

Provisional

For participants only

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Seventy-first session (second part)

Provisional summary record of the 3506th meeting

Held at the Palais des Nations, Geneva, on Thursday, 8 August 2019, at 3 p.m.

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Present:

Chair: Mr. Šturma

Members: Mr. Cissé

Ms. Escobar Hernández

Ms. Galvão Teles

Mr. Gómez-Robledo

Mr. Grossman Guiloff

Mr. Hassouna

Mr. Huang

Mr. Jalloh

Mr. Laraba

Ms. Lehto

Mr. Murase

Mr. Murphy

Mr. Nguyen

Mr. Nolte

Mr. Oral

Mr. Ouazzani Chahdi

Mr. Park

Mr. Petrič

Mr. Rajput

Mr. Ruda Santolaria

Mr. Tladi

Mr. Valencia-Ospina

Mr. Vázquez-Bermúdez

Sir Michael Wood

Mr. Zagaynov

Secretariat:

Mr. Llewellyn Secretary to the Commission

The meeting was called to order at 3 p.m.

Draft report of the Commission on the work of its seventy-first session *(continued)*

Chapter VI. Protection of the environment in relation to armed conflicts (continued) (A/CN.4/L.930 and A/CN.4/L.930/Add.1)

The Chair invited the Commission to resume its consideration of the portion of chapter VI of the draft report contained in document A/CN.4/L.930/Add.1, beginning with those paragraphs that had been left in abeyance.

C. *Text of the draft principles on protection of the environment in relation to armed conflicts adopted by the Commission on first reading (continued)*

2. *Text of the draft principles and commentaries thereto (continued)*

Part Two (Principles of general application) (continued)

Commentary to draft principle 6 (Agreements concerning the presence of military forces in relation to armed conflict) (continued)

Paragraph 6 (continued)

Ms. Lehto (Special Rapporteur) proposed that the words “pollution on facilities” in the second sentence should be amended to “pollution from facilities”.

Paragraph (6), as amended, was adopted.

Commentary to draft principle 10 (Corporate due diligence) (continued)

Paragraph (12) (continued)

Ms. Lehto (Special Rapporteur) proposed that the paragraph should read: “The view was expressed that the second sentence of draft principle 10 should recommend that natural resources be purchased or obtained ‘equitably’ and in an environmentally sustainable manner. While the established understanding of the concept of sustainability as encompassing environmental, economic and social aspects or the importance of all these aspects for corporate due diligence was not questioned, the Commission did not include that notion as it was felt that it could create confusion in the context of draft principle 10.”

Mr. Nolte proposed that the words “the notion” should be replaced with “the word ‘equitably’”.

Paragraph (12), as amended by the Special Rapporteur and Mr. Nolte, was adopted.

Part Three (Principles applicable during armed conflict) (continued)

Commentary to draft principle (12) (Martens Clause with respect to the protection of the environment in relation to armed conflict) (continued)

Paragraph (5) (continued)

Ms. Lehto (Special Rapporteur) said that, having consulted informally with Mr. Zagaynov, she wished to propose that the paragraph should remain unchanged.

Paragraph (5) was adopted.

Paragraph (7) (continued)

Ms. Lehto (Special Rapporteur) said that, in the second sentence, the words “it can even be asked” should be replaced with “it has even been asked” and the word “remains” should be replaced with “can remain”. The third sentence should read: “That reference was retained given that humanitarian and environmental concerns are not mutually exclusive, as pointed out by the International Court of Justice.” Immediately after the call-out for

footnote 220, a new sentence should be added to read: “Moreover, the retention of that notion was seen as appropriate to protect the integrity of the Martens Clause.”

Paragraph (7) was adopted with those amendments.

Commentary to draft principle (13) (General protection of the natural environment during armed conflict) (continued)

Paragraph (3) (continued)

Ms. Lehto (Special Rapporteur) said that the words “law of armed conflict” should be inserted after the word “several” in the first sentence.

The Chair said that it had also been proposed that the words “to date” should be deleted from the first sentence. He took it that the Commission agreed to that amendment, in addition to the amendment proposed by Ms. Lehto.

Paragraph (3) was adopted with those amendments.

Paragraphs (10) and (11) (continued)

Ms. Lehto (Special Rapporteur) said that paragraph (10) should be amended to read: “Paragraph 3 of draft principle 13 is based on the fundamental rule that a distinction must be made between military objectives and civilian objects. It underlines the inherently civilian nature of the natural environment”. Paragraphs (10) and (11) should then be merged, such that the text of paragraph (11) continued directly from the final sentence of paragraph (10). Lastly, in the final sentence of the text of paragraph (11), the words “parts of” should be inserted before “the natural environment”.

The Chair said he took it that the Commission agreed that paragraphs (10) and (11) should be merged and adopted with the amendments proposed by Ms. Lehto.

On that understanding, paragraphs (10) and (11) were adopted.

Commentary to draft principle 16 (Prohibition of reprisals) (continued)

Paragraph (10) (continued)

Ms. Lehto (Special Rapporteur) proposed that the words “was simply too precarious, as it” should be deleted from the second sentence, and that the second part of the third sentence should be amended to read “given the fundamental importance of the existing rule to the law of armed conflict”.

Paragraph (10) was adopted with those amendments.

The Chair invited the Commission to consider the commentary to draft principle 17.

Commentary to draft principle 17 (Protected zones)

Paragraphs (1) to (5)

Paragraphs (1) to (5) were adopted.

Commentary to draft principle 18 (Prohibition of pillage)

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

Mr. Murphy said that, in the first sentence, the term “an international crime” should be replaced with “a war crime”. In the third sentence, the word “literally” should be replaced with the words “in that context”. In footnote 274, the first reference should be to Additional Protocol II, article 4, paragraph (2) (g).

Paragraph (2), as amended, was adopted.

Paragraph (3)

Mr. Murphy said that the word “such” should be added before the word “pillage” in the third sentence. At the end of the same sentence, the words “easily met with high-value” should be amended to “easily met for high-value”.

Paragraph (3), as amended, was adopted.

Paragraphs (4) and (5)

Paragraphs (4) and (5) were adopted.

Paragraph (6)

Mr. Murphy proposed that the word “authoritatively” should be deleted from the third sentence.

Paragraph (6), as amended, was adopted.

Paragraph (7)

Mr. Murphy said that the words “in transnational environmental crime” in the third sentence should be amended to “through transnational environmental crime”.

Ms. Lehto (Special Rapporteur) said that a new sentence should be inserted at the end of the paragraph. It would read: “This broader context underscores the application of the prohibition of pillage to natural resources.”

Paragraph (7), as amended, was adopted.

Paragraph (8)

Paragraph (8) was adopted.

Commentary to draft principle 19 (Environmental modification techniques)

Paragraph (1)

Mr. Murphy said that, in the first sentence, “article 1 of the 1976 Convention” should be amended to read “article 1, paragraph 1, of the 1976 Convention”. In the third sentence, the opening words “an environmental modification technique is defined” should be amended to “environmental modification techniques are defined”, the indefinite article “a” after “in the convention as” should be deleted and the word “any” should be inserted before the word “technique” inside the quotation.

Paragraph (1), as amended, was adopted.

Paragraph (2)

Mr. Murphy said that, in the first sentence, the words “the environment as a weapon” should be replaced with “hostile uses of environmental modification techniques”. In the same sentence, the word “the” before “obligations” should be replaced with “such”. In the following sentence, the opening words “it is to be recalled in this respect that” should be deleted.

Ms. Lehto (Special Rapporteur) said that she would like to see Mr. Murphy’s proposals in writing before commenting on them.

The Chair suggested that the Commission should suspend its consideration of the paragraph to allow Mr. Murphy time to send Ms. Lehto his proposals in writing.

It was so decided.

Paragraph (2) was left in abeyance.

Paragraph (3)

Mr. Murphy said that, in the second sentence, the words “is clear in that the Convention” should be deleted. In the following sentence, the words “some have argued that” should be inserted before the opening words “this condition could nonetheless”.

Ms. Lehto (Special Rapporteur) proposed that the words “it has been argued that” should be inserted instead of “some have argued that”.

Paragraph (3), as amended, was adopted.

Paragraph (4)

Mr. Murphy said that the words “in contrast” should be deleted from the first sentence. The second sentence should be amended to read: “The ICRC study on customary international humanitarian law maintains that the prohibition of the destruction of the natural environment as a weapon is a norm of customary international law.” In that way the paragraph would reflect the study more precisely.

Mr. Nolte, referring to Mr. Murphy’s proposal, said that the word “concludes” should be used instead of “maintains”.

Paragraph (4), as amended, was adopted.

Paragraph (5)

Paragraph (5) was adopted.

Paragraph (6)

Mr. Murase said that the term “environmental warfare” was unclear. He wished to propose that it should be replaced with the words “the use of environmental modification as a weapon or warfare”. In the final sentence, after the words “regarding specific weapons”, the words “including, *inter alia*, chemical and biological weapons” should be inserted. A long debate had taken place in the Drafting Committee in that regard. It seemed odd to mention only environmental modification techniques, as chemical and biological weapons had had a prominent place in that context.

Mr. Vázquez-Bermúdez proposed that the words “the existing” should be deleted from the final sentence.

Mr. Gómez-Robledo said that he supported Mr. Murase’s second proposal. However, he would replace the phrase “chemical and biological weapons” with “weapons of mass destruction”.

Ms. Lehto (Special Rapporteur) said that she did not support Mr. Murase’s first proposal, because it missed the point of the sentence and rendered it tautological. The idea was that the Environmental Modification Convention was the first and only convention to date that addressed the protection of the environment in armed conflict. If the words “environmental warfare” were not acceptable, she would propose that they should be replaced with the words “protection of the environment in armed conflict”.

Mr. Murase said that weapons of mass destruction did not necessarily include environmental weapons. He would prefer to keep the words “chemical and biological weapons”.

Mr. Vázquez-Bermúdez said that he had no objection to Mr. Murase’s proposal to amend the final sentence. However, he was in favour of retaining the reference to “environmental warfare” in the first sentence.

Mr. Grossman Guiloff said that he supported Mr. Murase’s second proposal; the issue had been discussed in the Drafting Committee.

Mr. Murphy said that there were other treaties that addressed the environment in times of war. Perhaps the words “to specifically address” should be replaced with “exclusively to address” or “solely to address”. With regard to Mr. Gómez-Robledo’s proposal, the insertion of the words “weapons of mass destruction” would raise the question

of what was included under that term. If the term encompassed environmental modification techniques as a means of warfare, an important element of the project would be excluded from it.

Mr. Gómez-Robledo said that his intention in proposing the insertion of “weapons of mass destruction” was clearly and plainly to refer also to nuclear weapons. Given the sensitivity of the term “nuclear weapons”, he preferred to use “weapons of mass destruction”. If his initial proposal was not acceptable, he wished to propose that, in addition to Mr. Murase’s proposal, an additional sentence should be added at the end of the paragraph to read: “Another view was expressed that nuclear weapons or other weapons of mass destruction should be included.”

Ms. Lehto (Special Rapporteur) said that, in the light of Mr. Murphy’s proposal regarding the first sentence, perhaps the words “the only international treaty to specifically address environmental warfare” should be amended to “the only international treaty dedicated to prohibiting environmental warfare”. Regarding Mr. Gómez-Robledo’s proposal, she wished to recall that the issue of weapons of mass destruction in general had not been discussed in the Drafting Committee. Only chemical and biological weapons had been discussed. It would therefore be logical to mention only those weapons. She proposed inserting the phrase “such as biological or chemical weapons”, instead of “including, *inter alia*, chemical and biological weapons”.

Mr. Gómez-Robledo said that he could agree to Mr. Murase’s proposal for the final sentence, as amended by Ms. Lehto, if his own proposal for an additional sentence at the end of the paragraph was accepted.

Mr. Petrič said that, while the meaning of terms such as “weapons of mass destruction” or “chemical weapons” was immediately obvious, the phrase “environmental warfare” was not clear. He would therefore prefer another term to be used.

Mr. Murphy said that he would be interested to know whether Mr. Gómez-Robledo was of the view that the project should deal with nuclear weapons but not with chemical and biological weapons.

Mr. Gómez-Robledo noting that although, in the last sentence, it was stated that the inclusion of draft principle 19 was without prejudice to the existing conventional or customary rules of international law regarding specific weapons, said that there was in fact a conventional rule of international law under the Treaty on the Prohibition of Nuclear Weapons, which was not yet in force. He would like that reality to be reflected in a separate sentence, since chemical and biological weapons were covered by existing treaties that were already in force.

Mr. Nolte said that of course Mr. Gómez-Robledo had the right to have his views reflected. However, the question was whether those views had been expressed in the Drafting Committee; if the issue of nuclear weapons had not been discussed, no reference thereto should be included in the commentary.

Mr. Vázquez-Bermúdez said that, as the final sentence of the paragraph was a “without prejudice” clause, he was flexible as to the enumeration that followed. In the first sentence, however, he preferred the Special Rapporteur’s original proposed text, as the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques was indeed the only international treaty that specifically addressed environmental warfare.

Mr. Zagaynov said that he wished to raise an important methodological question. In view of his own recent experience in that regard, he would like clarification on the Commission’s general practice regarding the reflection of minority views in its report to the General Assembly.

Sir Michael Wood suggested the insertion, in the first sentence, of the word “techniques” after “environmental warfare”. Referring to Mr. Vázquez-Bermúdez’s proposal to delete the words “the existing” in the second sentence, he suggested that the word “existing” should be retained, so that the phrase in question, as amended by Mr. Murase, would read “... is without prejudice to existing conventional or customary rules of

international law regarding specific weapons, including *inter alia* ...”. It would then be up to the reader to decide to what extent such conventional or customary rules existed.

Ms. Galvão Teles, noting that, in the statement of the Chair of the Drafting Committee, the words “in particular biological and chemical weapons” had been used, said that that wording, which did not exclude other weapons, should be inserted at the end of the second sentence of the current paragraph. The statement had also referred to weapons that had serious impacts on the environment, although she was not suggesting that such language should be used in the commentary.

Ms. Lehto (Special Rapporteur), referring to the proposed addition, in the first sentence, of the word “techniques” after “environmental warfare”, said that her preference would be to refer to “means and methods of environmental warfare”, in order to reflect the language normally used in the law of armed conflict.

Paragraph (6) was left in abeyance.

Part Four (Principles applicable in situations of occupation)

Introduction

The Chair suggested that the word “Commentary” should be inserted as a heading under “Introduction”.

It was so decided.

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

Mr. Nolte proposed that, in the last sentence, the words “factual concept” should be replaced with “fact-based concept”, because, although the concept of authority was fact-oriented, it was ultimately a normative concept, too.

Paragraph (2), as amended, was adopted.

Paragraph (3)

Paragraph (3) was adopted with a minor drafting change.

Paragraph (4)

Paragraph (4) was adopted.

Paragraph (5)

Mr. Murphy said that, at the beginning of the fourth sentence, the phrase “A further consequence of occupation as a factual category” should be deleted and that the words “is applicable” should be replaced with “may also be applicable”. The Commission should adopt a more cautious approach in an area that was contested and where there was no treaty law.

Ms. Lehto (Special Rapporteur) said that while she understood the intention behind the amendment proposed by Mr. Murphy, the sentence as amended would make little sense: indeed, if the situation in question met the criteria of article 42 of the Hague Regulations, then the law of occupation necessarily applied.

Mr. Nolte said that while he too understood the intention behind the proposed amendment, he found the verb “may” to be too soft. He suggested instead replacing the word “is” with “appears to be”.

Sir Michael Wood said that the introduction to part four contained a considerable amount of new text, including some quite sweeping statements in various paragraphs that he would not necessarily find convincing. He was making that point at the current juncture

because, on second reading, having had more time to look at the paragraphs, he would wish to come back with some suggestions for changes. By way of example, in the last sentence of paragraph (5), which stated that “the term ‘Occupying Power’ as used in the present draft principles is sufficiently broad to cover such cases”, the phrase “such cases” included some quite general cases that had been mentioned earlier in the paragraph. In the second sentence, for instance, it was stated that the law of occupation extended to “territories with unclear status that are placed under foreign rule”, which suggested that any foreign rule was an occupation within the meaning of the laws of war. Having said that, he agreed with Mr. Murphy’s suggestion to replace the word “is” with “may be”, a change that he did not see as contradicting the rest of the sentence, since the criteria of article 42 of the Hague Regulations could apply to situations that did not fall under that article.

Mr. Murphy, expressing support for the statement made by Sir Michael Wood, suggested that, in the fourth sentence, the word “meets” could be changed to “comparable to” if it addressed the Special Rapporteur’s concerns.

Mr. Vázquez-Bermúdez said that perhaps the deletion of the word “all” in the first sentence would provide a solution to the concerns expressed in relation to the rest of the paragraph.

Ms. Lehto (Special Rapporteur) said that it had been an express wish of the Drafting Committee to include a general commentary to address specifically the issues that she had included as part of the introduction to part four. The sentence on the application of the law of occupation to territories with unclear status had drawn on the language of the 2016 commentary of the International Committee of the Red Cross on article 2 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; she had understood such language to be uncontested.

Regarding the fourth sentence of the paragraph, she drew attention to the statement of the Chair of the Drafting Committee at the Commission’s seventieth session, which noted that international organizations “may exercise functions similar to occupying States in certain circumstances”, but that “there was little practice to build on”. Drawing on that language, she suggested that the fourth sentence should be redrafted to read “The law of occupation may also be applicable to territorial administration by an international organization, provided that the situation meets the criteria of article 42 of the Hague Regulations.” Footnote 326 would be retained.

Paragraph (5), as amended, was adopted.

Paragraph (6)

Mr. Nolte proposed that the words “as time goes by” should be inserted at the end of the last sentence.

Paragraph (6), as amended, was adopted.

Paragraph (7)

Mr. Murphy proposed that the current last sentence should end after the words “prolonged occupation” and that a new sentence should be added that would begin with the words “For each part, the draft principles”, followed by the current final phrase of the paragraph, namely “may require some adjustment, hence the phrase *mutatis mutandis*”. It would thus be clear that each part of the draft principles, and not just part five, might require some adjustment.

Mr. Nguyen proposed that, in the penultimate sentence, the word “general” should be deleted in the phrase “general protection”, so as to avoid raising the question of what “specific” protection might be.

Paragraph (7), as amended, was adopted.

*Commentary to draft principle 20 (General obligations of an Occupying Power)**Paragraphs (1) and (2)*

Paragraphs (1) and (2) were adopted.

Paragraph (3)

Mr. Murphy said that the section of the advisory opinion of the International Court of Justice on the *Legality of the Threat or Use of Nuclear Weapons* cited in the third sentence referred to treaties on protection of the environment. He therefore proposed replacing the words “customary international environmental law continues to apply” with “treaties on the protection of the environment continue to apply”. In addition, the word “draft” in the fourth sentence should be deleted.

Ms. Lehto (Special Rapporteur) said that the advisory opinion in question also referred to the principle of protection and specifically established that it was a principle of customary international environmental law. Therefore, if a reference to treaties were to be added, she would prefer also to retain the reference to customary international environmental law.

Paragraph (3), as amended, was adopted.

Paragraph (4)

Sir Michael Wood said that, in the fourth sentence, the reference to the Permanent Court of Arbitration was not accurate, since the cases cited had been decided not by the Permanent Court of Arbitration as an institution, but by arbitration courts administered by the Permanent Court. The necessary drafting change should be made to the text and the corresponding footnote.

Paragraph (4) was adopted, subject to the requisite drafting changes.

Paragraph (5)

Mr. Nolte said that, in the second sentence, the words “consequences on the population” should be changed to “consequences for the population”.

Mr. Zagaynov said that the concluding observations cited in footnote 346 did not deal with populations of occupied territories; the citation should therefore be deleted.

Paragraph (5), as amended and with an amendment to footnote 346, was adopted.

Paragraph (6)

Mr. Murphy proposed that, in the third sentence, the word “commonality” should be replaced with “common objectives” and that the phrase “, in terms of objectives” should be deleted.

Paragraph (6), as amended, was adopted.

Paragraphs (7) to (9)

Paragraphs (7) to (9) were adopted.

Paragraph (10)

Mr. Nolte proposed that, in the penultimate sentence, the word “forward-looking” should be replaced with “proactive” and the words “so as to avoid stagnation” should be deleted, since proactive action would necessarily prevent stagnation. He further proposed that the phrase “, including for the benefit of the population of the occupied territory.” should be inserted at the end of the penultimate sentence.

Sir Michael Wood proposed that, in the penultimate sentence, the words “the occupation law” should be replaced with “the law of occupation”, since presumably the sentence was not referring to a law that applied to a specific territory.

Paragraph (10), as amended, was adopted.

Paragraph (11)

Mr. Nolte said that, as in paragraph (10), the word “forward-looking” in the last sentence should be replaced with “proactive”

Paragraph (11), as amended, was adopted.

Paragraph (12)

Paragraph (12) was adopted.

Commentary to draft principle 21 (Sustainable use of natural resources)

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

Paragraph (4)

Ms. Lehto (Special Rapporteur), noting that the paragraph had been included as originally drafted, prior to its discussion within the Drafting Committee, said that the second sentence should be replaced with: “The prohibition of pillage of natural resources is furthermore applicable in situations of occupation.” A new footnote should then be inserted, to read “See draft principle 18 and the commentary thereto.”

Mr. Murphy, referring to the first sentence, said that, in a time of occupation, the Occupying Power could seize public movable property of the enemy belligerent even if such seizure was not “rendered absolutely necessary by military operations”. He suggested that the paragraph should focus on immovable property, since the exploitation of natural resources was specifically mentioned in the first sentence. Specifically, the word “immovable” should be inserted before the word “property” and the words “movable or immovable” should be deleted.

Ms. Lehto (Special Rapporteur) said that she would prefer to see the proposal in writing.

Paragraph (4) was left in abeyance.

Paragraphs (5) and (6)

Paragraphs (5) and (6) were adopted.

Paragraph (7)

Mr. Nolte said that, in the final sentence, it would be more accurate to refer to “a court of arbitration” rather than to the Permanent Court of Arbitration, for the reasons previously given by Sir Michael Wood.

Paragraph (7), as amended, was adopted.

Paragraphs (8) and (9)

Paragraphs (8) and (9) were adopted.

Commentary to draft principle 22 (Due diligence)

Paragraph (1)

Mr. Murphy said that the last part of the final sentence, after the words “stating that”, should read “the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States and of areas beyond national control constitute ‘part of the corpus of international law relating to the environment’”.

Paragraph (1), as amended, was adopted.

Paragraph (2)

Ms. Lehto (Special Rapporteur) said that she would provide footnotes related to the three conventions cited in the paragraph.

On that understanding, paragraph (2) was adopted.

Paragraphs (3) to (6)

Paragraphs (3) to (6) were adopted.

Paragraph (7)

Mr. Murphy said that the final phrase of the fourth sentence should read “areas beyond the occupied territory” not “areas beyond the occupied jurisdiction”.

Paragraph (7), as amended, was adopted.

Part Five (Principles applicable after armed conflict)

Commentary to draft principle 23 (Peace processes)

Paragraph (1)

Mr. Nolte said that, in the first sentence, the adjective “contemporary” should be deleted, because there was always a danger that a text might one day appear dated if that word was included.

Paragraph (1), as amended, was adopted.

Paragraphs (2) and (3)

Paragraphs (2) and (3) were adopted.

Paragraph (4)

Mr. Murphy said that the word “obligation” should be replaced with “recommendation”.

Mr. Nolte said that he agreed with Mr. Murphy’s proposal. The word “value” was not apt and should be replaced with “ambition”.

Ms. Lehto (Special Rapporteur) said that she would prefer the more neutral term “provision” to the word “recommendation”. The text could therefore refer to the “normative ambition of the provision”.

Paragraph (4), as amended, was adopted.

Paragraphs (5) and (6)

Paragraphs (5) and (6) were adopted.

Paragraph (7)

Ms. Lehto (Special Rapporteur) said that, in footnote 401, she had added a reference to the peace agreement between the Government of Colombia and the Revolutionary Armed Forces of Colombia-People’s Army and the footnote had been reorganized to refer to the various agreements in chronological order, starting with the most recent agreement.

With that amendment to footnote 401, paragraph (7) was adopted.

Paragraphs (8) and (9)

Paragraphs (8) and (9) were adopted.

Commentary to draft principle 24 (Sharing and granting access to information)

Paragraphs (1) to (7)

Paragraphs (1) to (7) were adopted.

Paragraph (8)

Mr. Nolte said that the sources given in the paragraph related to international human rights law, regarding the claim to receive and share information. As it seemed to him that in the context of armed conflict the right of a State *vis-à-vis* another State to access information was particularly important, he wondered whether it might be appropriate to reorder the paragraphs so as to begin with inter-State claims regarding the sharing of information.

Ms. Lehto (Special Rapporteur) said that paragraphs (13) and (12) were the only ones which referred to the sharing of information between States. Paragraphs (1) to (12) concerned public access to information. She would like to keep those paragraphs together. The paragraphs on the exchange of information between States then followed, and paragraph (20) set forth exceptions on account of vital security interests.

Paragraphs (8) was adopted.

Paragraphs (9) and (10)

Paragraphs (9) and (10) were adopted.

Paragraph (11)

Ms. Escobar Hernández said that she wondered whether it might be possible to consider the inclusion in the paragraph of a reference to the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), which contained similar provisions to the Aarhus Convention. She would be happy to provide the Special Rapporteur with the necessary information.

Ms. Lehto (Special Rapporteur) said that a number of paragraphs of the commentary to other draft principles already contained a reference to that Agreement, but it would be right to mention it in the context of paragraph (11).

Paragraph (11), as amended, was adopted.

Paragraphs (12) to (21)

Paragraphs (12) to (21) were adopted.

Commentary to draft principle 25 (Post-armed conflict environmental assessments and remedial measures)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

Paragraph (3)

Mr. Murphy said that, in the second sentence, the word “impact” should be inserted between “such” and “assessments”.

Paragraph (3), as amended, was adopted.

Paragraph (4)

Paragraph (4) was adopted with a minor editorial amendment to the English text.

Paragraphs (5) and (6)

Paragraphs (5) and (6) were adopted.

Commentary to draft principle 26 (Relief and assistance)

Paragraphs (1)

Ms. Lehto (Special Rapporteur) said that footnote 452 should contain a reference to draft principle 14 and paragraph (8) of the commentary thereto, which dealt with the same issue.

With that amendment to footnote 452, paragraph (1) was adopted.

Paragraphs (2) and (3)

Paragraphs (2) and (3) were adopted.

Paragraph (4)

Ms. Lehto (Special Rapporteur) said that the fourth sentence should end after the words “relief and assistance”. The following sentence should then begin with the words “Such measures may include ...”.

Paragraph (4), as amended was adopted.

Paragraphs (5) and (6)

Paragraphs (5) and (6) were adopted.

Commentary to draft principle 27 (Remnants of war)

Paragraphs (1) to (9)

Paragraphs (1) to (9) were adopted.

Commentary to draft principle 28 (Remnants of war at sea)

Paragraphs (1) to (7)

Paragraphs (1) to (7) were adopted with minor editorial adjustments to paragraphs ((2) and (7).

The meeting was suspended at 4.45 p.m. and resumed at 5.05 p.m.

The Chair invited the Commission to resume its consideration of the paragraphs of the commentary to draft principles 19 and 21 which had been left in abeyance.

Draft principle 19 (Environmental modification techniques) (continued)

Paragraph (2) (continued)

Ms. Lehto (Special Rapporteur) said that, in the first sentence, after the words “customary obligation” she wished to propose the deletion of the phrase “prohibiting the use of the environment as a weapon” and to replace it with a phrase which would read “that, according to the ICRC study on customary international humanitarian law, prohibits the use of the environment as a weapon”. In the second sentence, in order to avoid repetition, the phrase “according to the ICRC study on customary international humanitarian law” should be replaced with “to quote the ICRC study” followed by the quotation.

Paragraph (2), as amended, was adopted.

Paragraph (6) (continued)

Ms. Lehto (Special Rapporteur) said that the phrase “that have serious impacts on the environment” should be added at the end of the final sentence of the paragraph.

Paragraph (6), as amended, was adopted.

Draft principle 21 (Sustainable use of natural resources) (continued)

Paragraph (4) (continued)

Ms. Lehto (Special Rapporteur) said that, in the first sentence, before the indicator for footnote 374, she wished to propose the addition of the phrase: “(or, with respect to seizure of movable public property, is necessary for military operations).” A reference to article 53 of the Hague Regulations should then be added to footnote 374. The second sentence, which began with the words “Pillage is furthermore prohibited”, would be replaced with a sentence that referred to draft principle 18 concerning the prohibition of pillage.

Paragraph (4), as amended, was adopted.

The portion of chapter VI of the draft report contained in document A/CN.4/L.930/Add.1, as a whole, as amended, was adopted.

The Chair invited the Commission to resume its consideration of the portion of chapter VI of the draft report contained in document [A/CN.4/L.930](#).

Paragraph 10

Paragraph 10 was adopted, subject to its completion by the Secretariat.

Paragraph 11

The Chair drew members’ attention to the new text for paragraph 11, which had been distributed in the meeting room. It read:

“11. At its ... meeting, on ..., the Commission decided, in accordance with articles 16 to 21 of its statute, to transmit the draft principles (see sect. C below), through the Secretary-General, to Governments, international organizations and others, including the International Committee of the Red Cross and the Environmental Law Institute, for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 1 December 2020. The Commission also indicated that it would welcome comments and observations on the draft principles from the United Nations, including the United Nations Environment Programme, by the same date.”

Ms. Lehto (Special Rapporteur) said that she would particularly appreciate comments from the United Nations Environment Programme, the International Committee of the Red Cross and the Environmental Law Institute, because they had been the three initiators of the topic in 2009. If they were specifically mentioned they might have a greater incentive to respond. There was a precedent for the language she was proposing. It was similar to that used in past reports with respect to the topics “Crimes against humanity” and “Protection of persons in the event of disasters”.

Mr. Nolte said that he wished to know why the United Nations and the United Nations Environment Programme had not been mentioned immediately after the reference to international organizations. He suggested that the relevant part of the first sentence could be amended to read “international organizations, including from the United Nations and its Environment Programme, and others.”. The second sentence could then be deleted.

Paragraph 11, as amended, was adopted.

Paragraph 12

Paragraph 12 was adopted.

The portion of chapter VI of the draft report contained in document A/CN.4/L.930, as a whole, as amended, was adopted.

Chapter VI of the draft report, as a whole, as amended, was adopted.

Ms. Lehto (Special Rapporteur) said that, on her appointment as Special Rapporteur in 2017, she had indicated that she would count on everyone's support and cooperation. She was grateful that she had received plenty of both. She wished to thank the current Chair and his predecessor for guiding the adoption of the commentary, as well as the current Chair of the Drafting Committee and his predecessor and all the members for their contributions to output which represented a milestone in the Commission's work. She also had a debt of gratitude to the members of the Secretariat and her assistants.

Chapter VIII. Immunity of State officials from foreign criminal jurisdiction
(A/CN.4/L.932)

The Chair invited the Commission to consider chapter VIII of its draft report contained in document [A/CN.4/L.932](#)

A. *Introduction*

Paragraphs 1 to 3

Paragraphs 1 to 3 were adopted.

B. *Consideration of the topic at the present session*

Paragraphs 4 to 6

Paragraphs 4 to 6 were adopted.

Paragraph 7

Ms. Escobar Hernández (Special Rapporteur) said that, in accordance with the Commission's usual practice, footnote 8 should include the text of draft article 8 *ante*, as provisionally adopted by the Drafting Committee. She therefore proposed that the following wording should be added to the footnote: "Draft article 8 *ante*, provisionally adopted by the Drafting Committee, reads as follows:" There would then follow the text of the draft article.

With that amendment to footnote 8, paragraph 7 was adopted.

Paragraphs 8 and 9

Paragraphs 8 and 9 were adopted.

Paragraph 10

Mr. Murphy said that, in the fourth sentence, for the sake of clarity, the word "said" should be replaced with "the seventh". In the fifth sentence, he was not sure what was meant by the term "legal institutes".

The Chair suggested that the term "legal institutes" should be replaced with "legal concepts".

Paragraph 10, as amended, was adopted subject to minor editorial adjustments.

Paragraph 11

Paragraph 11 was adopted.

Paragraph 12

Ms. Escobar Hernández (Special Rapporteur) said that in the Spanish text, the words "*las posibles transgresiones de las garantías procesales*" should be replaced with "*la preocupación por el ejercicio de la jurisdicción del Estado del foro*". She would leave it to the Secretariat to ensure that the other language versions were amended, as necessary.

Paragraph 12, as amended, was adopted on that understanding.

Paragraph 13

Mr. Nolte said that the last part of the paragraph was unclear. His preference would be to replace the words “parallel in the” with “congruent”, and the word “definition” with “formulation”.

Ms. Escobar Hernández (Special Rapporteur) said that the second proposed change was acceptable. The word “congruent”, however, went further than what she had said when introducing the draft articles.

Mr. Nolte said that the word “parallel” did not accurately reflect the concern that he and a number of other members had expressed, namely that draft article 7 and the issue of procedural guarantees should be dealt with together and in a meaningful way.

Mr. Tladi said that, since the paragraph provided an account of a statement made by the Special Rapporteur, she should have the final say as to its wording.

Ms. Escobar Hernández (Special Rapporteur) said that she agreed with Mr. Tladi. In the spirit of compromise, however, she would be willing to replace the words “to establish a parallel in” with “of some members of the Commission to ensure a simultaneous” [*de algunos miembros de la Comisión por realizar al mismo tiempo*].

Paragraph 13, as amended, was adopted.

Paragraph 14

Mr. Murphy said that, in the first sentence, the words “associated with jurisdiction” were unclear. In the last sentence, he would replace the word “proceeded” with “was based”.

Ms. Escobar Hernández (Special Rapporteur) proposed that, in the first sentence, the words “associated with jurisdiction” should be replaced with “associated with the concept of criminal jurisdiction”.

Paragraph 14, as amended, was adopted.

Paragraphs 15 to 25

Paragraphs 15 to 25 were adopted.

Paragraph 26

Ms. Escobar Hernández (Special Rapporteur) said that the adjective “criminal” should be inserted before “proceedings”

Paragraph 26, as amended, was adopted subject to minor editorial corrections.

Paragraphs 27 and 28

Paragraphs 27 and 28 were adopted.

Paragraph 29

Ms. Escobar Hernández (Special Rapporteur) said that, in the fourth sentence of the Spanish text, reference should be made to the “*Corte Internacional de Justicia*” rather than the “*Corte Penal Internacional*”.

Paragraph 29 was adopted with that amendment to the Spanish text, and subject to minor editorial amendments.

Paragraph 30

Mr. Tladi said that while, in the interests of saving time, he would not make any specific proposals, he wished to note that the paragraphs summarizing the debate on the sixth and seventh reports of the Special Rapporteur at the current session were rather unbalanced. For example, the view that specific procedural safeguards should be designed

to address concerns regarding the application of draft article 7 was repeated several times. The opposing view, though implied, was not mentioned anywhere.

Paragraph 30 was adopted.

Paragraph 31

Sir Michael Wood said that, in the last sentence, the word “general” should be inserted before “international law”.

Paragraph 31, as amended, was adopted.

Paragraph 32

Paragraph 32 was adopted.

Paragraph 33

Mr. Nolte said that, in the fifth sentence, to reflect more accurately what had been said during the debate on the Special Rapporteur’s sixth and seventh reports, the words “taking into account” should be replaced with “and that many States had emphasized”. The problem with the current drafting was that it linked two distinct propositions.

Mr. Grossman Guiloff said that it would be more appropriate to say “many of the States that expressed an opinion” than “many States”.

Mr. Tladi, supported by **Mr. Jalloh**, said that paragraph 33 was one of the paragraphs in which there was a lack of balance. If the fifth sentence was modified along the lines suggested by Mr. Nolte, the view that there was a need to avoid reopening the debate on draft article 7 should be the subject of a separate sentence, in which it should be noted that draft article 7 had been duly adopted by the Commission and should thus not be undermined.

Mr. Nolte said that he wished merely to have two statements that he had made during the debate properly reflected, independently of each other.

Ms. Escobar Hernández (Special Rapporteur) said that she understood the concerns expressed by Mr. Nolte and Mr. Tladi. Given that responding to those concerns would require some revision of the paragraph, she proposed that its consideration should be suspended.

Paragraph 33 was left in abeyance.

Paragraph 34

Paragraph 34 was adopted.

Paragraph 35

Paragraph 35 was adopted subject to minor drafting and editorial changes.

Paragraph 36

Paragraph 36 was adopted.

Paragraph 37

Mr. Nolte said that the fourth sentence would read better if the word “more” was inserted before “prominent role”.

Ms. Escobar Hernández (Special Rapporteur) said that, in the last sentence, the word “draft” should be inserted before “article 9”.

Sir Michael Wood said that, to capture the contrast between the first and second sentences, the words “In this regard” in the second sentence should be replaced with “At the same time”.

Mr. Ouazzani Chahdi said that, instead of the phrase “at the same time”, a word such as “also” could be used. It was a matter for the Special Rapporteur to decide.

Ms. Escobar Hernández (Special Rapporteur) said that she would not object to the use of “also”, so that the beginning of the second sentence would read: “It was also considered important ...”.

Paragraph 37, as amended, was adopted.

The meeting rose at 6.10 p.m.