

Provisional

**For participants only**

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**International Law Commission****Sixty-eighth session (second part)****Provisional summary record of the 3344th meeting**

Held at the Palais des Nations, Geneva, on 10 August 2016, at 3 p.m.

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***Present:***

*Chairman:* Mr. Comissário Afonso

*Members:* Mr. Caflisch  
Mr. Candiotti  
Mr. El-Murtadi  
Ms. Escobar Hernández  
Mr. Hassouna  
Mr. Huang  
Ms. Jacobsson  
Mr. Kamto  
Mr. Kittichaisaree  
Mr. Laraba  
Mr. McRae  
Mr. Murase  
Mr. Murphy  
Mr. Niehaus  
Mr. Nolte  
Mr. Park  
Mr. Peter  
Mr. Petrič  
Mr. Saboia  
Mr. Singh  
Mr. Šturma  
Mr. Tladi  
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 3 p.m.*

### **Programme, procedures and working methods of the Commission and its documentation**

#### *Report of the Planning Group (A/CN.4/L.878)*

**Mr. Nolte** (Chairman of the Planning Group), presenting the Planning Group's report (A/CN.4/L.878), said that the Group had held four meetings. It had had before it: section H, entitled "Other decisions and conclusions of the Commission", of the Topical Summary of the discussion held in the Sixth Commission of the General Assembly during its seventieth session; document A/71/6 (Prog. 6), Proposed strategic framework for the period 2018-2019, Programme 6, Legal Affairs; General Assembly resolution 70/236 of 23 December 2015 on the report of the International Law Commission on the work of its sixty-seventh session, and General Assembly resolution 70/118 of 14 December 2015 on the rule of law at the national and international levels.

The Working Group on the Long-term Programme of Work had been reconstituted at the current session under the chairmanship of Mr. McRae. It had submitted its report on the work of the quinquennium (section 1 of document A/CN.4/L.878) and, in particular, it had recommended the inclusion of two topics in the long-term programme of work, namely the settlement of international disputes to which international organizations were party and the succession of States in respect of State responsibility.

The Planning Group had welcomed the two memoranda prepared by the Secretariat (A/CN.4/679 and Add.1) and had taken note of six potential topics: (a) General principles of law; (b) International agreements concluded with or between subjects of international law other than States or international organizations; (c) Recognition of States; (d) Land boundary delimitation and demarcation; (e) Compensation under international law, and (f) Principles of evidence in international law. It had recommended that those six topics should be further considered by the Working Group on the Long-term programme of work at the Commission's sixty-ninth session (in 2017).

At the end of every quinquennium the Commission usually included in chapter III of its annual report an invitation to States to propose possible new topics. That invitation would be made in chapter III of the draft report on the sixty-eighth session and the Commission would examine it in due course. At the request of the General Assembly, the Planning Group had considered the question of the rule of law at the national and international levels in its report. The Commission's comments thereupon were to be found in section 2 of that document.

He drew the Commission members' attention to three points.

The first point concerned section 3 of the Group's report entitled "Consideration of paragraphs 9 to 12 of resolution 70/236 of 23 December 2015 on the report of the International Law Commission on the work of the sixty-seventh session" and, more specifically, the possibility of holding one half session in New York. After considering all the relevant factors, the Commission recommended that in 2018 the first part of its seventieth session should be held in New York and it requested the Secretariat to make the requisite administrative and organizational arrangements. Emphasis was placed on the need to ensure access to library facilities at Headquarters and electronic access to the resources and research assistance of the Library of the United Nations Office at Geneva. In accordance with its practice, the Commission would decide on the dates of its seventieth session in 2017, in other words in the year immediately preceding the seventieth session.

The second point, covered in section 4 of the report, concerned the seventieth anniversary of the International Law Commission. The Commission recommended that events should be organized to celebrate its seventieth anniversary during its seventieth session in 2018. Those events could be split between the first half of the session in New York and the second half of the session in Geneva. Since such a celebration would require a substantial amount of organization, institutional arrangements had been put in place. The Commission requested the Secretariat to take the first steps towards organizing those

commemorative events in consultation with the Chairman of the Commission and the Chairman of the Planning Group.

The third point concerned section 6 of the report on documentation and publications which not only made the usual points, but also drew attention to the particular situation which the Commission faced in respect of the availability of documentation.

In conclusion, the Commission recommended that its following session should be held from 1 May to 2 June and from 2 July to 4 August 2017. He took it that, subject to the necessary adjustments, the Planning Group's recommendations would be included in the Chapter of the Commission's report entitled "Other decisions and conclusions of the Commission" in accordance with its usual practice.

**The Chairman** invited the members of the Commission to take note of the report of the Planning Group whose recommendations would be included in the final chapter of the Commission's report.

**Mr. Murphy** drew members' attention to paragraph 43 of the report and asked whether, since its workload would be considerably lighter, the Commission should not meet for less than ten weeks the following year. At the beginning of the current quinquennium, when the Commission had found itself in a similar situation, it had met for nine weeks.

**Mr. Nolte** (Chairman of the Planning Group) said that paragraph 43 had not yet been presented for adoption and that the Planning Group had discussed that eventuality. Consultations were being held with the Secretariat and with the special rapporteurs on various topics in order to determine the number of weeks which would be necessary. As there would still be a fair number of topics on the agenda, eight in all, and perhaps some groundwork, the decision had been taken to recommend a 10-week session.

**Sir Michael Wood** said that it would be wise for the Commission to make the most of the 10 weeks of the sixty-ninth session and for the Special Rapporteurs who had been reappointed and whose topics were on the agenda to present extensive reports.

**Mr. Kittichaisaree** said that consultations among the officers of the Commission with a view to appointing special rapporteurs took a long time and that the procedure should be shortened in order to enable newly appointed special rapporteurs to present a report in the second half of the session.

**Mr. Petrič** recalled that, in previous quinquennia, mainly for financial reasons, the Commission had been under pressure to lighten its programme of work. It had been encouraged to cut the length of its sessions to nine or even eight weeks, but that idea had been rejected. As the Planning Group assuredly had good reasons for recommending two five-week part-sessions, the Commission should be wary of proposing a shorter session in 2017.

**Ms. Escobar Hernández** commented that the issue of reviewing the Commission's working methods had been raised on several occasions during the current and previous sessions and that it would be advisable to deal with that matter at the beginning of the following session. She therefore thought that the length recommended by the Planning Group was reasonable.

**Mr. Kamto** said that 10 weeks would not be too long if the Special Rapporteurs presented extensive reports containing draft articles which would require consideration during debates in plenary sittings at the following session. He warned the Commission members not to take a hasty decision to curtail the session.

*The Commission took note of the report of the Planning Group.*

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

##### *Chapter IX. Jus cogens (continued) (A/CN.4/L.887)*

**The Chairman** invited the members of the Commission to resume the adoption of chapter IX of the draft report at paragraph 19 of section 2, which they had started to discuss at the previous sitting.

2. *Summary of the debate**Paragraph 19*

**Mr. Vázquez-Bermúdez** said that he had given the secretariat the text of an amendment which he was proposing in light of the debate. In view of the amendments proposed in that context by Mr. Kittichaisaree and Mr. Nolte, the adjective “international” should be inserted before the words “public order” at the end of the first sentence and the words “form of” should be inserted before “*opinio juris*” in the third sentence.

*Paragraph 19, as amended, was adopted, subject to the inclusion of the new text submitted to the secretariat by Mr. Vázquez-Bermúdez.*

*Paragraph 20*

**Sir Michael Wood** commented that, as it stood, the seventh sentence suggested that the Commission had made an unsuccessful attempt to identify the rules of customary international law. He therefore proposed replacing the phrase “had not been feasible” with “would not have been feasible”.

*Paragraph 20, as amended, was adopted.*

*Paragraphs 21 to 23*

*Paragraphs 21 to 23 were adopted.*

*Paragraph 24*

**Mr. Nolte**, noting that paragraphs 23 and 24 dealt with the same issue, namely members’ doubts as to the existence of regional *jus cogens*, proposed that the phrase at the beginning of the first sentence “However, it was” should be replaced with “However, other members” which provided a more logical bridge between the two paragraphs.

**Mr. Vázquez-Bermúdez** supported that proposal and explained that the Inter-American Commission on Human Rights had stopped short of admitting the existence of regional *jus cogens*. He therefore proposed that the first sentence should be recast to read “However, other members pointed out that some references to regional *jus cogens* with respect to certain norms had been made, for example by the Inter-American Commission on Human Rights.”

**Sir Michael Wood** commented that it would likewise be going too far to say that the existence of regional *jus cogens* had been recognized in Europe.

**Mr. Nolte** said that, if his memory served him correctly, when the report had been considered, at least two decisions acknowledging the existence of regional *jus cogens* in Europe had been mentioned. He therefore proposed amending the end of the first sentence to state that reference had been made to the possibility that regional rules of *jus cogens* existed in Europe.

*Paragraph 24, as amended, was adopted.*

*Paragraph 25*

**Mr. Park** proposed the deletion of the word “rule” after the term “persistent objector” in the last sentence of the English version.

**Mr. Vázquez-Bermúdez** said that in order to reflect the Commission’s debate on the matter of the persistent objector more accurately, the first sentence should be deleted and replaced with two sentences which could read “Several members emphasized the incompatibility of the notion of the persistent objector with *jus cogens* norms, which have by definition a universal preemptory character. In this regard, those members added it would be impossible to admit, for example, a persistent objector to the prohibition of the crime of genocide.”

*Paragraph 25, as amended, was adopted.*

*Paragraph 26*

**Mr. Murphy** said that, as the form which would be taken by the outcome of the Commission's work was as yet undecided, it would be preferable to place the word "conclusions" in inverted commas in the first sentence and, in the English version, to replace the words "draft conclusions" with "type of outcome".

*Paragraph 26, as amended, was adopted.*

*Paragraph 27*

**Sir Michael Wood** proposed the deletion of the phrase "which would require a decision on whether to have an indicative list or not" from the final sentence, because it referred not only to *jus cogens* rules but also to their content. It was, however, impossible to draw up a list of their content.

*Paragraph 27, as amended, was adopted.*

*Paragraph 28*

*Paragraph 28 was adopted.*

*Paragraph 29*

**Mr. Vázquez-Bermúdez**, noting that the paragraph recorded only the viewpoint of members who had expressed doubts about the inclusion of paragraph 2, although several members had welcomed it, proposed that the beginning of the second sentence should be supplemented with the wording "Several members expressed support for the content of paragraph 2, while other members ...".

**Mr. Murphy** approved of that amendment, but suggested that, for the sake of symmetry, the words "other members" should be replaced with "several others".

*Paragraph 29, as amended, was adopted.*

*Paragraph 30*

**Mr. Nolte** drew attention to the second sentence which concerned his comments during the plenary debate and which did not faithfully reflect his view. He therefore proposed that the word "since" should be replaced with "if" and that the phrase "of a more formal nature" should be deleted.

**Mr. Vázquez-Bermúdez** proposed the insertion of the phrase "by clarifying the nature of *jus cogens*" after "Vienna Convention" in the final sentence and the addition of "as a whole" at the very end of it.

*Paragraph 30, as amended, was adopted.*

*Paragraphs 31 to 33*

*Paragraphs 31 to 33 were adopted.*

*Section 2 (Summary of the debate), as a whole, as amended, was adopted.*

3. *Concluding remarks of the Special Rapporteur*

*Paragraphs 34 and 35*

*Paragraphs 34 and 35 were adopted.*

*Paragraph 36*

**Mr. Nolte** proposed replacing "difference" with "differences".

*Paragraph 36, as amended, was adopted.*

*Paragraphs 37 to 40**Paragraphs 37 to 40 were adopted.**Paragraph 41*

**Mr. Tladi** (Special Rapporteur) proposed replacing the phrase “He proceeded to supplement his first report with additional references to” at the beginning of the final sentence with “In addition to the authorities in his first report, he provided additional authorities for”.

*Paragraph 41, as amended, was adopted.**Paragraph 42*

**Mr. Kittichaisaree** said that although Mr. Tladi would undoubtedly be reappointed Special Rapporteur for the topic *Jus cogens*, it would be preferable to recast the paragraph in impersonal terms in order to avoid creating the impression that the decision had already been taken at that stage.

**Mr. Tladi** (Special Rapporteur) said that the sentence could be amended as proposed by Mr. Candioti and Mr. Saboia to read “He further expressed the view that there was merit in considering suggestions for modifying the title of the project and that this could be considered in a future report.”

*Paragraph 42, as amended, was adopted.**Section 3 (Concluding remarks of the Special Rapporteur), as a whole, as amended, was adopted.**Chapter IX of the draft report of the Commission contained in document A/CN.4/L.887, as a whole, as amended, was adopted.**Chapter X Protection of the environment in relation to armed conflicts (A/CN.4/L.888 and Add.1)*

**The Chairman** invited the members of the Commission to proceed with the adoption, paragraph by paragraph, of documents A/CN.4/L.888 and Add.1.

*Document A/CN.4/L.888**Section A. Introduction**Paragraphs 1 and 2**Paragraphs 1 and 2 were adopted.**Section B. Consideration of the topic at the present session**Paragraphs 3 to 6**Paragraphs 3 to 6 were adopted.**Paragraph 7*

**Ms. Jacobsson** (Special Rapporteur) explained that a footnote based on footnote 378 of the report of the Commission on the work of its seventy-seventh session would be inserted. It would contain the text of the draft principles provisionally adopted by the Drafting Committee.

*Paragraph 7 was adopted.**Paragraph 8**Paragraph 8 was adopted.*

**Mr Candioti** proposed that, although it was not customary to do so, after paragraph 8 a paragraph should be inserted paying tribute to the Special Rapporteur's excellent work on a thorny issue.

**The Chairman** said that the proposal had been adopted and that the secretariat would draft that paragraph for inclusion in the report.

*Paragraph 9*

*Paragraph 9 was adopted.*

*Paragraph 10*

**Mr. Murphy** proposed replacing the term "legal fields" with "legal issues".

*Paragraph 10, as amended, was adopted.*

*Paragraph 11*

**Ms. Jacobsson** (Special Rapporteur) said that the phrase "the new trend among States" should be replaced with "the emerging trend among States".

*Paragraph 11, as amended, was adopted.*

*Paragraphs 12 to 14*

*Paragraphs 12 to 14 were adopted.*

*Paragraph 15*

**Ms. Jacobsson** (Special Rapporteur) proposed the addition in the English text of the words "the United Nations Environment Programme (UNEP) and" after "the International Committee of the Red Cross (ICRC)", because she had also greatly benefited from cooperation with that entity.

*Paragraph 15, as amended, was adopted.*

*Paragraphs 16 to 20*

*Paragraphs 16 to 20 were adopted.*

*Paragraph 21*

**Mr. Murphy** said that the sentence "It was also pointed out that the topic should address the protection of the environment irrespective of its usefulness or economic value" implied that there might be circumstances where the environment was useless and had no economic value, which was clearly not the opinion of Commission members. That sentence must therefore be deleted.

*Paragraph 21, as amended, was adopted.*

*Paragraphs 22 to 49*

*Paragraphs 22 to 49 were adopted.*

*Document A/CN.4/L.888, as a whole, as amended, was adopted.*

*Document A/CN.4/L.88/Add.1*

**The Chairman** invited the members of the Commission to consider, paragraph by paragraph document A/CN.4/L.888/Add.1 which contained the remaining portion of chapter X. A revised version of the document containing the amendments proposed by the Special Rapporteur had been distributed.

- C. *Text of the draft principles on protection of the environment in relation to armed conflict provisionally adopted by the Commission at its sixty-eighth session*
2. *Text of the draft principles with commentaries thereto*

### **Introduction**

#### *Paragraph (1)*

**Mr. Murphy** said that as Part One of the draft principles contained general principles that concerned more than the protection of the environment before the outbreak of an armed conflict, the first part of the second sentence “provides guidance ... *before* the outbreak of an armed conflict” should be deleted and the phrase added by the Special Rapporteur “contains draft principles of a more general nature that are of relevance to all three temporal phases” should be retained without the conjunction “and”. At the end of the sentence it would be wise to add the words “before, during and after an armed conflict” in order to make it clear what phases were meant, since they were defined only later in the text.

**Sir Michael Wood** said that the first part of the second sentence should be kept but slightly reworked. The whole sentence, with the addition proposed by the Special Rapporteur and amended by Mr Murphy would then read “Part One concerns the protection of the environment *before* the outbreak of an armed conflict, but also contains draft principles of a more general nature that are of relevance to all three temporal phases — before, during and after — an armed conflict.” In the last sentence “Part Two outlines” should be replaced with “Part Two pertains to”.

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

#### *Paragraph (2)*

**Mr. Murphy** said that, in the first line, only the word “principles” should be in inverted commas.

*Paragraph (2), as amended, was adopted.*

#### *Paragraph (3)*

*Paragraph (3) was adopted.*

#### *Paragraph (4)*

**Mr. Murphy** considered that the explanations given in paragraph (4) were out of place in a commentary. He proposed that the paragraph should be recast to indicate only that the Special Rapporteur had proposed some definitions which the Commission was still considering and which could form the basis of a future draft principle 3.

**Ms. Jacobsson** (Special Rapporteur) explained that, in that paragraph, she had wished to make it plain that she had never been convinced of the need to adopt a provision on the use of terms and on which opinions in the Sixth Committee and the Commission were still divided. If the paragraph were reworded, she would like her position to be duly reflected.

**Sir Michael Wood** disagreed with Mr. Murphy and thought that, since the Special Rapporteur would no longer be a member of the Commission in 2017, that paragraph was very helpful and should be retained. The end of the last sentence should, however, be reworded to read “in order to evaluate the need for the paragraph in the light of subsequent debates.

**Mr. Candiotti** said that it would be advisable to evaluate the need not of the paragraph but of the provision.

**The Chairman** said that if there were no objections, he would take it that the Commission was prepared to adopt paragraph (4) with the amendments proposed by Sir Michael Wood and Mr. Candiotti.

*Paragraph (4), as amended, was adopted.*

*Commentary to draft principle 1. (Scope)*

*Paragraph (1)*

**Sir Michael Wood** proposed deleting the words “the recognition” in the fourth sentence of the English text, commencing the following sentence with “However” and deleting the phrase “in relation to the protection of the environment in armed conflict”.

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

*Paragraph (2) to (4)*

*Paragraphs (2) to (4) were adopted.*

*The commentary to draft principle 1, as a whole, as amended, was adopted.*

*Commentary to draft principle 2. (Purpose)*

*Paragraph (1)*

**Mr. Murphy** proposed to streamline the penultimate sentence by deleting the phrases “the purposive nature of the provision found in” and “which in this case”. Furthermore, the meaning of the last sentence was not plain and should be clarified or deleted.

**Ms. Jacobsson** (Special Rapporteur) agreed to the deletion of the last sentence, but was unconvinced by the rewording proposed by Mr. Murphy for the last sentence, which she preferred to keep as it stood.

**Mr. McRae** said that the term “purposive nature” was unduly complicated and could be replaced by “the purpose” without that altering the initial meaning of the sentence.

*Paragraph (1), as amended by Mr. McRae, was adopted.*

*Paragraphs (2) to (4)*

*Paragraphs (2) to (4) were adopted.*

*The commentary to draft principle 2, as a whole, as amended, was adopted.*

## **Part One General Principles**

*Commentary to draft principle 5 (Designation of protected areas)*

**Mr. Park** (Rapporteur) noted that, in the revised version of document A/CN.4/L.888/Add.1 which the Special Rapporteur had distributed, the draft principles had been renumbered and their old numbers had been crossed out. He proposed that the old numbering should still be shown in brackets in order to make it easier for the reader to find the corresponding provisions in previous reports.

**Ms. Jacobsson** (Special Rapporteur) recalled that, as the Chairman of the Drafting Committee had said on presenting his report, the draft principles adopted at the previous and current sessions had been renumbered. Showing the old and new numbering side by side might be confusing. It would therefore be preferable to show only the new numbering.

**Sir Michael Wood** agreed with Mr. Park that it was essential to show the old numbers in brackets, otherwise it would be impossible for the reader to find the corresponding provisions and the relevant explanations in previous reports. Moreover, that was the Commission’s usual practice.

After an exchange of view in which **Mr. Saboia**, **Ms. Jacobsson** (Special Rapporteur), **Mr. Candiotti**, **Mr. Vázquez-Bermúdez**, **Sir Michael Wood** and **the Chairman** took part, the latter said that he took it that the Commission accepted the

proposal of Mr. Park and Sir Michael Wood that the old numbers of the draft principles should be shown in brackets.

*It was so decided.*

*Paragraphs (1) to (3)*

*Paragraphs (1) to (3) were adopted.*

*The commentary to draft principle 5, as a whole, was adopted.*

## **Part Two. Principles applicable during armed conflict**

*Commentary to draft principle 9 (General protection of the natural environment during armed conflict)*

*Paragraphs (1) to (3)*

*Paragraphs (1) to (3) were adopted.*

*Paragraph (4)*

**Mr. Murphy** said that in the last line “was duly noted” should be replaced with “was emphasized”.

**Mr. Caflisch** endorsed that proposal, but thought that in a commentary it would be preferable to use the wording “should be emphasized”.

**Mr. Candiotti** agreed with Mr. Caflisch and also proposed that, in the English version, “effects on” should be replaced with “effects of” in the phrase “effects on armed conflicts on treaties”.

*It was so decided.*

*Paragraph (4), as amended, was adopted.*

*Paragraphs (5) to (8)*

*Paragraphs (5) to (8) were adopted.*

*Paragraph (9)*

**Mr. Murphy** commented that, in the penultimate sentence, “draft articles” should be replaced with “draft principles”

*Paragraph (9), as amended, was adopted.*

*Paragraph (10)*

**Mr. Murphy** said that the plan was to have the new members of the Commission appoint a new special rapporteur, with the result that it was not certain that the requirement set forth in article 36 of Additional Protocol I would be addressed in a forthcoming draft principle. The last sentence in the paragraph should therefore be deleted.

**Mr. Vázquez-Bermúdez** proposed the replacement of “will be addressed” with “would be addressed” in the English version, since the conditional tense was less affirmative.

**Mr. Murphy** was not in favour of using the conditional tense which suggested an intention to give the new members of the Commission and the new special rapporteur instructions on what course to take. It would be preferable to opt for either “might be” or “could be”.

**Mr. Caflisch** proposed “may have to”.

**Ms. Jacobsson** (Special Rapporteur) explained that the commentary had been drawn up before the draft principles had been considered. She had initially intended to deal with

the matter of article 36 in draft principle 4. She currently intended to examine that issue in the informal commentary to draft principle 4 which she intended to write.

**Ms. Escobar Hernández** considered it preferable to keep the phrase as it stood in order to respect the Special Rapporteur's wishes. The future tense in no way implied any intention to give instructions to the new members of the Commission or the new special rapporteur. Moreover, it was the Commission's practice to reconsider draft commentary before adopting a draft text on first reading. At that juncture it would make any amendments it considered necessary. It would be premature to alter that sentence at that stage when there was no knowing what decision the new members of the Commission would take.

**Mr. Saboia** agreed with Ms. Escobar Hernández. If, however, it were decided to discard the phrase in its current form, it would be preferable to choose "may have to be".

**Mr. McRae** proposed the wording "should be the subject of a future draft principle". That would express the Special Rapporteur's viewpoint without giving any instructions to the new members of the Commission.

**Sir Michael Wood** thought it preferable to use "could".

**Mr. Murphy** shared the view of Sir Michael Wood.

*That proposal was accepted.*

*Paragraph (10), as amended, was adopted.*

*Paragraphs (11) to (15)*

*Paragraphs (11) to (15) were adopted.*

*The commentary to draft principle 9, as a whole, as amended, was adopted.*

*Commentary to draft principle 10 (Application of the law of armed conflict to the natural environment)*

*Paragraphs (1) to (3)*

*Paragraphs (1) to (3) were adopted.*

*Paragraph (4)*

**Mr. Murphy** said that it would be wise to replace "as a civilian object" with "in the same way as a civilian object" in the penultimate sentence.

*Paragraph (4), as amended, was adopted.*

*Paragraphs (5) to (12)*

*Paragraphs (5) to (12) were adopted.*

*The commentary to draft principle 10, as a whole, as amended, was adopted.*

*Commentary to draft principle 11 (Environmental considerations)*

*Paragraphs (1) to (5)*

*Paragraphs (1) to (5) were adopted.*

*The commentary to draft principle 11, as a whole, was adopted.*

*Commentary to draft principle 12 (Prohibition of reprisals)*

*Paragraph (1)*

*Paragraph (1) was adopted.*

*Paragraph (2)*

**Mr. Kittichaisaree** proposed that, for the sake of readability, the word “some” should be deleted from the phrase “some other members” in the second line of the paragraph in the English version.

*Paragraph (2), as amended, was adopted.*

*Paragraphs (3) and (4)*

*Paragraphs (3) and (4) were adopted.*

*Paragraph (5)*

**Mr. Park** suggested that “prohibition against reprisals” should be replaced with “prohibition of reprisals” in the fourth line of the English version.

**Sir Michael Wood** considered that it would be preferable to reformulate the penultimate sentence of the paragraph to read “Some members were concerned that reproducing article 55, paragraph 2 verbatim in draft principle 12 could therefore be misinterpreted ...”.

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

*Paragraph (6)*

**Mr. Murphy** proposed that “environmental reprisals” should be replaced with “attacks against the natural environment by way of reprisal” in the English text.

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

*Paragraph (7)*

*Paragraph (7) was adopted.*

*Paragraph (8)*

**Mr. Murphy** commented that “the draft principles” should be replaced with “draft principle 12” in the first sentence.

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

*Paragraph (9)*

**Mr. Murphy** drew attention to the lack of consensus on the prohibition of reprisals against the environment in non-international armed conflicts. The end of the second sentence of the paragraph should therefore be reworded “some members expressed the view that reprisals against the natural environment in armed conflicts are prohibited”.

*Paragraph (9), as amended, was adopted.*

*Paragraph (10)*

**Mr. Petrič** proposed replacing “could” with “can” in the last sentence of the paragraph in order better to convey the controversy mentioned in the first line.

*Paragraph (10), as amended, was adopted.*

*The commentary to draft principle 12, as a whole, as amended, was adopted.*

*Commentary to draft principle 13 (Protected zones)*

*Paragraphs (1) to (3)*

*Paragraphs (1) to (3) were adopted.*

*Paragraph (4)*

**Mr. Kittichaisaree** noted that the first sentence of the paragraph spoke of the “1954 Hague Convention referenced above”. As no reference appeared to have been made to that Convention, he proposed the deletion of “referenced above”.

*Paragraph (4), as amended, was adopted.*

*Paragraph (5)*

*Paragraph (5) was adopted.*

*The commentary to draft principle 13, as a whole, as amended, was adopted.*

*Chapter X of the draft report of the Commission contained in document A/CN.4/L.888 and Add.1, as a whole, as amended, was adopted.*

*The meeting rose at 6 p.m.*