

Provisional

**For participants only**

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**International Law Commission**  
**Seventy-third session (second part)**

**Provisional summary record of the 3603rd meeting**

Held at the Palais des Nations, Geneva, on Thursday, 28 July 2022, at 3 p.m.

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

*Chapter V. Protection of the environment in relation to armed conflicts (continued)*

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***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. Huang  
Mr. Jalloh  
Mr. Laraba  
Ms. Lehto  
Mr. Murase  
Mr. Murphy  
Mr. Nguyen  
Ms. Oral  
Mr. Ouazzani Chahdi  
Mr. Park  
Mr. Ruda Santolaria  
Mr. Saboia  
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-third session** *(continued)*

*Chapter V. Protection of the environment in relation to armed conflicts (continued)*  
(A/CN.4/L.961 and A/CN.4/L.961/Add.1)

**The Chair** invited the Commission to resume its consideration of the portion of chapter V of the draft report contained in document A/CN.4/L.961/Add.1, beginning with paragraph (3) of the commentary to draft principle 9.

*Part Two (Principles of general application) (continued)*

*Commentary to draft principle 9 (State responsibility) (continued)*

*Paragraph (3)*

**Mr. Forteau** said that the last sentence of the paragraph, which stated that “The scope of the responsibility of the State, as well as the threshold for compensable environmental harm, depend on the applicable primary rules”, was not strictly true, since secondary rules might also apply. He therefore proposed that the phrase beginning “depend on” should be replaced by “may vary depending on” [*peuvent varier en fonction de*].

**Ms. Lehto** (Special Rapporteur) said that she agreed with Mr. Forteau’s proposal. As a separate point, the term “*jus ad bellum*” should be deleted. It had been included in the paragraph because it had been the first reference to the law on the use of force in an earlier version of the commentary, but that was no longer the case, as it had been mentioned in the amended version of paragraph (4) of the general commentary in chapter V (E) (2).

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

*Paragraph (4)*

**Ms. Lehto** (Special Rapporteur) said that the phrase “including their private acts” at the end of the second sentence should be deleted. The mention of State responsibility for private acts of armed forces would be included in footnote 149, accompanied by references to the relevant legal writings. In order to make clearer the legal nature of the special obligation of the Occupying Power, the last sentence of the paragraph should read: “In situations of occupation, furthermore, the Occupying Power is responsible for acts in violation of human rights law or the law of armed conflict even when they are committed by private actors, unless it can establish that the particular injury occurred notwithstanding its due diligence in seeking to prevent such violations.” For the same reason, in footnote 152, the phrase “which resulted from its failure to exercise its duty of vigilance” would be inserted after the word “Ituri”.

**Mr. Forteau** said that he was grateful to the Special Rapporteur for adding extra wording to reflect the substance of the judgment in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* of 9 February 2022. A reference to paragraph 95 of the judgment should also be incorporated in footnote 152.

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

*Paragraph (5)*

**Ms. Lehto** (Special Rapporteur) suggested that, for the sake of clarity, the first part of the first sentence should be amended to read “Environmental damage caused in armed conflict was recognized as compensable under international law when the United Nations Compensation Commission (UNCC) was established”.

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

*Paragraph (6)*

**Ms. Lehto** (Special Rapporteur) said that, in the last sentence, it would be more accurate to say that “the UNCC accepted claims for a non-exhaustive list of losses or expenses”.

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

*Paragraphs (7) to (12)*

*Paragraphs (7) to (12) were adopted with a minor editorial amendment.*

*Commentary to draft principle 10 (Due diligence by business enterprises)*

*Paragraphs (1) to (3)*

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

*Paragraph (4)*

*Paragraph (4) was adopted with minor editorial changes to the footnotes.*

*Paragraphs (5) to (7)*

*Paragraphs (5) to (7) were adopted.*

*Paragraph (8)*

**Ms. Lehto** (Special Rapporteur) suggested that, for the sake of readability, the long final sentence should be split after “persons under their jurisdiction”. The first of the two resulting sentences would then need to be adjusted to make “the explicit reference” the subject of the verb.

**Mr. Murphy** said that he wondered whether the meaning of the first sentence would be made clearer if it read: “There is no uniform practice on how to refer to the business entities addressed in the draft principle.”

**Mr. Jalloh** said that, since it was clear that the paragraph referred to the wider context and not to particular draft principles, wording along the lines of “There is no uniform practice on how to refer to business entities” might be more suitable.

**Ms. Oral** said that another possibility would be to state that “There is no uniform practice on how to refer to business entities in the different regulatory frameworks. These use terms ranging from ...”. However, she could also support Mr. Jalloh’s proposal.

**Ms. Lehto** (Special Rapporteur), supported by **Mr. Vázquez-Bermúdez**, agreed that the sentence could end after the words “business entities”.

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

*Paragraph (9)*

**Mr. Forteau** said that, in the sentence beginning with the words “This is the case, for instance”, the phrase that read “may become a party to the conflict” in essence suggested that a private military company could exercise the prerogatives of a public authority and become a party to the conflict. However, the company itself did not become a party to the conflict, it simply became an element acting for the State which was a party to the conflict. The end of the sentence should therefore read “and may act as a party to the conflict”.

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

*Paragraphs (10) to (12)*

*Paragraphs (10) to (12) were adopted.*

*Paragraph (13)*

**Ms. Lehto** (Special Rapporteur) said that, in the second sentence, “Part One” should read “Part Two”.

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

*Commentary to draft principle 11 (Liability of business enterprises)**Paragraph (1)*

**Ms. Lehto** (Special Rapporteur) suggested that the words “by business enterprises” should be inserted between “caused” and “to the environment” in the second sentence.

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

*Paragraph (2)*

**Ms. Lehto** (Special Rapporteur) said that she was proposing the deletion of the second half of the paragraph after the marker for footnote 228. She had explained in her third report (A/CN.4/750) that principle 11 and the Guiding Principles on Business and Human Rights served different purposes, but there was no need to include that explanation in the commentary, which explained the content of the draft principle.

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

*Paragraphs (3) and (4)*

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

*Paragraph (5)*

**Ms. Lehto** (Special Rapporteur) said that the second and third sentences should be replaced with the following updated text provided by Mr. Murphy:

For instance, United States courts are sometimes willing to hold a parent company accountable for the actions of a foreign subsidiary on the basis of a principal–agent relationship. In the *In re Parmalat Securities Litigation* case, the United States District Court for the Southern District of New York explained that such an agency relationship exists if there is agreement between the parent and the subsidiary that the subsidiary will act for the parent, and the parent retains control over the subsidiary. In a further case, the same court stated that a parent may be held legally accountable for the actions of a foreign subsidiary if the corporate relationship between the two is sufficiently close.

**Mr. Hmoud** said that the *Kiobel* case had also turned on the issue of corporate responsibility for wrongful acts. He therefore wondered why no reference had been made to it in paragraph (5).

**Mr. Murphy** said that, as the *Bowoto v. Chevron* case had been set aside, he had tried to identify a good case that would speak to the issue of the regulation by a United States court of a parent company with respect to the conduct of a subsidiary abroad. The *In re Parmalat Securities Litigation* case had been a good replacement. The *Kiobel* case might not be a good option, because ultimately the Supreme Court had decided that United States law did not apply to the corporation in question.

**Mr. Forteau**, supported by **Mr. Grossman Guiloff**, said he regretted that the paragraph was rather imbalanced, because it focused entirely on the practice of courts in common law systems and ignored the practice of courts in the Romano-Germanic or other law systems. Surely examples which illustrated how parent companies had been held accountable for their subsidiaries could have been found in the case law of those courts and that of the European Court of Justice? Moreover, the *In re Parmalat Securities Litigation* case concerned fraud or bankruptcy, not environmental protection.

**Ms. Lehto** (Special Rapporteur) said that the *Kiobel* case had been discussed in her second report on the topic (A/CN.4/728). However, in the paragraph under consideration, she had cited only national cases that shed light on aspects of the relationship between parent companies and their subsidiaries. With regard to the representativeness of the case law, while a Dutch court ruling was cited in one of the footnotes associated with the paragraph, she fully recognized that there might be an imbalance in that regard. She would have welcomed additional examples from other legal systems.

As indicated in the informal document circulated in the meeting room, an additional reference would be inserted in the last footnote associated with the paragraph.

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

*Paragraphs (6) to (9)*

*Paragraphs (6) to (9) were adopted with a minor editorial change.*

*Paragraph (10)*

**Mr. Park** said that he would be grateful if the Special Rapporteur could explain the intention behind the last sentence, which had not been included in the commentaries adopted on first reading. According to that sentence, compensation could be awarded to a State affected by pure environmental damage, but it was unclear who would provide and receive such compensation. Presumably, the situation that the Special Rapporteur had in mind was one in which a business entity paid compensation to a State. However, the paragraph under consideration related to the last sentence of draft principle 11, which concerned the provision by States of adequate and effective procedures and remedies, in particular for the victims of the harm caused by them to the environment.

**Mr. Forteau** said that he wondered whether the last sentence was intended to address situations in which compensation was paid to public authorities. In the *Erika* case, for example, some French local authorities had been awarded compensation in connection with an oil spill. He agreed with Mr. Park that the sentence seemed to address an issue not covered by the corresponding draft principle.

**Ms. Lehto** (Special Rapporteur) said that the paragraph was primarily intended to explain the meaning of the phrase “in particular for the victims” in draft principle 11. The last sentence, which addressed the specific situation of pure environmental damage, was based on one of the written submissions that had been received.

**Mr. Forteau** said that the Commission could draw inspiration from draft principle 8, in which the phrase “local communities” was used. The words “affected States” in the last sentence could thus be replaced with “local communities or public entities”.

**Ms. Lehto** (Special Rapporteur) said that she would prefer simply to replace the word “State” with “communities”, which would cover all possible situations. In addition, she proposed that the words “in particular in case” in the same sentence should be replaced with “in cases”.

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

*Paragraphs (11) and (12)*

*Paragraphs (11) and (12) were adopted.*

**The Chair** invited members to return to paragraph (2) of the commentary to draft principle 7, which had been left in abeyance at the previous meeting, before beginning their consideration of the general commentary to Part Three.

*Commentary to draft principle 7 (Peace operations) (continued)*

*Paragraph (2) (continued)*

**Ms. Lehto** (Special Rapporteur) said that, while no peace operation was deployed in order to become a party to an armed conflict, such an operation might become involved in hostilities at a later stage. At the previous meeting, the view had been expressed that it was unclear from the last two sentences whether it was the peace operation itself or the deploying State or organization that might become a party to the armed conflict. In her view, the Commission did not need to resolve that issue in the paragraph under consideration. It was the peace operation that might be involved in hostilities and would then have to observe the obligations that applied under the law of armed conflict. In the event that questions of responsibility arose, they also concerned the State or organization that had deployed the operation. Such questions nevertheless fell outside the scope of the draft principle. In the

light of the concerns that had been raised, she was proposing that the last two sentences should be replaced with a single sentence that read: “Where peace operations deployed in armed conflict become involved in hostilities, obligations under the law of armed conflict apply to them.”

**Mr. Forteau** said he was not sure that the Commission should take a position on the issue addressed in the last two sentences of the paragraph.

**Ms. Lehto** (Special Rapporteur) said that there had been cases in which peace operations had become involved in hostilities, thereby triggering the application of the law of armed conflict.

**Sir Michael Wood** said that one way of addressing Mr. Forteau’s concern might be to delete the words “to them” from the proposed new sentence. The question of to whom such obligations would apply would then be left open.

**Mr. Murphy** said that another solution might be to amend the proposed text to read: “Where such an operation deployed in armed conflict becomes involved in hostilities, obligations under the law of armed conflict apply.” Such wording would narrow the scope of the sentence to a particular operation. The omission of the word “peace” would allow for the possibility that, by the time that the operation became involved in hostilities, its nature as a peace operation was in doubt.

**Ms. Lehto** (Special Rapporteur) said that she supported Mr. Murphy’s suggestion that the noun “operation” should appear in the singular, since it would be prudent to avoid creating the impression that all peace operations became involved in hostilities. However, she found it preferable to begin the sentence with the words “Where a peace operation deployed in armed conflict becomes involved”.

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

### *Part Three (Principles applicable during armed conflict)*

#### *General commentary*

#### *Paragraphs (1) to (3)*

*Paragraphs (1) to (3) were adopted with minor drafting changes.*

#### *Paragraph (4)*

**Ms. Lehto** (Special Rapporteur) proposed replacing the words “rules of total exclusion” in the last sentence with “absolute rules”.

**Mr. Murphy** said that he was not sure that the expression “absolute rules” would be well understood. As an alternative, the last sentence could be amended to begin with the words “Where the rules of the law of armed conflict are not in conflict”, so that it would be clearer how it flowed from the previous sentence.

**Ms. Lehto** (Special Rapporteur) said that it might be confusing to use the word “conflict” with two different meanings in quick succession.

**Mr. Jalloh** said that he would prefer to retain the Special Rapporteur’s proposed wording. In his view, Mr. Murphy’s proposal would create ambiguity.

**Mr. Murphy** said that the expressions “absolute rules” and “total exclusion” were incorrect in the context. Two other options would be to amend the sentence such that it began with the words “Where the rules of the law of armed conflict are not in such conflict” or “Where the rules of the law of armed conflict are not in conflict with another applicable rule of international law”.

**Sir Michael Wood** said that the sentence could be amended to begin with the words “Where there is no such conflict, the law nevertheless allows for the concurrent application”.

**Mr. Forteau** said that he was not sure that “allows for” was the appropriate construction. The sentence as a whole might be clearer if amended to read: “In the absence

of such a conflict, other relevant rules of international law, such as international environmental law and international human rights law, may apply.”

**Mr. Hmoud** said he agreed that the words “absolute rules” were not clear. He supported the wording proposed by Mr. Forteau.

**Ms. Lehto** (Special Rapporteur) said that she could accept Mr. Forteau’s proposal. However, her preference would be to replace the words “In the absence of such a conflict” with “Where there is no such conflict” and to add the word “concurrently” at the end of the proposed wording, since the “other rules” in question could apply either instead of the rules of armed conflict or alongside them.

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

*Paragraph (5)*

**Ms. Lehto** (Special Rapporteur) said that paragraph (5) discussed a change that the Drafting Committee had decided to make to the terminology used in the draft principles. The first two sentences should be combined and reformulated to read: “Draft principles 13, 14 and 15 use the term ‘environment’, unlike the treaty provisions that they reflect or the draft principles adopted on first reading, rather than the term ‘natural environment’.” The text would, as a result, be more factual and free of any value judgment. In the following sentence, the adjective “established”, which qualified “terminology of international environmental law”, should be deleted, and, in the final sentence, the words “interpreted as intended to alter the scope” should be replaced with “understood to alter the scope”.

**Mr. Forteau** said that he agreed in principle with the Special Rapporteur’s proposals. For ease of reading, however, the beginning of the first sentence should be restructured to read “Unlike the treaty provisions that they reflect or the draft principles adopted on first reading, draft principles 13, 14 and 15 ...”, and the Special Rapporteur’s proposed wording of “understood to alter the scope” should be changed to “understood as altering the scope”.

**Sir Michael Wood** said that he supported both of Mr. Forteau’s proposals. The first sentence could be further simplified by deleting the reference to the first-reading text, as the reasons for changing a first-reading text were usually not addressed in commentaries. The resulting sentence would read “Unlike the treaty provisions that they reflect, draft principles 13, 14 and 15 use the term ‘environment’ rather than the term ‘natural environment’”. In the sentence that began “The final draft principles”, the word “final” should be deleted.

**Mr. Jalloh** said that he generally supported the Special Rapporteur’s proposals but wished to know why she proposed deleting the word “established”. As the decision to use the term “environment” instead of “natural environment” applied to draft principles other than the three referred to in the first sentence, he also wondered whether an explanation should be provided regarding the use of the term “environment” in the draft principles generally.

**Ms. Lehto** (Special Rapporteur) said that, at its current session, the Commission had decided to delete one of the four draft principles that had referred to the natural environment in the first-reading text, leaving only the three referred to in paragraph (5). She would not object to retaining the word “established” if that was the wish of the Commission. She supported the wording proposed by Sir Michael Wood.

**Sir Michael Wood** said that he supported the Special Rapporteur’s initial proposal to delete the word “established”. The Commission was not in a position to say what the established terminology of international environmental law was. International environmental lawyers no doubt all had their own terminology.

**Ms. Lehto** (Special Rapporteur) said she believed that the instruments of international environmental law were in fact quite uniform in referring to the “environment”. While there was no generally agreed definition, the term itself was uniformly used.

**Ms. Oral** said that, while the term “natural environment” seemed to be used in the context of armed conflict, the use of the term “environment” was otherwise prevalent and clearly established in international environmental law. She saw no reason to delete the word “established”.



**Mr. Murphy** said that it would perhaps be prudent to delete the word “established”, as a number of books published in the previous decade in the field of international environmental law used the term “natural environment” in discussions of pesticides and other matters.

**Mr. Hmoud** said that he was in favour of retaining the word “established”. However, the Commission could consider also indicating that “natural environment” was an established term in international humanitarian law.

**Sir Michael Wood** said that the use of the word “established” in the sentence was simply incorrect, since the term “natural environment” was, as Mr. Hmoud had just noted, the one most often used in the field of international humanitarian law and the part of international humanitarian law that dealt with the environment was clearly part of international environmental law.

*The meeting was suspended at 4.40 p.m. and resumed at 5 p.m.*

**Ms. Lehto** (Special Rapporteur) said she believed that the Commission was in a position to agree to adopt paragraph (5) with the following text:

Unlike the treaty provisions that they reflect, draft principles 13, 14 and 15 use the term “environment” rather than the term “natural environment”. The draft principles refer consistently to the “environment”, in line with the established terminology of international environmental law. This change should not be understood as altering the scope of the existing conventional and customary law of armed conflict, or to expand the scope of the notion of “natural environment” in that law.

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

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

*Paragraph (1)*

*Paragraph (1) was adopted.*

*Paragraph (2)*

**Ms. Lehto** (Special Rapporteur) said that, in the last sentence of the paragraph, the word “prevents” should be replaced with “precludes” and the word “legal” should be replaced with “permissible”.

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

*Paragraph (3)*

**Ms. Lehto** (Special Rapporteur) said that, in the first sentence, the words “Further than” should be replaced with “Beyond”; in the second sentence, the word “beside” should be replaced with “alongside”; in the third sentence, the word “provide” should be replaced with “offer”; and in the last sentence, the word “interpretations” should be replaced with “views”.

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

*Paragraph (4)*

*Paragraph (4) was adopted.*

*Paragraph (5)*

**Ms. Lehto** (Special Rapporteur) said that the words “for Military Manuals and Instructions” should be inserted after the word “Guidelines” in the second sentence and the word “updated” should be replaced with the year “2020” in the third sentence.

**Mr. Murphy** said that he supported the Special Rapporteur’s proposals. However, as the proposals would result in there being a reference to the 1994 guidelines in the second

sentence, a reference to the 2020 guidelines in the third sentence and then an undated reference to the guidelines in the fourth sentence, it would perhaps help avoid confusion to insert “1994” before “ICRC guidelines” in the fourth sentence.

**Ms. Lehto** (Special Rapporteur) said that the sentence seemed unlikely to lead to misunderstanding, as the guidelines that were circulated in 1994 were obviously the 1994 guidelines. However, she would not object to Mr. Murphy’s proposal.

**Mr. Jalloh** said that he did not support Mr. Murphy’s proposal. Since the fourth sentence already included a reference to the year 1994, it was unlikely that readers would be confused as to which guidelines were being referred to.

**Sir Michael Wood** said that, to avoid any doubts, the second, third and fourth sentences should be placed in chronological order: the second sentence, which introduced the 1994 guidelines, would remain where it was; the sentence beginning “In 1994” would become the third sentence; and the sentence beginning “The 2020 ICRC Guidelines” would become the fourth sentence.

**Ms. Lehto** (Special Rapporteur) said that, if the order of the sentences was changed as Sir Michael Wood had suggested, the words “this formulation” should be changed to “the same formulation” in the sentence that would begin “The 2020 ICRC Guidelines”.

**Ms. Oral** said that she supported Sir Michael Wood’s proposal. She wished to note, however, that the reference in the fifth sentence to the 2000 IUCN World Conservation Congress would not follow the chronological order.

**Ms. Lehto** (Special Rapporteur) said that Ms. Oral’s concern could be addressed by turning the text about the World Conservation Congress of the International Union for Conservation of Nature (IUCN) into a separate paragraph.

**The Chair** said he took it that the Commission agreed to the amendments proposed by the Special Rapporteur and Sir Michael Wood and to the placement of the text regarding the IUCN World Conservation Congress in a separate paragraph that would follow paragraph (5).

*Paragraph (5), as amended, was adopted on that understanding.*

*Paragraphs (6) and (7)*

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

*Paragraph (8)*

**Ms. Lehto** (Special Rapporteur) said that certain purely linguistic changes should be made to paragraph (8): in the first sentence, the word “phrase” should be replaced with “term”, and ““principle of humanity”” should be replaced with ““the principle of humanity””; in the third sentence, the word “concepts” should be replaced with “terms”; and, in the last sentence of the paragraph, “The concept” should be replaced with “The term ‘principles of humanity’”.

In addition, the following language, provided by Mr. Grossman Guiloff, should be inserted at the end of footnote 288:

See also *The Paquete Habana v. United States*, 175 U.S. 677(1900), in which the United States Supreme Court recognized that customary international law prohibited the capture of coastal fishing vessels designed to feed the civilian population, as well as *La Nostra Signora de la Piedad* (1801), 25 Merlin, Jurisprudence, Prise Maritime, sect. 3, art. 1.3, which established that the capture of such vessels was contrary to “the principles of humanity, and the maxims of international law”.

**Mr. Park** said that the first sentence of the previous paragraph, paragraph (7), contained a reference to ““the principles of humanity””. However, the definite article was absent when the term “principles of humanity” appeared in quotation marks in paragraph (8), in both the first and second sentences. The article would also not appear in the language that the Special Rapporteur proposed to add to the last sentence of paragraph (8). He wished to know why the definite article had been omitted in paragraph (8).

**Sir Michael Wood** said that the definite article should be included in paragraph (8) in the instances mentioned by Mr. Park, as the expression “the principles of humanity” was used in the formulation of the Martens Clause that appeared in article 1 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).

**Ms. Lehto** (Special Rapporteur) said that the definite article could be added before “principles of humanity” in the first and second sentences of paragraph (8), in the sentence she had just proposed to add to the end of that paragraph, and also in the last sentence of paragraph (7).

**Mr. Forteau** said that the idea expressed in the second sentence of paragraph (8), which referred to the *Corfu Channel Case*, was repeated in very similar terms in the second sentence of footnote 292; he suggested that one of the two should be deleted.

**Ms. Lehto** (Special Rapporteur) said that she would prefer the wording to be retained in the body of the commentary.

**Mr. Murphy**, referring to footnote 288 as amended by the Special Rapporteur, suggested that the wording of the second sentence should be aligned with that of the ruling in the *Paquete Habana* case by altering “designed to feed the civilian population” to “engaged in sustaining the civilian population”. The *Paquete Habana* judgment had referred to the principles of humanity by citing the case of *La Nostra Señora de la Piedad*, which the Special Rapporteur also proposed to mention in footnote 288; he suggested that the structure and wording of the sentence should be amended accordingly.

**Ms. Lehto** (Special Rapporteur), welcoming those suggestions, said that the footnote could refer first to *La Nostra Señora de la Piedad* and then to the *Paquete Habana* case, with the specific change of wording suggested by Mr. Murphy.

**Mr. Grossman Guiloff** and **Mr. Jalloh** observed that, while the Martens Clause was not explicitly mentioned in the *Paquete Habana* case, there were various direct and indirect references to the principles of humanity contained therein.

**Ms. Lehto** (Special Rapporteur) suggested that the sentence in footnote 288 should be amended to read:

See also *La Nostra Señora de la Piedad* (1801), 25 Merlin, Jurisprudence, Prise Maritime, sect. 3, art. 1.3, which established that the capture of such vessels was contrary to ‘the principles of humanity, and the maxims of international law’. See further *The Paquete Habana v. United States*, 175 U.S. 677(1900), in which the United States Supreme Court recognized that customary international law prohibited the capture of coastal fishing vessels engaged in sustaining the civilian population and cited with approval the *La Nostra Señora de la Piedad* case.

**Mr. Murphy** suggested that a specific page reference should be added for the *Paquete Habana* ruling, indicating where *La Nostra Señora de la Piedad* was cited.

**Mr. Grossman Guiloff**, welcoming the amended wording proposed by the Special Rapporteur, requested that reference should also be made to the specific mention of the expression “considerations of humanity” in the *Paquete Habana* ruling.

**Mr. Jalloh** suggested that adding a second page reference, to the page where that expression occurred, should satisfy that concern.

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

*Paragraph (9)*

*Paragraph (9) was adopted.*

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

*Paragraphs (1) and (2)*

*Paragraphs (1) and (2) were adopted.*

*Paragraph (3)*

*Paragraph (3) was adopted with a minor drafting change to footnote 295.*

*Paragraphs (4) and (5)*

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

*Paragraph (6)*

**Ms. Lehto** (Special Rapporteur) said that, in the first sentence, the phrase “provides clarity on the normative nature of paragraph 2 and” should be added after “The chapeau”; in the third sentence, the words “paragraph 2” should be changed to “the draft principles”; and, in the last sentence, the phrase “which goes beyond Additional Protocol I, and extends to applicable environmental and human rights obligations” should be deleted, and the words “general applicability of the provision to” should be changed to “claim that damage to the environment reaching this high threshold would be prohibited in”. The change to the last sentence was intended to avoid any suggestion that the treaty provision itself was being referenced, as the focus of the sentence was the high threshold for environmental damage; the wording of the amendment was in line with the report of the Chair of the Drafting Committee.

**Mr. Forteau** sought clarification regarding the amendments suggested to the last sentence of the paragraph. There seemed to be a mismatch between the wording of the chapeau of paragraph 2 and the claim being made in the draft commentary; further information might need to be included to give the reader some context.

**Ms. Lehto** (Special Rapporteur) suggested that retaining the words “which goes beyond Additional Protocol I, and extends to applicable environmental and human rights obligations” might clarify the sentence, which was intended to convey the idea that, in practice, it would be likely, taking into account environmental and human rights obligations, that damage to the environment that was widespread and severe would affect the human population in such a way as to violate their human rights and breach the environmental law obligations of the State or States involved.

**Mr. Murphy** said that it was incorrect to construe the reference to applicable international law in the chapeau as an attempt to go beyond Additional Protocol I. The intention of the second sentence of the paragraph was to make clear that the obligations set out in draft principle 13 were anchored in Additional Protocol I, to which some States had in any case entered reservations. The expression “goes beyond”, which had not appeared in the text adopted on first reading, was problematic. He could not accept the changes being proposed to the last sentence of the paragraph by the Special Rapporteur.

**Ms. Lehto** (Special Rapporteur) said that paragraph (4) of the commentary to draft principle 13 explained that, in the context, “applicable international law” meant the law of armed conflict but that international environmental law and international human rights law retained their relevance. Moreover, the Commission had agreed that draft principle 13 applied to armed conflicts irrespective of classification; the relevance of the chapeau had been pointed out by the Chair of the Drafting Committee in his report. The various views expressed by members did not seem irreconcilable.

**The Chair** suggested that the paragraph should be left pending to enable interested members to discuss it informally and find common ground.

*It was so decided.*

*Paragraph (7)*

**Ms. Lehto** (Special Rapporteur) said that the words “the rule” should be deleted from the first sentence and, in the second, the phrase “should be interpreted as indicating” should be changed to “indicates”.

*Paragraph (7), as amended, was adopted.*

*Paragraph (8)*

**Ms. Lehto** (Special Rapporteur) said that, in the first sentence, the words “similar to” should be changed to “like”. In the third sentence, the abbreviation “ICRC” should be added to qualify “commentary to article 35, paragraph 1” and the phrase “makes it clear” should be altered to “indicates”.

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

*Paragraph (9)*

**Ms. Lehto** (Special Rapporteur) said that the words “it is obvious that” should be deleted from the first sentence and the phrase “cannot only rely” altered to “should not rely solely”; in the second sentence, the words “also taking into account” should be changed to “should take into account”. In the third sentence, the phrase “the ICRC Guidelines similarly note” should be changed to “the ICRC has similarly noted” in order to reflect the fact that the information was taken from a summary of the Guidelines on the Protection of the Natural Environment in Armed Conflict provided by the International Committee of the Red Cross in its comments on draft principle 13, rather than from the Guidelines themselves.

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

*Paragraph (10)*

**Ms. Lehto** (Special Rapporteur) said that the words “under the law of armed conflict” should be inserted in the first sentence after “fundamental rule” and that, in the third sentence, the words “can be linked to” should be changed to “is to be read with”.

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

*The meeting rose at 6 p.m.*