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International Law Commission

Seventy-third session (first part)

Provisional summary record of the 3573rd meeting

Held at the Palais des Nations, Geneva, on Tuesday, 3 May 2022, at 11 a.m.

Contents

Present:

Chair:	Mr. Tladi
Members:	Mr. Argüello Gómez
	Mr. Cissé
	Ms. Escobar Hernández
	Mr. Forteau
	Ms. Galvão Teles
	Mr. Grossman Guiloff
	Mr. Hassouna
	Mr. Hmoud
	Mr. Jalloh
	Mr. Laraba
	Ms. Lehto
	Mr. Murase
	Mr. Murphy
	Mr. Nguyen
	Ms. Oral
	Mr. Ouazzani Chahdi
	Mr. Park
	Mr. Petrič
	Mr. Rajput
	Mr. Reinisch
	Mr. Saboia
	Mr. Šturma
	Mr. Valencia-Ospina
	Mr. Vázquez-Bermúdez
	Sir Michael Wood

Secretariat:

Mr. Llewellyn	Secretary to the Commission

The meeting was called to order at 11 a.m.

Protection of the environment in relation to armed conflicts (agenda item 3) (*continued*) (A/CN.4/749 and A/CN.4/750)

Mr. Murphy, welcoming the Special Rapporteur's excellent third report (A/CN.4/750), said that, in light of the Commission's rich debate thus far, his remarks would focus on the views expressed and proposals made on specific draft principles. Like Mr. Murase and Mr. Nguyen, he considered it awkward to state in draft principle 1 that the draft principles applied generally to situations of occupation, given that they included steps to be taken in advance of an armed conflict and that not all occupations were connected to armed conflict; moreover, the proposal seemed not to have come from any State. He agreed with Mr. Park that, in view of the negative reactions of several States, the word "shall" in draft principle 7 might be replaced with "should", or at least the word "should" could be placed in front of the second half of the sentence, which would then begin "and should take appropriate measures". Like Sir Michael Wood, he had doubts about the proposed changes to draft principle 9 and would prefer either to retain it as it stood or to delete it as being unnecessary.

Several of the suggestions made by Mr. Forteau, who had brought a fresh perspective to the text adopted on first reading, merited consideration by the Special Rapporteur and in the Drafting Committee. Among other things, he agreed with Mr. Forteau and others that introducing the concept of a "high-risk area" into draft principles 10 and 11 was inappropriate, unless such areas were clearly connected to an armed conflict, and he could support Sir Michael Wood's idea of introducing greater flexibility into the draft principles in terms of domestic implementation. He agreed with the Special Rapporteur's proposed deletion of draft principle 15 and was attracted to Sir Michael Wood's proposed addition to draft principle 16, which might well allay the concerns expressed by several States.

Like Mr. Park and others, he was in favour of remaining consistent with international humanitarian law treaties by using the term "natural environment", rather than "environment", in Part Three of the draft principles. While a few States had specifically called for one or the other of those terms to be used, a significant number had made no express choice but had habitually referred to the former. A simple desire for a broader term, rather than a response to States' reactions, was not a solid basis for changing the term to "environment" on second reading. It was worth noting that the title of the 2020 guidelines on the subject issued by the International Committee of the Red Cross (ICRC) referred to the "natural environment".

With regard to draft principle 13, he opposed the Special Rapporteur's proposed addition of a paragraph on methods or means of warfare, which could generate considerable opposition to the Commission's project. The second report of the previous Special Rapporteur for the topic (A/CN.4/685) contained an analysis of the two relevant provisions of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), namely articles 35 (3) and 55 (1), and noted the importance of considering whether they formed part of customary international law and whether they applied in non-international armed conflicts. The previous Special Rapporteur had consistently emphasized that the topic was not intended to deal with specific types of weapons, which was an issue that invariably arose when methods or means of warfare were discussed, and had made no proposal to incorporate the text of the two Protocol I provisions into the draft principles. In the debate on that report, however, some members of the Commission had suggested the inclusion of a draft principle to reflect those provisions, and the Drafting Committee had thus decided to include a provision on "widespread, long-term and severe damage to the natural environment". The resulting text, which was currently reflected in draft principle 13 (2), had been a compromise to reconcile the views of members who supported such a provision with those of members who took the view that the two provisions of Protocol I did not constitute customary international law, did not apply to non-international armed conflicts and had implications for certain types of weapons. The compromise text did not replicate the language of either provision, but took inspiration from the first sentence of article 55 (1). The omission of the second sentence had been a conscious decision, the importance of which was explained in the commentary adopted on first reading (A/74/10, chap. VI) as relating to "applicability and generality",

given that draft principle 13 did not distinguish between international and non-international armed conflicts.

Of the 23 written and 53 oral comments made by States on the first-reading text, only one, from Switzerland, had requested the inclusion of further text on the issue of methods or means of warfare in relation to widespread, long-term and severe damage. By contrast, several States believed that the Commission had already gone too far in addressing the issue. Canada had noted that paragraph 2 of draft principle 13 had "not obtained customary status" and had called for clarification that it applied only during international armed conflict. France had said that the paragraph did not reflect customary international law and that articles 35 and 55 of Protocol I did not have customary value, recalling, moreover, that those articles did not apply to non-international armed conflicts. The Netherlands had agreed with that view, requesting the Commission to explain, in the commentary, its reasoning for considering that draft principle 13 (2) applied to non-international armed conflict. Israel had suggested that the words "in accordance with the respective obligations of States under the law of armed conflict" should be added to the existing text, which he would support. Several States had also questioned or criticized the Commission's failure to explain what was meant by "widespread, long-term and severe". The Czech Republic had observed that the paragraph might be difficult to apply in practice, as article 55 (1) of Protocol I was unclear in its scope of interpretation. The Commission should not respond by doubling down on the issue with the addition of yet another paragraph derived from those two articles of Protocol I.

The Special Rapporteur's justification for the proposed addition to draft principle 13 was solely that the Commission should reflect article 35 (3) in its work. Her third report contained no analysis of the status of that provision as customary international law, of whether such a rule applied in non-international armed conflicts or of the implications of including such a rule on certain types of weapons in the draft principles.

There were several reasons why the inclusion of the proposed wording would be misguided. First, article 35 of Protocol I applied only to international armed conflicts. Unless the proposed addition to draft principle 13 was limited in the same way, it would not reflect article 35 (3). Second, some 20 States were not parties to Protocol I. Of those States, some had expressly rejected the premise that article 35 (3) reflected customary international law, even though they had accepted other provisions of Protocol I as being customary in nature. Consequently, it could not be assumed, in the draft principles, that the rule in question bound those States.

Third, some States that had ratified Protocol I, notably France and the United Kingdom, had filed reservations or declarations specific to the interpretation of article 35. Further, in relation to Protocol I provisions such as articles 35 and 55, several States, namely Belgium, Canada, France, Germany, Italy, the Netherlands, Spain and the United Kingdom, had made declarations stating either that Protocol I applied only to conventional weapons or that it was not applicable to the use of nuclear weapons. The previous Special Rapporteur, in her second report, had reviewed those and other reservations, declarations and statements on articles 35 and 55 and had concluded that States would "continue to have different views on the precise implications of the provisions, such as the threshold of the prescribed environmental damage". It was undoubtedly for that reason that she had not proposed the word-for-word replication of the Protocol I provisions in the Commission's work, as their verbatim inclusion would inescapably introduce the question of whether the Commission was seeking to ban certain weapons.

Fourth, the Rome Statute of the International Criminal Court contained a provision that was relevant to the issue. Article 8 included, among prosecutable war crimes, the act of intentionally launching an attack in the knowledge that it would cause widespread, long-term and severe damage to the natural environment, but with the important caveat that the attack causing such damage must be excessive in relation to the military advantage anticipated. Moreover, while the Rome Statute generally addressed both international and non-international armed conflicts, the provision in question applied only to international armed conflict, with no corresponding provision applicable in non-international armed conflict. It was that standard that had been incorporated into the national laws of many States. Although the standards to be applied for prosecuting a war crime were not directly relevant to the topic, the Rome Statute approach highlighted the need to be careful about making blanket

statements on the issue and to maintain the distinction between international and non-international armed conflicts.

Fifth, relevant manuals by experts on the customary law of war did not support the notion behind the proposed new paragraph for draft principle 13. For example, the *Manual on International Law Applicable to Air and Missile Warfare* published by the Harvard University Program on Humanitarian Policy and Conflict Research contained restrictive formulations with respect to the protection of the natural environment, yet the experts who had developed the manual had declined to use the wording being proposed for draft principle 13. The authors of the *Tallinn Manual on International Law Applicable to Cyber Warfare* had included such wording, but only in respect of States that were parties to Protocol I. In other words, there was no agreement that the rule operated outside the context of parties to Protocol I. Likewise, the 2006 Manual on the Law of Non-International Armed Conflict issued by the International Institute of Humanitarian Law contained only one rule on the protection of the natural environment in non-international armed conflicts, which simply provided that "damage to the natural environment during military operations must not be excessive in relation to the military advantage anticipated from those operations". In the commentary to that rule, it was stated that the rules contained in articles 35 (3) and 55 (1) of Protocol I had not been accepted as customary international law in either international or non-international armed conflict.

Finally, some publicists, reflecting on the divide, had concluded that customary international law did not directly track either provision, but was widely considered to include a prohibition on unnecessary and wanton destruction of the environment and a requirement that a belligerent should show due regard for the protection of the environment. That more general proposition was, in his view, what underpinned the current text of draft principle 13, and it did not support the Special Rapporteur's proposal for a new paragraph. In closing, he said he expected that the second reading would be completed during the current session and that he supported the referral of all the draft principles to the Drafting Committee for further work in light of the debate.

Mr. Hassouna, expressing appreciation to the Special Rapporteur for her report and for the updated bibliography to be circulated as an addendum thereto, said that the topic remained vital and urgent, as evidenced by the inclusion of an article on protecting the environment in relation to armed conflicts in the draft Global Pact for the Environment, while States' debates in the General Assembly and other multilateral bodies had demonstrated their growing interest in the issue. In the comments and observations of States, international organizations and others, the importance of the topic had been widely recognized and reference had been made to the severe environmental consequences of armed conflicts and the need to consolidate the legal framework for the protection of the environment in relation to armed conflicts. During the debate in the Sixth Committee at the seventy-fourth session of the General Assembly, the topic had been commented upon by a large number of States across all regional groups.

While he agreed with the Special Rapporteur that the interplay between the law of armed conflict and other areas of international law was closely related to the temporal scope of the draft principles, he considered that, in respect of the normative nature of the draft principles, more clarity might sometimes be needed in the formulation of the text, which ought always to be read together with the commentaries. He further agreed that the Commission consistently tried to take into account the available relevant practice of States and that it should also consider the relevant practice of international organizations and of non-State armed groups.

The Special Rapporteur's analysis, in her third report, relied on the various comments and observations made by States, international organizations, civil society organizations, practitioners and scholars. All those sources were valuable in relation to the topic. In fact, the views of non-governmental parties, especially those concerned with humanitarian law, were often more neutral and objective than the views of States, which were in many instances policy-oriented.

The protection of the environment in relation to armed conflicts was no doubt a topic of contemporary importance, as illustrated by the current Ukrainian conflict in Europe;

however, there had been armed conflicts and situations of occupation in other regions that had raised similar concerns with regard to the protection of the environment, such as the Palestinian conflict, the Uganda–Democratic Republic of the Congo conflict, the Afghanistan conflict and many non-international armed conflicts around the world. They all underlined the need to address their serious environmental consequences through a comprehensive legal framework, which the Commission should endeavour to formulate.

Concerning draft principle 1, he supported the Special Rapporteur's suggested addition of a reference to situations of occupation and the proposals made by a number of States to specify that the draft principles did not restrict or impair applicable rules of international law, in particular the law of armed conflict. While the Special Rapporteur was prepared to address that concern in the commentary, he would prefer that it should be addressed in the text as well.

Draft principle 2 contained only the phrase "in relation to armed conflict", whereas the phrase "including in situations of occupation" had been added to draft principle 1. In his view, similar terminology should be used in both principles, or at least in the relevant commentary. In addition, in order to harmonize draft principle 2 with article 34 of the articles on responsibility of States for internationally wrongful acts, the words "remedial measures" could be replaced with the stronger expression "full reparatory measures", the purpose of which should then be clarified in the same manner as the purpose of "preventive measures" already had been.

Concerning draft principle 3, paragraph (6) of the commentary referred to the interpretation of common article 1 of the Geneva Conventions of 12 August 1949, according to which that article required States to exert their influence to prevent and stop violations of the Geneva Conventions by the parties to an armed conflict. He welcomed the reference to common article 1 and its interpretation, as it reflected the widely accepted idea that all States parties to the Geneva Conventions and competent international organizations should ensure universal compliance with the humanitarian principles underlying them.

With regard to draft principle 4, he supported the Special Rapporteur's suggested reformulation, which removed the higher threshold according to which an area must be of both environmental and cultural importance at the same time in order to be considered for designation as a protected zone. That change would address a concern expressed by a number of States and organizations.

Draft principle 5 provided protection for the environment of indigenous peoples, thereby reaffirming their special relationship with the environment, which was of fundamental importance for their survival. Paragraph 1 of the original and reformulated versions of draft principle 5 used the phrase "in the event of an armed conflict", which seemed too restrictive. He would rather replace it with the words "in relation to armed conflict" so that the principle would apply before, during and after an armed conflict. He also supported the Special Rapporteur's suggested change to paragraph 2 so that its application would not be limited to the time after the termination of an armed conflict.

Although draft principle 6 was recommendatory in nature, it would pave the way for progressive development by recommending that agreements concerning the presence of military forces in relation to armed conflict should include provisions on environmental protection. In that context, he supported the Special Rapporteur's suggestion that the phrase "in relation to armed conflict" should be deleted from the title and that the phrase "to prevent, mitigate and remediate harm to the environment" should be included in the provision for the sake of consistency with the terminology of draft principles 2, 7 and 8 and the general nature of the draft principles as a whole.

In relation to draft principle 7, he supported the suggested change of wording from "the negative environmental consequences thereof" to "the environmental harm resulting from those operations" and agreed that a "without prejudice" clause should be added so as to safeguard other international obligations that might be binding on States and international organizations participating in a peace operation.

With regard to draft principle 8, he supported the suggestion that the phrase "where persons displaced by armed conflict are located" should be replaced with a broader

formulation encompassing areas of transit and the proposal by a number of States that "non-State armed groups" should be mentioned in the commentary when explaining the term "other relevant actors".

Draft principle 9 dealt with State responsibility for an internationally wrongful act of a State, in relation to an armed conflict, that caused damage to the environment. In that regard, he supported the reference in paragraph 1 to the basis of responsibility for environmental damage adopted by the International Court of Justice in the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, which referred to "the principle of full reparation" as requiring compensation for damage caused to the environment "in and of itself". The commentary should elaborate on the concept of reparation as an important element of accountability. He also supported the inclusion of a reference to the responsibility of non-State actors for conflict-related environmental harm, including individual criminal responsibility, the responsibility of non-State armed groups and the responsibility of international organizations, and welcomed the Special Rapporteur's readiness to include a saving clause in the draft principle to address that concern.

A number of comments had addressed draft principles 10 and 11 together, as they were closely related. He was open to the possibility of merging them into a single draft principle. The two phrases "area of armed conflict" and "post-armed conflict situation" were somewhat unclear and should be replaced with the broader phrase "in relation to armed conflict". He was in favour of stating explicitly that draft principles 10 and 11 would apply in situations of occupation. In addition, the commentary should specifically mention private military and security companies, as well as their relevant obligations. Finally, he supported the few changes recommended by the Special Rapporteur in the titles and terminology of the two draft principles.

As to Part Three, he agreed with the Special Rapporteur's recommendation that the term "environment" should be used throughout the draft principles, in keeping with the broad approach that the Commission had decided to take to the topic. In that regard, he wished to recall that the Commission was concerned with not only natural but also cultural sites of significance. Therefore, any use of the term "natural environment" could inadvertently narrow the scope of the word "environment" as used elsewhere in the draft principles.

While draft principle 12 had generally been supported by States and international organizations, a number of suggestions had been made with regard to the reference to "the principles of humanity". He agreed with the Special Rapporteur that no change to the draft principle was warranted, though the various interpretations given to the terms used therein could usefully be clarified in the commentary.

He agreed that relevant rules of the law of armed conflict should be included in draft principle 13. To that end, he was in favour of adding a reference to the customary prohibition on employing "methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the environment". He therefore supported the Special Rapporteur's proposed new paragraph reflecting article 35 (3) of Protocol I Additional to the Geneva Conventions of 1949. The Commission should also provide guidance, in the commentary, on the customary nature of the obligation of care.

With regard to draft principle 14, he agreed with the suggested deletion, endorsed by the Special Rapporteur, of the words "military necessity" and "in attack" in order to underline the broader scope of the principle of precautions under the law of armed conflict. Since draft principles 14 and 15 were closely related, he supported the Special Rapporteur's recommendation that draft principle 15 should be deleted and that the commentary thereto should be merged with the commentary to draft principle 14.

He agreed that draft principle 16 should apply to both international and non-international armed conflicts and supported the proposal to retain the current wording. The legal status of the prohibition of reprisals should be clarified in the commentary.

Concerning draft principle 17, he shared the view that the reference to "agreement" covered agreements between parties to the conflict and agreements concluded before the conflict. He supported the inclusion of a reference to additional agreed protections so as to ensure a high level of protection. While he supported the amendments to the draft principle

proposed by the Special Rapporteur, he believed that they should be reformulated in the interests of clarity.

Regarding draft principle 18, the prohibition of pillage was an established rule of customary and treaty law, as confirmed by the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto. It applied to situations of occupation and was especially relevant to operations carried out in occupied areas with a view to exploiting natural resources. He shared the Special Rapporteur's view that the draft principle should be retained as currently worded. The commentary should clarify the elements of pillage based on the Rome Statute and the jurisprudence of the International Tribunal for the Former Yugoslavia and the Special Court for Sierra Leone. He would also favour the insertion, in the commentary, of a reference to the principle of permanent sovereignty over natural resources, which was referred to in the International Court of Justice case *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* and in the African Charter on Human and Peoples' Rights.

He agreed that draft principle 19 should apply to non-international conflicts and non-State actors and supported the inclusion of examples of environmental modification techniques in the commentary.

He shared the view that it was important to spell out the environmental obligations of an occupying Power in draft principle 20. In the commentary, the Commission should clarify the concepts of occupation and of an occupying Power. Moreover, it should refer to the environmental obligations of an occupying Power in maritime areas and to the post-occupation responsibilities of occupying forces. With regard to the reference, in paragraph 2 of the draft principle, to the "health and well-being" of the population of the occupied territory, it should be recalled that the well-being of the population was a central feature of international humanitarian, human rights and environmental law, and that the draft Global Pact for the Environment established that: "Every person has the right to live in an ecologically sound environment adequate for their health, well-being, dignity, culture and fulfilment." The notion of dignity was, in his view, of particular importance in that context. He therefore agreed that the commentary should clarify that a number of other basic human rights would be covered by draft principle 20, including the rights to life and food. In paragraph 2, he supported the replacement of the word "population" with "protected persons". It should be clarified, in the commentary, that States might need to take proactive measures to protect the environment in occupied territories. Lastly, he supported the Special Rapporteur's proposed addition of the word "environmental" to the title of the draft principle and of the words "including environmental harm", "protected persons" and "or to violate their rights" in paragraph 2.

Concerning draft principle 21, he agreed with the position of several States that had underlined the importance of the principles of self-determination and permanent sovereignty over natural resources in setting limits on the use and exploitation of natural resources by an occupying Power. In his view, that point should be mentioned explicitly in the commentary. He also agreed that the word "population" should be replaced with "protected persons", in line with draft principle 20.

In relation to draft principle 22, he agreed that the phrase "exercise due diligence" should be replaced with "take appropriate measures", since the use of the term "due diligence" in the text and title of the draft principle could be misleading. He also supported the proposed replacement of the phrase "environment of areas beyond the occupied territory" with "environment of other States or areas beyond national jurisdiction".

He agreed with most of the Special Rapporteur's recommendations concerning draft principles 23 to 28. However, in relation to draft principle 24, "Sharing and granting access to information", the Commission should clarify what information was relevant and the modalities for access to such information.

In chapter III of her report, the Special Rapporteur addressed the question of possible additions to the draft principles. The Commission's practice regarding whether or not to include a preamble in the final outcome of its work had certainly not been uniform. However, a concise and general preamble could serve as a good introduction to the draft principles. The elements to be included in such a preamble could be considered by the Drafting Committee.

He agreed with the Special Rapporteur that it would not be appropriate to add or discuss new draft principles during the second reading. Nevertheless, a number of relevant issues could be dealt with in the commentaries. He did not support the proposed inclusion of a new draft principle on the establishment of an international mechanism to monitor the implementation of the draft principles, since follow-up to the draft principles should be left to States. Lastly, he agreed with the Special Rapporteur that the outcome of the Commission's work on the topic should take the form of "principles" and supported her proposed recommendation to the General Assembly. In the light of his comments, he recommended the referral of all the draft principles to the Drafting Committee.

Mr. Jalloh said that he wished to thank the Special Rapporteur for her well-balanced report, which provided the Commission with a sound foundation for its second and final reading of the draft principles. The Commission had received thoughtful responses to the request for comments issued in its 2019 report to the General Assembly (A/74/10, chap. VI). While he remained concerned about the paucity of comments from Africa, Asia, and Latin America and the Caribbean, he appreciated the support of colleagues who had joined his call, at the Commission's 3565th meeting, for the issue to be discussed in the Sixth Committee.

Under article 26 of its statute, the Commission was to "consult with any international or national organizations, official or non-official, on any subject entrusted to it if it believes that such a procedure might aid it in the performance of its functions". He was therefore grateful for the Special Rapporteur's careful consideration not only of the views of States, which were the fountain of the Commission's work, but also of the views of others. Indeed, the United Nations Environment Programme (UNEP), ICRC, the Environmental Law Institute and civil society all had a special role to play in the Commission's consideration of the topic.

Before turning to some specific comments on selected draft principles, he wished to make four general observations. First, in its 1996 advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the International Court of Justice had said that "the environment is under daily threat" and that it "is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn". Sadly, 26 years later, the state of the shared global environment had not improved. If anything, the impacts of climate change on the environment, on which all human and planetary life depended, were only getting worse. Against that backdrop, it was encouraging that many States supported the Commission's work on the topic, as was evident from the comments of Colombia, El Salvador and Lebanon, among others. The fact that the draft principles had been developed in close consultation with States and international organizations was also worth highlighting. The outcome of the Commission's work was not a mere theoretical exercise of the kind often found in the ivory towers of academia, but rather a practical document reflecting a compromise between extremes and an attempt to strike a delicate balance between codification and progressive development. The fact that critical comments had been received from both States and civil society suggested that the Commission had found the right balance between reality and utopia, though only time would tell. Positive feedback on the draft principles had been received from 19 specialized agencies, United Nations bodies and international organizations. It was vital for the Commission's work on the topic to complement related legal instruments. He therefore particularly welcomed the recognition by ICRC that the draft principles complemented its own efforts to enhance respect for international humanitarian law protecting the natural environment, most recently through the adoption of the updated 2020 guidelines on the protection of the natural environment in armed conflict. Regarding the use of the term "natural environment" in those guidelines, it was worth noting that ICRC itself had acknowledged that its topic was narrower than that of the Commission, which encompassed international humanitarian, human rights and environmental law.

His second general comment concerned the criticism that some States had directed at the Commission's approach and methodology. Ireland, Spain and ICRC, on the other hand, had expressed support. Like them, he was in favour of the Commission's general approach and methodology, including the temporal framing and the recognition of the interplay between different areas of international law, in particular the role of international environmental law and international human rights law in complementing the law of armed

conflict. That was one of the key added values of the topic for States and the international legal community. The Commission had been mandated by the General Assembly to treat international law as a holistic legal system with a view to promoting its coherence, rather than endorsing sectoral approaches that could lead to its fragmentation.

His third general observation concerned the normative nature of the draft principles, an issue on which some States had called for more clarity. He had taken a great academic and practical interest in the issue, including in the context of the Working Group on methods of work. That said, he agreed with the Special Rapporteur's comment in paragraph 26 of the report that the Commission could not be limited to the use of a specific verb such as "shall" versus "should". Moreover, reformulating all the draft principles as recommendations would not promote uniformity since, in each case, the basis of the obligation under customary and/or treaty law would need to be examined. In any event, States should presume that each of the Commission's outputs, whether framed as draft articles or not, was a package of provisions that constituted both progressive development and codification of international law, in line with the so-called "composite" view of codification adopted by the Commission as far back as the 1950s.

As a last general remark, he wished to recall the concern expressed with regard to State practice. He fully agreed with the Special Rapporteur that State practice, while paramount, was not the only international practice that was relevant for the purposes of the draft principles. That approach was consistent with the Commission's prior work. Furthermore, in the context of the topic at hand, although the practice of non-State actors did not generate rules of international law, the practice of non-State armed groups in the context of environmental protection was necessarily relevant to an assessment of the consolidation of international legal standards. In any case, especially in relation to the law of armed conflict, the absence of practice, to the extent that it was indicative of abstention by warring parties from causing damage to the environment during conflicts, was to be welcomed.

The Special Rapporteur made extensive suggestions for improvement of the draft principles adopted on first reading. While he agreed that the Commission should be cautious in its approach when a topic reached the second-reading stage, he generally supported the proposed changes, including the proposed deletion of draft principle 15, precisely because they constituted a valiant effort by the Special Rapporteur to accommodate the many views of States and of specialized bodies such as ICRC and UNEP. The Special Rapporteur also proposed changes to the commentaries. On balance, although he personally would have gone further, for example by including a principle on individual criminal responsibility, his impression was that the proposed changes would considerably strengthen the final outcome and thus the utility of the Commission's work on the topic.

To save time, he would address only four draft principles that he considered to be key, namely draft principles 1, 2, 5 and 9. A longer written version of his statement elaborating on his position and addressing many more of the proposed changes would be circulated to the members.

Several States, both in the Sixth Committee and in written comments, had suggested some clarifications to two critical aspects of draft principle 1. First, Switzerland and others had supported the applicability of the draft principles before, during and after armed conflict. However, in view of the general arrangement of the draft principles into parts on the basis of their scope of application, those States had also sought more clarity from the Commission concerning the scope of the draft principles *ratione temporis*. The same issues had been raised by ICRC and civil society organizations. He therefore supported the Special Rapporteur's proposal to add the words "including in situations of occupation", which covered a specific subset of international armed conflict, as recognized in the Regulations respecting the Laws and Customs of War on Land annexed to the Hague Convention IV of 1907 and in the Geneva Conventions of 12 August 1949. Regarding the scope *ratione materiae*, the draft principles were clearly intended to apply to both international and non-international armed conflicts, and even to hybrid or mixed conflicts that started out as internal and later became international. The applicability of the draft principles to different types of conflict, whether international or non-international, was a necessary product of the broad scope of the Commission's work on the topic, which drew on and reflected different areas of international law in addition to the law of armed conflict, but also addressed actors other than States. That

was one of the strengths of the draft principles, as he had consistently maintained. Like Mr. Hassouna, he had doubts over whether all the concerns expressed in relation to draft principle 1 could be sufficiently addressed through a minor change coupled with more extensive amendments to the commentary, which was what the Special Rapporteur appeared to be proposing. To clarify matters, he would prefer to rephrase the draft principle to read: "The present draft principles apply to the protection of the environment before, during or after an armed conflict, irrespective of the classification, including in situations of occupation."

In response to the comments of five States, ICRC, UNEP and civil society, the Special Rapporteur had proposed amendments to the text of draft principle 2. He supported those proposals. However, the Commission should also strengthen the relevant parts of the commentary to accommodate the suggestions made by Greece, Portugal, Switzerland and ICRC. In particular, a careful explanation of the duty to "prevent" harm would better ensure that the new text of the draft principle adequately captured the valid concern that both avoidance and minimization of harm should be properly included. In the commentary as currently worded, the suggestion by ICRC to add a reference to "avoiding" remained only implicit, yet, under rule 44 of the ICRC study *Customary International Humanitarian Law*, the position under international law was very clear.

Regarding draft principle 5, he strongly supported the Special Rapporteur's proposed change to paragraph 1, which would extend the provision's application to non-State actors, including, in particular, organized armed groups. That better captured the reality of modern civil wars, in which non-State armed groups frequently exercised control over a territory, often for long periods of time. Examples included the Revolutionary United Front in Sierra Leone, the National Patriotic Front of Liberia and, more recently, Islamic State in Iraq and the Levant and the Revolutionary Armed Forces of Colombia. The Special Rapporteur had also expressed openness to more inclusive phrasing concerning the protection of indigenous peoples. He was therefore in favour of adopting the suggestion by the International Union for Conservation of Nature (IUCN) to replace the phrase "territories that indigenous peoples inhabit" with "lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired". That wording resembled the language of the United Nations Declaration on the Rights of Indigenous Peoples, which was admittedly non-binding. He proposed that the wording should be further amended to include a reference to waters and coastal seas. For some indigenous communities, waters and coastal seas were a critical part not only of their livelihoods but also of their identities. Like Mr. Grossman Guiloff, he supported the suggestion by Spain to replace the modal verb "should" with "shall" in both paragraphs of the draft principle to better align it with relevant international law.

Draft principle 9 had attracted many useful comments from States. He agreed with the Special Rapporteur that most of the concerns raised could be addressed through updates to the commentary. He also concurred that paragraph 2 could be deleted and that, regrettably, conducting a more general review of accountability and reparation mechanisms was not possible in the context of the current topic. Many States had expressed concern about the vagueness of the draft provision with regard to the responsibility and accountability of non-State armed groups that caused damage to the environment; for example, Spain had described the Commission's failure to address the issue as "striking". In view of that concern, the Commission should clarify that other subjects of international law could, under certain circumstances, also be responsible for the damage that they caused to the environment in situations of armed conflict. It might be necessary to have different provisions for different types of responsibility.

In its submission, the Office of the United Nations High Commissioner for Human Rights (OHCHR) had suggested that draft principle 9 should be amended to refer more generally "to the law on responsibility under international law, without necessarily excluding the possibility that, for instance, an international organization or other analogous subject of international law could also be responsible for a wrongful act in certain circumstances". OHCHR had further suggested the inclusion of "the notion of individual responsibility for international crimes causing harm to the environment" in the draft principles. The Special Rapporteur correctly noted that the Rome Statute recognized individual criminal responsibility for some types of environmental damage caused during an armed conflict, especially an international one. Moreover, the 2016 policy paper on case selection of the

Office of the Prosecutor of the International Criminal Court highlighted individual criminal responsibility for environmental damage caused during an armed conflict in the limited context of the anthropocentric crimes within the subject matter of the Court's jurisdiction.

Although it would be difficult to include a fully comprehensive regime of international responsibility in the draft principles, there was, in his view, a need to address individual criminal responsibility. He did not agree that a saving clause was sufficient to address the issue in respect of either individuals or international organizations, a point that he had raised in 2019 at the Commission's 3469th meeting, during its debate on the Special Rapporteur's second report (A/CN.4/728). The Commission had played a seminal role in the development of the draft statute for an international criminal court and of the concept of individual criminal responsibility for international crimes, dating back to the formulation of the Principles of International Law recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal. It had also, in its work on the draft Code of Crimes against the Peace and Security of Mankind, advanced the idea – pioneering at the time – of international environmental crimes. He remained of the view that the Commission should propose a draft principle on the issue. The International Criminal Court system was predicated on the principle of complementarity, which required States parties to the Rome Statute to act at the national level as the first line of defence against impunity. The added value of such a provision was that it would be a recommendation to all States, not just those States parties, and the proposal to include it might in fact coincide with the discussion of an informal proposal made in the Assembly of States Parties to include "ecocide" as a fifth category of crimes under the Rome Statute. While it should be noted that he had been part of the independent expert group that had drafted the definition of "ecocide" at the request of Stop Ecocide International, the informal proposal had been generally well received, and parliamentary or government-level discussion of the criminalization of ecocide was on public record in at least 18 States parties to the Rome Statute. He suggested that draft principle 9 should be amended through the insertion of a new paragraph that read: "States should take the necessary legislative and other measures to ensure that persons who commit crimes that lead to the destruction of the environment during, before or after armed conflict are held individually criminally responsible."

He supported the addition of a preamble to the draft text and the recommendation to the General Assembly proposed by the Special Rapporteur in paragraph 322 of her report. He was also in favour of using the word "environment" instead of "natural environment" for the purposes of the topic. In that regard, he wished to recall the appeal that he had made in 2019 for caution in taking up any definition of even the wider term in view of evolving scientific knowledge on the environment. The term "natural environment" should be retained in the commentaries where warranted; he hoped that would address the valid concerns voiced by Mr. Murphy, Mr. Park and Sir Michael Wood. To conclude, he said that he was in favour of referring all the draft principles to the Drafting Committee.

Ms. Oral said that she wished to begin by paying tribute to the Special Rapporteur, whose third report on what was an important and challenging topic had been meticulously prepared and provided the Commission with an excellent overview of the comments made by States, international organizations and civil society.

The Commission was entering the final stages of its work on the draft principles at a timely juncture, in view of current world events. Regrettably, the Russian invasion of Ukraine was not the first time unlawful acts of aggression had taken place. Other examples of armed conflict included the invasion of Kuwait by Iraq, the "shock and awe" operations carried out by the United States of America against Iraq and the protracted conflicts in Syria, Yemen and Palestine, as well as the Democratic Republic of the Congo, which had recently been awarded compensation for, *inter alia*, damage related to natural resources under the recent International Court of Justice judgment in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*. Armed conflict, whether international or not, caused lasting damage to the environment, with immediate and long-term consequences for the livelihoods of many. The protection of the environment, which was already threatened by peacetime activities, must be strengthened under the existing rules of international law.

The North Atlantic Treaty Organization had been among the first organizations to recognize the threat to peace and security posed by environmental degradation and conflict

over natural resources when, in 1969, it had created the Committee on the Challenges of Modern Society. Environmental degradation and the resulting loss of natural resources were very much linked to peace and security. The Russian invasion of Ukraine was, however, the first time in recent memory that nuclear plants had been targeted and that a credible nuclear threat had been expressed by a nuclear-weapon State that was a permanent member of the Security Council. That was a legal matter of direct relevance to the Commission's work that could not be ignored.

Overall, the comments received from States had been favourable and had provided constructive and insightful views and recommendations. She had taken note of some of the general comments made in relation to the Commission's approach and methodology and, overall, agreed with the observations of the Special Rapporteur contained in paragraphs 23 to 27 of the report.

With regard to draft principle 1, she supported the Special Rapporteur's recommendation that the phrase "including in situations of occupation" should be added to the end of the sentence. That language was consistent with Part Four of the draft principles and the judgment in *Armed Activities on the Territory of the Congo*, which covered both the period of armed conflict and the occupation.

Concerning draft principle 2, she could support the proposal by the United Kingdom on the replacement of "preventive measures for minimizing damage to the environment during armed conflict and through remedial measures" with "measures to prevent, mitigate and remediate harm to the environment during armed conflict". However, if the same formulation was applied *mutatis mutandis* to draft principle 6, the express reference to "impact assessments, restoration and clean-up measures" would be lost. It should be made clear in the commentary that all those elements were integral to remediation.

With regard to draft principle 4, she wished to express her concern about the use of the adjective "major" to qualify areas of environmental and cultural importance, as that qualification was not commonly used in international environmental law. The IUCN categories for protected areas, which were considered authoritative by Governments, did not use such language. The adjective "major" was not found in the Convention on Biological Diversity, the Convention for the Protection of the World Cultural and Natural Heritage or other instruments. It appeared to add a further criterion to that of "importance", which she found problematic. The Commission should therefore consider deleting the word "major" from the draft principle. Otherwise, she agreed with the approach taken by the Special Rapporteur to address the concerns raised by the Nordic countries, Germany, Spain, ICRC and civil society about the potential for the conjunction "and" in "environmental and cultural importance" to be read as a cumulative requirement.

She supported the proposed revised text of draft principle 5, but also agreed with the comment made by IUCN that draft principle 5 should not only refer to the lands inhabited by indigenous peoples but should also reflect the wording of article 26 of the United Nations Declaration on the Rights of Indigenous Peoples, which referred to "lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired".

With regard to draft principle 7, she fully concurred with the explanation provided by the Special Rapporteur in paragraph 73 of the report and agreed that the phrase "the negative environmental consequences thereof" should be replaced with "the environmental harm resulting from those operations", in line with a suggestion made by the United Kingdom.

She concurred with the proposed revisions to draft principle 8 and the reason adduced for adding the language "or through which they transit". Reference should, however, be made in the commentary to non-State actors in relation to the reference to "other relevant actors".

She fully supported the proposed changes to draft principle 9. She also welcomed the support expressed by a number of States for the recognition in the draft principle of the compensability of pure environmental damage under international law, which had been recognized by the International Court of Justice in its judgment in *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*. Moreover, concerning paragraph 2, she agreed with Italy that the rules of State responsibility were customary international law and applied to the environment within the context of armed conflict. The

comments made about the responsibility of non-State actors could be discussed further in the Drafting Committee.

With regard to draft principles 10 and 11, she considered the inclusion of corporate responsibility and the notion of environmental sustainability to be an important contribution of the Commission's work; that had been confirmed by the overall positive response from States. She could support the proposed revisions to the titles, the addition of the language "a high-risk area or an area affected by an armed conflict" and the use of the broader term "business enterprises" in both draft principles. She was pleased to note that draft principle 12 had been strongly supported by States and wished to express her support for retaining the title as it stood.

Draft principle 13, which had generated a number of comments from States and organizations, highlighted the core integrative aspect of the Commission's work in bringing together international environmental law, international human rights law and the law of armed conflict. Greece had raised an important question concerning the extent to which the general principles of international environmental law operated in wartime and how they interacted with *jus in bello* rules. Existing international law obligations for the protection of the environment should not be subordinated to the laws of war, especially in respect of protected areas. Such areas were important for the preservation of biodiversity, habitats, ecosystems and wildlife, and should be protected by the rule prohibiting the destruction of property except in cases of "imperative necessity of war", as noted by Switzerland. That threshold would be consistent with the provisions on the environment of Protocol I Additional to the Geneva Conventions of 1949. Spain had expressed the view, which she shared, that there should be more integration between international environmental law and the law of armed conflict. UNEP had suggested that draft principle 13 should clarify the continued application of obligations under multilateral environmental agreements, a view that was shared by several States. However, she questioned the use of the language "in particular, the law of armed conflict" in paragraph 1, as it seemed to subordinate obligations under environmental law to those under the law of armed conflict. She would prefer to delete that wording.

She likewise agreed with Japan and others that there was a need to clarify and essentially limit the use of the environment as a military objective. As noted by States, the environment was inherently of a civilian nature. Draft principle 13 should not be read as creating a broad exception that would allow for attacks on the environment. Otherwise, she supported the changes recommended by the Special Rapporteur. She would also be amenable to deleting draft principle 15.

With regard to draft principle 17, which mirrored draft principle 4, she shared the concerns raised by Estonia, the Netherlands, Portugal and ICRC about the phrase "designated by agreement", whose inclusion should not serve to impair the protection of a site that would otherwise be protected. The Netherlands had also expressed a legitimate concern that draft principle 17 might diminish the protection afforded to the environment under draft principle 13, and had queried how the draft principle related to areas protected under multilateral environmental agreements, a point also raised by UNEP. Greece had made a useful proposal to expand the scope of the draft principle to cover not only sites designated by agreement, but also sites protected by decisions of relevant treaty bodies. She would be in favour of including all applicable international agreements related to the protection of the environment, biodiversity and wildlife.

The Special Rapporteur's explanation to the effect that the reference to "agreement" covered agreements between parties to the conflict and agreements concluded before the conflict was important. However, the emphasis placed on "agreement" seemed to exclude nationally established protected areas for the protection of biodiversity, wildlife and ecosystems. Although the inclusion of protected zones for the protection of the environment was indeed one of the important contributions made by the draft principles, further clarification was needed in that regard. She therefore agreed with the Special Rapporteur that the linkage between draft principles 4 and 13 should be strengthened. Lastly, she concurred with the point raised by Mr. Murase that, in light of the attack on the Chernobyl nuclear site during the ongoing Russian invasion of Ukraine, express reference should be made to nuclear facilities as protected zones under draft principle 17.

Draft principle 20 had generated many useful and insightful comments. She supported the addition of the word "environmental" to the title so that it would refer to the "general environmental obligations" of an occupying Power. She also agreed with the comment made by Lebanon that the possible impact of an occupation on the environment might only become evident in the post-occupation period. That point should be made clear in the text, with the addition, in paragraph 1, of the phrase "including post-occupation effects" after "and take environmental considerations into account"; it should not be left to the commentary.

Draft principle 21 also contributed to the modernization of the law of armed conflict, as noted by the Netherlands. However, she had doubts about the Special Rapporteur's proposal to replace the word "population" with "protected persons" for the sake of consistency with article 4 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War. While she understood the logic behind that proposal, she queried the practical application of that term in relation to the sustainable use of natural resources. She would prefer to maintain the original reference to "population". She also agreed with Austria and Malaysia that the draft principle should refer to preventing, rather than minimizing, environmental harm. That terminology was better aligned with current standards of international environmental law.

The reference to "due diligence" in draft principle 22 had generated a number of comments, which had prompted the Special Rapporteur to propose a reformulated text. She herself had expressed reservations regarding the original formulation adopted on first reading. States had correctly pointed out that the first-reading text did not parallel existing terminology and usage. In the draft principle, the due diligence obligation was triggered by the operative words "to ensure". Indeed, principle 2 of the Rio Declaration on Environment and Development, which had been incorporated *mutatis mutandis* into other international conventions, provided that "States have … the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction". Japan had suggested that the language of the draft principle should be aligned with that of the Commission's draft articles on the law of transboundary aquifers. While the Special Rapporteur had taken up that suggestion, she herself did not support that change. Those draft articles did not have the same widespread acceptance as the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), the Rio Declaration or the Convention on Biological Diversity. She did, however, welcome the return to the formulation "beyond national jurisdiction".

Draft principle 24, "Sharing and granting access to information", was important and reflected contemporary environmental law practice at the national and international levels. She respectfully disagreed with those States that had commented otherwise, especially those that were members of the European Union, where public participation and access to environmental information was enshrined in the Community legal framework. Moreover, as stated in the report, the right of access to information held by public authorities was a well-accepted principle under international human rights law. The Economic and Social Commission for Asia and the Pacific (ESCAP) had highlighted the fact that access to environmental information was vital for providing relief and remedy. In her view, it was also crucial for the purposes of effective remediation and the return of displaced communities. She agreed that the right of access to information should not apply only in post-conflict situations and therefore supported the Special Rapporteur's proposed replacement of the words "after an armed conflict" with the broader language "in relation to an armed conflict".

With regard to draft principle 25, she essentially supported the revisions proposed by the Special Rapporteur. The Commission might also wish to offer, in the commentary, additional clarification of the relationship of "remedial measures" to other treaty-based obligations. She wished to recommend the referral of all the draft principles to the Drafting Committee and would circulate her complete statement to the members in writing.

Mr. Reinisch said that he wished to commend the Special Rapporteur on her third report, which comprehensively reviewed the Commission's work on the topic to date and addressed, in meticulous detail, the comments and observations received on the draft principles adopted on first reading. He shared the Special Rapporteur's view that the law of armed conflict often provided *lex specialis* rules with regard to the generally applicable human rights and environmental law obligations that were relevant to the topic. He also

supported her decision to highlight the fact that practice was not limited to States, but included non-State actors even beyond international organizations, such as non-State armed groups.

While he agreed with the substance of the Special Rapporteur's proposal to add the words "including in situations of occupation" to draft principle 1, he wondered to what extent that addition was really necessary, since it was generally recognized that occupation pertained to international armed conflict. The proposal might make sense insofar as it ensured the draft principles' temporal application even when no military activities were taking place. However, that scenario could also have been covered in the commentary.

He welcomed the Special Rapporteur's suggestion that the language "preventive measures for minimizing damage" in draft principle 2 should be replaced with the broader language "measures to prevent, mitigate and remediate harm", which was also used in other draft principles.

Concerning draft principle 4, he would have been content to replace the conjunctive term "and" with the disjunctive term "or" in the phrase "areas of major environmental and cultural importance". However, he understood the Special Rapporteur's point that the ramifications of doing so could go beyond the Commission's mandate in relation to the topic. He therefore supported her suggested wording, which clarified that cultural importance on its own would not be covered by the draft principle.

He concurred with the drafting suggestions made by the Special Rapporteur in respect of draft principles 6 and 7. The question of whether draft principle 7 should be formulated in a hortatory or a more obligatory fashion might require additional reflection. The language "States and international organizations involved in peace operations in relation to armed conflict shall consider the impact of such operations on the environment" appeared to reflect an obligation, albeit merely to "consider" any such impact. However, he understood that it might be necessary to discuss more thoroughly the extent to which the taking of "appropriate measures to prevent, mitigate and remediate" environmental harm had already hardened into a customary international law obligation.

He had taken note of the reformulation of draft principle 9 (2) recommended by the Special Rapporteur, which contained a "without prejudice" clause referring to the responsibility of non-State actors, including international organizations, and individual criminal responsibility, instead of merely to State responsibility. However, in his view, that approach raised the more general question of the extent to which such "without prejudice" clauses made sense. Perhaps that point would be better addressed in the commentary. As for the previous formulation, the Special Rapporteur had found that "its usefulness in the current context of draft principle 9 is not evident", and States had remarked on its redundancy and potential to introduce ambiguity. Several States, along with United Nations bodies, had called for the inclusion of a reference to individual criminal responsibility for environmental crimes, and recently both the Office of the Prosecutor of the International Criminal Court and the Assembly of States Parties to the Rome Statute had begun to contemplate that possibility. Those suggestions did not appear to have encountered any criticism thus far. Nevertheless, the Special Rapporteur herself had stated that "it would hardly be manageable to propose the inclusion of a comprehensive regime of international responsibility in the set of draft principles". He thus agreed that the commentary should include a clear overview of the relevant legal developments, and welcomed the Special Rapporteur's intention to make proposals to that effect.

In general, he considered draft principles 10 and 11, which dealt with corporate responsibility, to reflect a well-balanced approach to what was a highly difficult question. Most of the aspects touched upon, such as liability, supply chain-related damage and extraterritoriality, were in a state of considerable flux. It was therefore advisable to formulate the draft principles in the broad manner suggested by the Special Rapporteur. On liability, the language "*de facto* control" in draft principle 11 left sufficient flexibility for the adjustment of those requirements in accordance with national standards. The same could be said of the wording recommending that States should ensure that business enterprises "can be held liable" – as opposed to "must be held liable" – "as appropriate". That language also addressed the concerns about extraterritorial jurisdiction voiced by some States. Supply chain

issues also appeared to be appropriately treated in the clear wording of draft principle 10, although the reasons for not including those issues in draft principle 11 could perhaps be elucidated in the commentary. As noted in several of the comments received, those two provisions could have an important and positive impact on the progressive development of international law.

With regard to the draft principles concerning the protection of the environment during armed conflict, he welcomed the Special Rapporteur's recommendation that the text should consistently refer to the "environment" instead of the "natural environment". He supported the addition to draft principle 13 of a new paragraph 2 concerning the prohibition of methods or means of warfare intended or expected to cause widespread, long-term and severe damage to the environment. The customary law quality of articles 35 (3) and 55 (1) of Protocol I Additional to the Geneva Conventions of 1949, on which the draft principle was based, was not uncontroversial. Nevertheless, the Special Rapporteur had provided very good reasons for the paragraph's inclusion.

He welcomed the suggested streamlining of the text of draft principle 14 and had no objection to the deletion of draft principle 15 and the inclusion of its major considerations in the commentary. However, if draft principle 15 was deleted in its entirety, he wondered whether the suggested deletion of the words "military necessity" from draft principle 14 might make the draft principle more difficult to understand, as "military necessity" would then be referred to only in the commentary.

He agreed with the Special Rapporteur that draft principle 18, "Prohibition of pillage", should be left as it stood and that the Commission should consider clarifying, in the commentary, the extent to which it went beyond "private" pillage and whether certain exceptions relating to military necessity might exist.

He likewise agreed with the Special Rapporteur that the wording used in the introductory phrase of draft principle 19 clarified that obligations corresponding to those assumed under the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques did not necessarily constitute customary international law. He thus shared her view that there was no need to modify draft principle 19.

The Special Rapporteur's replacement, in draft principle 22, of the phrase "exercise due diligence" with "take appropriate measures" was an improvement that should be endorsed. He had no objection to the Special Rapporteur's suggestion that, in draft principle 23, the words "environment damaged by the conflict" should be replaced with "environment damaged in relation to the conflict". However, the reasons for that change should be explained in the commentary in greater detail.

Concerning draft principle 24, he agreed that paragraph 2 should be deleted and that the commentary should clarify what kind of qualifications and exceptions to an obligation to share and grant access to information, which might exist mostly pursuant to treaty law, were pertinent. He also found acceptable the slight change made to paragraph 1, since the post-conflict application of the draft principle was already evident from its placement in Part Five of the draft principles.

He supported the suggested changes to draft principle 27, particularly the replacement of the conjunctive term "and" with the disjunctive term "or" in the phrase "toxic and hazardous remnants of war" in paragraphs 1 and 2. He agreed that the wording "as soon as possible" in paragraph 1 was preferable to the existing wording for the reasons laid out by the Special Rapporteur in the report.

While he acknowledged that the draft preambular paragraphs proposed by the Special Rapporteur might be helpful for those called upon to interpret the draft principles, he was slightly hesitant about their inclusion, given the Commission's tradition of not providing preambular language in most cases, especially in texts that were not intended to form the basis of a draft convention. For the same reason, it was perhaps not appropriate to suggest the establishment of a mechanism to monitor the implementation of the draft principles. Such mechanisms would require the consent of States and the cooperation of other entities. He did not believe that the draft principles, beyond recommending the establishment of such a

mechanism, could meaningfully contribute to that question. He agreed with the Special Rapporteur's proposed recommendation to the General Assembly, as set out in paragraph 322 of the report. He supported the referral of the draft principles to the Drafting Committee.

The meeting rose at 12.55 p.m.