

Chapter IX

PROTECTION OF THE ENVIRONMENT IN RELATION TO ARMED CONFLICTS

A. Introduction

130. The Commission, at its sixty-third session (2011), decided to include the topic “Protection of the environment in relation to armed conflicts” in its long-term programme of work,³⁸⁶ on the basis of a proposal that was reproduced in annex V to the report of the Commission on the work of that session.³⁸⁷ The General Assembly, in paragraph 7 of its resolution 66/98 of 9 December 2011, took note of the inclusion of the topic in the Commission’s long-term programme of work.

131. At its 3171st meeting, on 28 May 2013, the Commission decided to include the topic “Protection of the environment in relation to armed conflicts” in its programme of work and to appoint Ms. Marie Jacobsson as Special Rapporteur for the topic.

B. Consideration of the topic at the present session

132. At its 3188th meeting, on 30 July 2013, the Special Rapporteur presented the following oral report to the Commission on the informal consultations held on the topic, under her chairpersonship, on 6 June and 9 July 2013. At the same meeting, the Commission took note of the report.

REPORT OF THE SPECIAL RAPPORTEUR ON THE INFORMAL CONSULTATIONS HELD ON THE TOPIC

133. The purpose of the informal consultations had been to initiate an informal dialogue with members of the Commission on a number of issues that could be of relevance to the consideration of this topic during the present quinquennium. To facilitate the consultations, the Special Rapporteur had prepared two informal papers setting forth some preliminary elements, which were to be read together with the syllabus reproduced in annex V to the Commission’s 2011 report containing the initial proposal for the topic.

134. The initial consultations had offered members of the Commission an opportunity to reflect and comment on the road ahead. The elements of the work discussed included its scope and methodology, the general direction of work and the timetable for future work.

135. With respect to the questions of scope and methodology, the Special Rapporteur had proposed that the topic could be addressed from a temporal perspective, rather than from the perspective of various areas of international law, such as international environmental law, the law of armed conflict and international human rights

law, so as to make the topic more manageable and easier to delineate. The temporal phases would address legal measures taken to protect the environment before, during and after an armed conflict (respectively, Phase I, Phase II and Phase III). Such an approach was encouraged, as it would allow the Commission to identify specific legal issues relating to the topic that arose at the different stages relating to an armed conflict. The identification of such issues could then facilitate the development of concrete conclusions or guidelines.

136. The Special Rapporteur further proposed that the focus of work would be on Phase I, that is obligations of relevance to a potential armed conflict, and Phase III, post-conflict measures. Phase II, that is the phase during which the laws of war apply, would be given less focus, as it was suggested that it was not the task of the Commission to modify the existing legal regimes. It was proposed that work on Phase II would also focus on non-international armed conflicts.

137. The approach of addressing the topic in temporal phases was generally welcomed by members of the Commission. Several members emphasized that Phase II was the most important phase. Other members were of the opinion that the most important phase was either Phase I or Phase III, or both. Ultimately, there was general agreement with the view of the Special Rapporteur that, although the work was to be divided into temporal phases, there could not be a strict dividing line between the different phases. Such a dividing line would be artificial and would not correspond with the way in which the relevant legal rules operated. The law of armed conflict, for example, consisted of rules applicable before, during and after an armed conflict.

138. The informal consultations also addressed whether the Commission should consider the effects of certain weapons on the environment. The Special Rapporteur proposed that the effect of particular weapons should not be the focus of the topic. Some members agreed, cautioning against consideration of the issue of weapons, while a few members took the view that it should be addressed.

139. In order to facilitate a discussion on the road ahead, the Special Rapporteur had circulated an outline for future work on the topic, including the proposed focus of her first report. A three-year timetable for the work was proposed, with one report to be submitted for the Commission’s consideration each year.

140. The Special Rapporteur indicated that she intended to present her first report to the Commission for

³⁸⁶ *Yearbook ... 2011*, vol. II (Part Two), paras. 365–367.

³⁸⁷ *Ibid.*, p. 211.

consideration at its sixty-sixth session in 2014. The focus of the first report would be on Phase I, namely obligations of relevance to a potential armed conflict. It would not address post-conflict measures *per se*, even if preparation for post-conflict measures needed to be undertaken before an armed conflict had broken out. The Special Rapporteur also indicated that she planned to identify, for the purposes of her first report, the issues previously considered by the Commission that could be of relevance to the present topic.

141. It was proposed that the second report, to be submitted in 2015, would be on the law of armed conflict, including non-international armed conflict, and would contain an analysis of existing rules. The third report would focus on post-conflict measures, including reparation for damage, reconstruction, responsibility, liability and compensation, with particular attention being given to the consideration of case law. All three reports would contain conclusions or draft guidelines to be discussed in the Commission, with the possibility of referral to the Drafting Committee.

142. To assist with her work on the topic, the Special Rapporteur indicated that it would be important to gather information from a variety of sources. In that regard, the Special Rapporteur indicated that it would be useful if the Commission could ask States to provide examples

of when international environmental law, including regional and bilateral treaties, had continued to apply in times of international or non-international armed conflict. Members of the Commission had also encouraged consultations with other United Nations organs or international organizations involved in the protection of the environment, such as the United Nations Environment Programme, UNESCO, UNHCR and the ICRC. Consultations with regional bodies, such as the African Union, the European Union, the League of Arab States and the Organization of American States, had also been generally welcomed.

143. With respect to the final outcome of the Commission's work on the topic, the Special Rapporteur indicated that the topic was more suited to the development of non-binding draft guidelines than to a draft convention. Some members considered it premature to decide on the final form of the work.

144. Attention was also drawn to a discrepancy in the prior translation of the title of the topic into certain official languages, which had been the source of confusion. The title of the topic should read "Protection of the environment in relation to armed conflicts". The phrase "in relation to" had to be included in all languages so as to indicate that the topic covered the three temporal phases and was not limited to the armed conflict phase.