. MURPHY proposed the addition, in the same sentence, of the article “the” before “alteration of atmospheric conditions” as well as of the adverb “only” after “has to contribute”. He questioned the relevance of the third sentence, which stated that “the difference between ‘deleterious effects’ and ‘significant deleterious effects’ may be of little practical significance”, since the Commission had drawn a clear distinction between the two concepts in draft guideline 1 (b) and (c). It would therefore be better to delete the sentence.

*Those proposals was adopted.*

*Paragraph (13), as amended, was adopted.*

Commentary to draft guideline 2 (Scope of the guidelines)

Paragraph (1)

45. Mr. MURPHY observed that the text of the commentary referred to paragraphs 1, 2, 3 and 4 of the draft guideline, whereas in the draft guideline itself, the paragraphs were identified by the letters (a), (b), (c) and (d).

46. The CHAIRPERSON said that the Secretariat would make the necessary corrections.

47. Sir Michael WOOD proposed that the verb “provides” be replaced with “describes” in the second sentence of the English version.

*That proposal was adopted.*

*Paragraph (1), as amended, was adopted.*

Paragraph (2)

48. Mr. NOLTE proposed that paragraph (2) be split into two paragraphs and that the new paragraph should begin after the marker for the last footnote to the paragraph. He noted that the fifth sentence, “The science indicates with 95 per cent certainty that human activity is the dominant cause of observed warming since the mid-20th century”, which, in his view, was too categorical a statement, was not supported by a reference to a source.

49. Sir Michael WOOD said that it was a statement that had been made by the IPCC. The sentence should therefore begin with the words “According to the IPCC,” and should be referenced.

50. Mr. MURASE (Special Rapporteur) confirmed that the sentence was drawn from the IPCC report cited in the first footnote to the paragraph and that the exact reference would be incorporated into that footnote. He endorsed Mr. Nolte’s proposal to split the paragraph into two.

51. Mr. MURPHY proposed, for the sake of consistency with draft guideline 2 (a), that the words “transboundary” and “global” should be deleted from the second sentence. Given that draft guideline 2 dealt neither with local pollution nor with natural occurrences, he considered that the last three sentences were out of place in paragraph (2) as they contained questionable statements. For example, it could not be said that “any ameliorative human action ... has to take into account the totality of the atmosphere”, as stated in the last sentence. As a rule, any matter relating to the effects of local pollution on transboundary pollution should be dealt with in the relevant part of the draft guidelines.

52. Mr. NOLTE pointed out that the first of the three sentences, which Mr. Murphy proposed should be deleted, stated that “whatever happens locally *may* have a bearing on the transboundary and global context”—a cautious statement which seemed acceptable.

53. Sir Michael WOOD suggested that the statement be amended to the effect that “whatever happened locally might *sometimes* have a bearing on the transboundary and global context”. He further suggested that the last sentence be amended to the effect that “ameliorative human action ... *might need* to take into account the totality of the atmosphere”.

54. Mr. MURASE (Special Rapporteur) said that he endorsed those proposals and had no objection to the deletion of the penultimate sentence, as Mr. Murphy had proposed.

55. The CHAIRPERSON suggested that the Special Rapporteur hold consultations with those members

who had made comments with a view to submitting an amended version of the paragraph to the Commission subsequently.

*That proposal was adopted.*

Paragraph (3)

56. Mr. PETRIČ, supported by Mr. KITTICHAISAREE, said that since some of the assertions made in paragraph (3) were controversial, more authoritative scientific sources should be cited in the relevant footnotes.

57. Mr. MURASE (Special Rapporteur), after endorsing that proposal, said that he would add references to the United Nations Framework Convention on Climate Change and to the recent amendment of the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution to Abate Acidification, Eutrophication and Ground-level Ozone. Lastly, he said that in the English version of the last sentence, the word “warning” should read “warming”.

*Paragraph (3) was adopted with that correction, subject to the necessary amendments.*

Paragraphs (4) and (5)

*Paragraphs (4) and (5) were adopted.*

Paragraph (6)

58. Mr. MURPHY questioned the appropriateness of entering into a substantive debate on legal issues that the Commission did not wish to prejudice. Since the main idea was expressed in paragraph (8), he proposed that paragraphs (6) to (8) be reduced into one simple sentence indicating that the Commission did not intend to address those issues. However, if paragraph (6) was retained, at least its second and third sentences should be deleted.

59. Sir Michael WOOD said that it would be regrettable if paragraphs (6) and (7) were deleted since they contained useful information on the distinction between the atmosphere and airspace. He therefore suggested that paragraph (6) be retained, but amended by deleting the word “applicable” in the first sentence and by adding, after the quotation from the Convention on International Civil Aviation, a footnote referring to article 2, paragraph 2, of the United Nations Convention on the Law of the Sea, according to which the sovereignty of a coastal State “extends to the air space over the territorial sea as well as to its bed and subsoil”. Lastly, he proposed the deletion of the last sentence, which was unclear.

60. Mr. TLADI said that, for the sake of the equilibrium of the different parts of the draft guidelines, paragraphs (6) to (8) should be merged, as Mr. Murphy had proposed.

61. Mr. MURASE (Special Rapporteur) recalled that, when the Commission had begun its discussions on the project, in 2009, one of the main topics of discussion had been the distinction between airspace and the atmosphere. The explanations given in paragraphs (6) and (7) were intended for members of the Sixth Committee and should therefore be retained. Furthermore, it was preferable not to merge paragraphs (6) and (7), since the former

dealt with airspace, while the latter dealt with outer space. However, all the other proposals made by Mr. Murphy and Sir Michael were acceptable.

Paragraph (7)

*Paragraph (7) was adopted.*

Paragraph (8)

62. Mr. MURPHY proposed that the first sentence be amended to the effect that the Commission had elected in paragraph (d) to indicate that the draft guidelines did not affect the legal status of airspace.

*Paragraph (8), as amended, was adopted.*

*Commentary to draft guideline 5 (International cooperation)*

Paragraph (1)

63. Mr. NOLTE proposed that the third sentence be simplified to read: “Rather than being perceived in terms of bilateral collaborative relations, the concept of international cooperation is also to a large extent built on the notion of common interests of the international community as a whole.” He also proposed that a reference be included in the second footnote to the paragraph to the *Festschrift* for Bruno Simma, former member of the Commission, and entitled “From bilateralism to community interest in international law”.<sup>344</sup>

64. Mr. VÁZQUEZ-BERMÚDEZ endorsed those proposals.

65. Sir Michael WOOD said he considered that the first four sentences in paragraph (1) were not useful and that the paragraph should start from the fifth sentence with the words: “Draft guideline 5 provides”.

66. Mr. MURPHY endorsed that proposal and said that the fifth sentence could be amended by explaining that the commentary dealt with draft guideline 5 (a) and by deleting the phrase “and stresses the importance, in particular, of exchanging scientific information and conducting joint monitoring in the protection of the atmosphere”, given that this phrase concerned draft guideline 5 (b).

67. Mr. MURASE (Special Rapporteur) said that the text under consideration followed Mr. Valencia-Ospina’s text on natural disasters, which, *inter alia*, dealt with international cooperation, and for that reason he wished to retain the first four sentences.

68. The CHAIRPERSON suggested that the Special Rapporteur should hold consultations with those members who had made comments with a view to submitting to the Commission subsequently an amended version of the paragraph.

*That proposal was adopted.*

*The meeting rose at 6.05 p.m.*

<sup>344</sup> B. Simma, “From bilateralism to community interest in international law”, *Collected Courses of The Hague Academy of International Law, 1994-VI*, vol. 250, pp. 217–384.