

Provisional

**For participants only**

8 July 2016

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## **International Law Commission**

### **Sixty-eighth session (first part)**

#### **Provisional summary record of the 3309th meeting**

Held at the Palais des Nations, Geneva, on Thursday, 2 June 2016, at 10 a.m.

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Identification of customary international law (*continued*)

*Report of the Drafting Committee*


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***Present:***

*Chairman:* Mr. Comissário Afonso

*Members:* Mr. Caflisch  
Mr. Candiotti  
Mr. El-Murtadi  
Ms. Escobar Hernández  
Mr. Forteau  
Mr. Hassouna  
Mr. Hmoud  
Ms. Jacobsson  
Mr. Kittichaisaree  
Mr. Kolodkin  
Mr. Laraba  
Mr. McRae  
Mr. Murphy  
Mr. Niehaus  
Mr. Nolte  
Mr. Park  
Mr. Peter  
Mr. Petrič  
Mr. Saboia  
Mr. Singh  
Mr. Šturma  
Mr. Valencia-Ospina  
Mr. Vázquez-Bermúdez  
Mr. Wako  
Mr. Wisnumurti  
Sir Michael Wood

***Secretariat:***

Mr. Llewellyn Secretary to the Commission

*The meeting was called to order at 10 a.m.*

**Identification of customary international law** (agenda item 6) (*continued*) (A/CN.4/695)

*Report of the Drafting Committee* (A/CN.4/L.872)

**Mr. Šturma** (Chairman of the Drafting Committee), introducing the report of the Drafting Committee on the topic of the identification of customary law (A/CN.4/L.872), said that the report should be read together with the interim report of the Drafting Committee presented at the Commission's meeting on 7 August 2014 (A/CN.4/SR.3242) and the report of the Drafting Committee (A/CN.4/L.869) presented at the Commission's meeting on 29 July 2015 (A/CN.4/SR.3280), which described the work of the Drafting Committee on the topic at the sixty-sixth and sixty-seventh sessions of the Commission, respectively. It would be recalled that the Drafting Committee had provisionally adopted a set of 16 draft conclusions in 2014 and 2015, of which the Commission had taken note at its previous session. The current report reproduced the text of all the draft conclusions that had been provisionally adopted by the Drafting Committee.

At the present session, the Drafting Committee had devoted one meeting, on 27 May 2015, to its consideration of the draft conclusions on the topic. It had considered the amendments to the draft conclusions which had been proposed by the Special Rapporteur in his fourth report (A/CN.4/695), in the light of the suggestions and reformulations made by the Special Rapporteur. In order to respond to suggestions made, or concerns raised, in the plenary debate, the Special Rapporteur had suggested that the Drafting Committee should confine itself to the changes proposed in the fourth report that were uncontroversial, since a number of other proposals might need more thorough discussion and would be best addressed at the second reading stage.

The only amendments made by the Drafting Committee at the current session to the draft conclusions provisionally adopted by the Committee in 2014 and 2015 concerned draft conclusion 3 (2), as well as the title of that draft conclusion. Draft conclusion 3 (2) now read: "Each of the two constituent elements is to be separately ascertained. This requires an assessment of evidence for each element." The text of draft conclusion 3 (2), as provisionally adopted in 2014, had referred to "Each element", while the text now adopted by the Drafting Committee referred to "Each of the two constituent elements". The change was of a purely editorial character and did not affect the substance of that provision. The purpose of referring to "each of the two constituent elements" was to clarify the link between draft conclusions 2 and 3. The same amendment had been made in the title of draft conclusion 3, which accordingly read "Assessment of evidence for the two constituent elements".

He sincerely hoped that the Commission would be in a position to adopt the draft conclusions on first reading, as set out in document A/CN.4/L.872.

*Draft conclusions 1 to 16 were adopted.*

**The Chairman** said that he took it that the Commission wished to adopt the draft conclusions on the identification of customary international law, as a whole, as contained in document A/CN.4/L.872

*It was so decided.*

**The Chairman** said that it was his understanding that the Special Rapporteur would prepare commentaries, for inclusion in the report of the Commission on the work of its sixty-eighth session.

*The meeting rose at 10.20 to enable the Drafting Committee on subsequent agreements and subsequent practice in relation to the interpretation of treaties to meet.*