Chapter IX

PROTECTION OF THE ENVIRONMENT IN RELATION TO ARMED CONFLICTS

A. Introduction

130. At its sixty-fifth session (2013), the Commission decided to include the topic "Protection of the environment in relation to armed conflicts" in its programme of work and appointed Ms. Marie G. Jacobsson as Special Rapporteur for the topic.[368]

131. At its sixty-sixth session (2014), the Commission considered the preliminary report of the Special Rapporteur.[369]

B. Consideration of the topic at the present session

132. At the present session, the Commission had before it the second report of the Special Rapporteur (A/CN.4/685), which it considered at its 3264th to 3269th meetings, from 6 to 10 July and on 14 July 2015.

133. At its 3269th meeting, on 14 July 2015, the Commission referred the preambular paragraphs and draft principles 1 to 5, as contained in the second report of the Special Rapporteur,[370] to the Drafting Committee, with the understanding that the provision on "use of terms" was being referred for the purpose of facilitating discussions and would be left pending by the Drafting Committee at this stage.

134. At the 3281st meeting, on 30 July 2015, the Chairperson of the Drafting Committee presented[371] the report of the Drafting Committee on "Protection of the environment in relation to armed conflicts", containing the draft introductory provisions and draft principles I-(x) to II-5, provisionally adopted by the Drafting Committee at the sixty-seventh session (A/CN.4/L.870),[372] which can be found on the Commission's website. The Commission

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[368] The decision was made at the 3171st meeting of the Commission, on 28 May 2013 (see *Yearbook … 2013*, vol. II (Part Two), para. 167). For the syllabus of the topic, see *Yearbook … 2011*, vol. II (Part Two), annex V.

[369] *Yearbook … 2014*, vol. II (Part One), document A/CN.4/674; see also *ibid*., vol. II (Part Two), paras. 186–222.

[370] The text proposed by the Special Rapporteur in her second report (A/CN.4/685) read as follows:

"*Preamble*

"*Scope of the principles*

"The present principles apply to the protection of the environment in relation to armed conflicts.

"*Purpose*

"These principles are aimed at enhancing the protection of the environment in relation to armed conflicts through preventive and restorative measures. They also are aimed at minimizing collateral damage to the environment during armed conflict.

"*Use of terms*

"For the purposes of the present principles

"(*a*) 'armed conflict' means a situation in which there is resort to armed force between States or protracted resort to armed force between governmental authorities and organized armed groups or between such groups within a State;

"(*b*) 'environment' includes natural resources, both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors, and the characteristics of the landscape.

"*Draft principles*

"*Principle 1*

"The natural environment is civilian in nature and may not be the object of an attack, unless and until portions of it become a military objective. It shall be respected and protected, consistent with applicable international law and, in particular, international humanitarian law.

"*Principle 2*

"During an armed conflict, fundamental principles and rules of international humanitarian law, including the principles of precautions in attack, distinction and proportionality and the rules on military necessity, shall be applied in a manner so as to enhance the strongest possible protection of the environment.

"*Principle 3*

"Environmental considerations must be taken into account when assessing what is necessary and proportionate in the pursuit of lawful military objectives.

"*Principle 4*

"Attacks against the natural environment by way of reprisals are prohibited.

"*Principle 5*

"States should designate areas of major ecological importance as demilitarized zones before the commencement of an armed conflict, or at least at its outset."

[371] The statement by the Chairperson of the Drafting Committee is available from the Commission's website, http://legal.un.org/ilc.

[372] The text provisionally adopted by the Drafting Committee read as follows:

"*Introduction*

"*Scope*

"The present draft principles apply to the protection of the environment before, during or after an armed conflict.

"*Purpose*

"The present draft principles are aimed at enhancing the protection of the environment in relation to armed conflict, including through preventive measures for minimizing damage to the environment during armed conflict and through remedial measures.

"*Part One*

"*Preventive measures*

"*Draft principle I-(x). Designation of protected zones*

"States should designate, by agreement or otherwise, areas of major environmental and cultural importance as protected zones.

"*Part Two*

"*Draft principles applicable during armed conflict*

"*Draft principle II-1. General protection of the [natural] environment during armed conflict*

"1. The [natural] environment shall be respected and protected in accordance with applicable international law and, in particular, the law of armed conflict.

"2. Care shall be taken to protect the [natural] environment against widespread, long-term and severe damage.

"3. No part of the [natural] environment may be attacked, unless it has become a military objective.

took note of the draft introductory provisions and draft principles as presented by the Drafting Committee. It is anticipated that commentaries to the draft principles will be considered at the next session.

1. Introduction by the Special Rapporteur of the second report

135. The purpose of the second report consisted of identifying existing rules of armed conflict directly relevant to the protection of the environment in relation to armed conflict and included an examination of such rules. The report also contained proposals for a preamble and five draft principles. The preambular paragraphs contained provisions on the scope of the draft principles, the purpose and use of terms, delineating the terms "armed conflict" and "environment" for the purposes of the draft principles. The suggested formulations on "armed conflict" and "environment" had already been submitted in the preliminary report.[373] Draft principle 1 contained a provision on the protection of the environment during armed conflict and was general in nature. Draft principle 2 concerned the application of the law of armed conflict to the environment and draft principle 3 addressed the need to take into account environmental considerations when assessing what is necessary and proportionate in the pursuit of military objectives. Draft principle 4 contained a prohibition on attacks against the environment by way of reprisals and draft principle 5 concerned the designation of areas of major ecological importance as demilitarized zones. When introducing the report, the Special Rapporteur clarified that "principles" had been proposed as being the most appropriate outcome of the work, as they offered sufficient flexibility to cover all stages of the topic. Referring to the proposed preamble, the Special Rapporteur reiterated her doubts as to need for a provision on "use of terms" but observed that it would have been premature to exclude it, in the light of views expressed by some members of the Commission and by States with regard to the value of such a clause. The need for such a provision would be re-evaluated in the light of discussions during the present session.

136. The Special Rapporteur indicated that, in addition to an examination of the law applicable during an armed conflict, the report addressed some aspects of methodology and sources. It also provided a brief recapitulation of the discussions within the Commission during the previous session, as well as information on the views and practice of States and of select relevant case law. Concerning the information provided by States, the Special Rapporteur noted that such information was highly heterogeneous, as States had chosen to provide information on different matters, and that it was therefore difficult to draw far-reaching conclusions. Nevertheless, two conclusions were worth highlighting: that the majority of regulations on peacetime military obligations were of recent date; and that multilateral operations were increasingly undertaken within a framework of relatively newly adopted environmental regulations. Regarding the section of the report concerning case law, the Special Rapporteur drew attention to the challenges that presented themselves in analysing the cases with regard to the distinction between property, livelihood, nature, land and natural resources, which entailed a clear link to human rights, in particular where indigenous peoples were affected. She concluded that there was reason to revert to this issue.

137. The core of the second report related to the law applicable during armed conflict. It provided an analysis of the directly applicable treaty provisions and relevant principles of the law of armed conflict, such as the principles of distinction, proportionality and precaution in attack, as well as the rules on military necessity. The Special Rapporteur emphasized, however, that since it was not the task of the Commission to revise the law of armed conflict, the report avoided analysing the operational interpretations of such provisions. The report thus limited itself to establishing whether the application of the provisions also covered measures aimed at protecting the environment.

138. The report also addressed protected zones and areas and examined the legal framework with regard to demilitarized zones, nuclear-weapon-free zones, natural heritage zones and areas of major ecological importance in relation to the topic. The Special Rapporteur noted that this section aimed to analyse the relationship between environmental and cultural heritage zones, as well as the right of indigenous peoples to their environment as a cultural and natural resource.

139. The Special Rapporteur further drew attention to certain issues that the second report did not cover, including the Martens clause, multilateral operations, the work of the United Nations Compensation Commission and situations of occupation, all of which would be examined in the third report, given that they were also relevant to phase III (post-conflict obligations).

140. The Special Rapporteur concluded by describing the proposed future programme of work, noting that her third report would include proposals on post-conflict measures, including cooperation, sharing of information and best practices, as well as reparative measures. The third report would also aim to close the circle of the three temporal phases, and it would therefore consist of three parts. The first part would focus on the law applicable in post-conflict situations; the second would address issues that had not yet been examined, such as occupation; and the third would contain a summary analysis of all three phases. The Special Rapporteur indicated her intention to continue consultations with other entities and regional

"*Draft principle II-2. Application of the law of armed conflict to the environment*

"The law of armed conflict, including the principles and rules on distinction, proportionality, military necessity and precautions in attack, shall be applied to the [natural] environment, with a view to its protection.

"*Draft principle II-3. Environmental considerations*

"Environmental considerations shall be taken into account when applying the principle of proportionality and the rules on military necessity.

"*Draft principle II-4. Prohibition of reprisals*

"Attacks against the [natural] environment by way of reprisals are prohibited.

"*Principle II-5. Protected zones*

"An area of major environmental and cultural importance designated by agreement as a protected zone shall be protected against any attack, as long as it does not contain a military objective."

[373] A/CN.4/674 (see footnote 369 above), paras. 69–86.

organizations and observed that it would be of assistance if States would continue to submit information on national legislation and case law relevant to the topic.

2. Summary of the debate

(a) *General comments*

141. The importance that was attached to this topic was reiterated by some members, noting not only its contemporary relevance but also the challenges it presented, in particular in attempting to achieve a proper balance between safeguarding legitimate rights that exist under the law of armed conflict and protecting the environment. In order to achieve such equilibrium, it was suggested that an in-depth analysis of the notion of "widespread, long-term and severe damage", as well as of the standards used for those criteria, would be essential.

142. Some members acknowledged that the purpose of the second report was to identify the existing rules of armed conflict that are directly relevant to the protection of the environment. At the same time, some members also stressed the need to methodically examine rules and principles of international environmental law to consider their continued applicability during armed conflict and their relationship with that legal regime. An analysis of that nature was key to the topic as a whole, in particular with regard to the second phase currently under discussion. It was recommended that such a systematic review should use the draft articles on effects of armed conflict on treaties adopted by the Commission in 2011 as a point of departure.[374] It was acknowledged that the law of armed conflict applied, in principle, as *lex specialis* during armed conflict. It was nevertheless also observed that legal gaps would be avoided by not ruling out the parallel applicability of international environmental law. This was an approach the Commission had used to address similar questions in relation to the topic "Protection of persons in the event of disasters". Some members also drew attention to the relevance of other legal fields such as human rights to the topic and encouraged the Special Rapporteur to examine further how these fields interrelate. In this context, it was suggested that the question of how the topic was intended to interact with the debate surrounding the relationship between international humanitarian law and human rights law should be addressed. Such an analysis should seek to clarify both the way in which environmental protections would be applied and how they would fit with related human rights protections.

143. Also from a methodological perspective, caution was expressed by some members against an attempt to simply transpose provisions of the law of armed conflict, as they applied with regard to the protection of civilians or civilian objects, to the protection of the environment. The material, personal and temporal scope of application of the law of armed conflict had to be respected. It was suggested that it might be more appropriate to develop specific rules for the protection of the environment, instead of overcoming gaps in the regime of environmental protection during armed conflict simply by stating that it is civilian in nature.

144. The detailed information on State practice and analysis of applicable rules contained in the report was generally welcomed, though some members also observed that it was not clear what conclusions could be drawn from it and how the information fed into the elaboration and content of the proposed draft principles. It was stressed that the Commission would need to know how to use the information in its work, whether the practice represented customary international law, emerging rules or new trends. The view was also expressed that some rules under the law of armed conflict relating to the protection of the environment did not seem to reflect customary international law. The Commission would therefore have to consider to what extent the final outcome would contribute to the development of *lex ferenda*.

145. Concerning the terminology used in the draft principles, several members questioned the lack of uniformity of concepts, in particular with regard to terms such as "environment" and "natural environment" which were used inconsistently in the text, giving rise to confusion. Furthermore, members generally questioned the placement of the provisions concerning scope, purpose and use of terms in the preamble. While they were sympathetic to the view of the Special Rapporteur that such provisions were not "principles" *per se*, they referred to past practice of the Commission and encouraged the Special Rapporteur to consider their placement, including by moving some of them into the operative part of the draft principles. It was also suggested, however, that they could be joined under an introductory heading.

146. With regard to the outcome and form of the topic, some members expressed a preference for draft articles, as this corresponded better with the prescriptive nature of the terminology used in some of the proposed draft principles. Several members supported the Special Rapporteur's proposal to develop draft principles. They did not agree with the view of some members that the Commission had adopted principles only when motivated by a desire to influence the development of international law, rather than laying down normative prescriptions. In their view, principles would indeed have legal significance, albeit at a more general and abstract level than rules. It was also argued that draft principles were particularly appropriate if the intention was not to develop a new convention. It was furthermore pointed out that the Commission might not wish to limit itself to principles, but also to propose recommendations or best practices. While several members considered that the structure of the draft principles should be aligned with the temporal phases, it was also observed that, as some of the draft principles would span more than one phase, a strict temporal division would be neither desirable nor feasible.

(b) *Scope*

147. There was substantial discussion on the limitations of the scope of the topic. Some members noted that it might be useful to add an element of threshold, indicating that the topic aimed to address situations of a *certain degree* of damage caused to the environment during armed conflict.

[374] *Yearbook … 2011*, vol. II (Part Two), paras. 100–101. The articles on the effects of armed conflicts on treaties adopted by the Commission are contained in the annex to General Assembly resolution 66/99 of 9 December 2011.

While there was widespread agreement that both international and non-international armed conflict should be covered by the topic, the need to clarify how the differences between these types of conflict were reflected was also noted. It was pointed out that, if the Commission decided to adopt one single regime covering both types of armed conflict, an approach that had its merits, it would be important to clearly indicate the methodology followed for this purpose. Several members also underlined the need for further research on the practice of non-State actors, in the context of non-international armed conflicts.

148. On the question of specific weapons, divergent views were expressed as to whether or not the draft principles would apply, as a matter of existing law, to nuclear weapons and other weapons of mass destruction. In the light of the declarations made by States upon ratification of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Additional Protocol I), concerning its non-applicability to nuclear weapons, it was suggested that the draft principles address this question by means of a "without prejudice" clause. The view was also expressed that further clarification on the scope of the topic in relation to weapons might be needed.

149. Some members were of the view that natural and cultural heritage should be excluded, though it was also observed that the issue had important linkages with the environment and merited being addressed. The importance of clearly differentiating between the human environment and the natural environment was also highlighted by some members, who considered the former concept to be outside the scope of the topic. Whereas some members emphasized that the exploitation of natural resources was not directly linked to the scope of the topic, it was suggested that the question of human rights infringements caused by actions affecting natural resources should be dealt with. Furthermore, some members were of the view that the draft principles should include a provision on indigenous peoples, in the light of their special relationship with the environment.

150. Some members referred to what they considered to be certain lacunae in the proposed draft principles, and various proposals concerning additional provisions were made. In this context, several members considered it important for the draft principles to reflect the prohibition on "employ[ing] methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment", as set forth in article 35, paragraph 3, of Additional Protocol I. While the high threshold of this provision was acknowledged, it was noted that at least it provided a minimum standard. A reference was also made to the duty of care expressed in article 55, paragraph 1, of Additional Protocol I: "Care shall be taken in warfare to protect the natural environment against wide-spread, long-term and severe damage." It was suggested that this provision be reflected either in draft principle 1 or in a separate draft principle. The view was also expressed that it would be appropriate for the draft principles to reflect the obligation contained in the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques "not to engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as [a] means of destruction, damage or injury" (art. 1). Besides the uncertainty regarding its customary international law status, it was observed that it would be difficult to contest the value of the principle in relation to contemporary international environmental law. It was further suggested that the draft principle ought to contain a prohibition on destruction of the environment that was not justified by military necessity and was carried out wantonly, drawing from language in General Assembly resolution 47/37 of 25 November 1992. It did not seem that this aspect was covered in draft principle 1, which addressed "attacks" but not necessarily the notion of "destruction".

151. Some members regretted the fact that the assertion in the report concerning the importance of national legislation on the protection of the environment had not been translated into the draft principles. A separate draft principle was therefore proposed to reflect a duty for States to undertake to protect the environment in relation to armed conflict through legislative measures consistent with applicable international law.

(c) *Purpose*

152. Several members expressed the view that the proposed provision on purpose was unduly restrictive. In addition to preventive and restorative measures, the draft principles also contained prohibitive clauses, as well as obligations to take precautionary measures. Several members proposed the deletion of the term "collateral". It was pointed out that the aim was to minimize all damage, whether collateral or not. It was also suggested that a distinction be made between intentional and collateral damage. The view was expressed that the question of collateral damage could be addressed in a separate draft principle, though some members observed that the term required further analysis.

(d) *Use of terms*

153. Several members supported the inclusion of a provision on the use of terms in the draft principles; such a provision would assist in properly determining the scope of the text and clarifying the subject matter at hand. Caution was nevertheless also voiced regarding any attempt to define, for the purpose of this topic, the terms "armed conflict" and "environment", which involved highly complex issues. With regard to the definition of "armed conflict", several members noted that it was broad enough to cover non-international armed conflicts, which are more common, more difficult to regulate, and more damaging to the environment. It was furthermore suggested that it might require some clarification to ensure that the draft principles only applied to situations in which the protracted use of force reached a certain level of intensity. Situations of internal disturbances of a pure law-enforcement nature would thus be excluded from the scope of the present topic. The broad manner in which the term "environment" had been defined was questioned by a number of members, and it was suggested that the scope of protection should be limited to the environment as relevant to armed conflict situations. In this regard, it was observed that it was not possible to borrow a definition from an

instrument dealing with peacetime situations and simply transpose it to situations of armed conflict.

(e) *Draft principle 1*

154. Whereas some members supported draft principle 1, several members expressed concern over the labelling of the environment as a whole as "civilian in nature", which they considered was too broad and ambiguous. The proposition seemed to imply an equation between the environment as a whole and the concept of a "civilian object", which would lead to significant difficulties when applying the principle of distinction. It was pointed out that the law of armed conflict did not address protection of persons or things in the abstract. It would therefore be more appropriate to express the rule of environmental protection in terms of its specific parts or features. It was also suggested that it be defined as a civilian object. Such an approach would enable a classification of protection under the rules applicable to the protection of civilian objects, though it was also observed that such rules could not automatically apply to the environment. It was pointed out that the circumstances in which a civilian object becomes a military objective, as well as the distinction of whether it becomes such an objective in whole or in part, required clarification. Some other members emphasized that the environment could not be considered a civilian "object", although it included such objects.

155. Some members drew attention to the second sentence of draft principle 1, which they considered could serve as the first principle, allowing the protection of the environment to be addressed first as a whole, then in parts. As such, the second sentence should either be reversed with the first or included in a separate principle altogether. It was also suggested that the scope of "applicable international law" should be clarified and that the pertinent rules under international humanitarian law should be identified.

(f) *Draft principle 2*

156. Members agreed in general with the thrust of draft principle 2, though concern over the formulation "strongest possible" protection was also voiced. It was pointed out that the expression did not accurately reflect the requirement under international humanitarian law, which sets forth an obligation to take feasible precautions to avoid and in any event minimize damage excessive to the concrete military advantage. Furthermore, it was noted that the wording did not seem to recognize that in certain circumstances it would not be possible to satisfy such a standard for the protection of both civilians and the environment. The view was also expressed that it would be necessary to adapt the principles referred to in this provision to the specificity of the environment, as well as to clarify their applicability in the light of the civilian status that the environment had been ascribed in draft principle 1. With regard to the principle of precaution, it was noted that the standard to be applied for the required assessment of "damage" should be clarified, particularly in terms of whether it was distinct from the criteria "widespread, severe and long-term damage". The point was also made that the draft principle should clarify the applicability of the principle of proportionality with regard to the parts of the environment that had lost their protection. A suggestion was made that a specific reference to the principle of humanity should be included.

(g) *Draft principle 3*

157. Several members supported draft principle 3, which they observed had been drawn from the International Court of Justice's advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons*.[375] However, the view was also expressed that the Court seemed to have addressed the issue of environmental considerations in relation to *jus ad bellum* and not *jus in bello*, which would render the proposition in draft principle 3 problematic. The counter point was also made that reference in the opinion was to *jus in bello*. Attention was also drawn to the fact that there might be situations in which environmental considerations were simply not relevant; the provision should include a caveat to acknowledge this. A suggestion was made that the content of draft principle 3 should be elaborated to clarify how environmental considerations should be taken into account in assessing necessity and proportionality. In this context, it was pointed out that "environmental considerations" would need to be properly defined and the limit of such considerations clarified. A proposal was made to add a sentence to the effect that such assessments should be done objectively and on the basis of the information available at the time. A certain overlap between draft principles 2 and 3 was observed by some members and the possibility of merging the two draft principles was therefore put forward. However, it was observed that draft principle 3 was more specific than draft principle 2 and should be retained.

(h) *Draft principle 4*

158. Several members noted that draft principle 4 mirrored the provision laid down in article 55, paragraph 2, of Additional Protocol I and expressed support for its inclusion. An absolute prohibition seemed appropriate; if the environment, or part thereof, became a military objective, other rules applied concerning attacks against it. Anything less than an absolute prohibition did not therefore seem warranted. It was further observed that the fact that the prohibition might exist only as a treaty obligation and not as a customary rule could be explained in the commentaries; the task of the Commission was not to produce a catalogue of customary rules. However, some other members considered it highly pertinent that the prohibition on reprisals was not generally accepted as a rule under customary international law and should be reflected as such in the draft principle. The drafting of the prohibition in such absolute terms as had been proposed by the Special Rapporteur was therefore questioned by those members. Moreover, it was observed that, in exceptional cases, belligerent reprisals could be considered lawful when used as enforcement measures in reaction to unlawful acts by the other party. In this context, references were made to the reservations made by States to article 55, paragraph 2, of Additional Protocol I, as well as to the definition of reprisals contained in the ICRC customary international law study.[376] To the extent that

[375] *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, *I.C.J. Reports 1996*, p. 226.

[376] J.-M. Henckaerts and L. Doswald-Beck (eds.), *Customary International Humanitarian Law*, vols. I and II (Cambridge, Cambridge University Press, 2005).

the draft principles addressed all armed conflict—international and non-international—attention was drawn to the fact that neither article 3, common to the Geneva Conventions, nor the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Additional Protocol II) contained a specific prohibition on belligerent reprisals. The draft principle should therefore be redrafted with appropriate caveats. The view was nevertheless also expressed that this was an area where the Commission might wish to engage in the progressive development of the law in order to extend the prohibition of reprisals to non-international armed conflicts.

(i) *Draft principle 5*

159. While several members expressed support for the thrust of draft principle 5, which concerned the designation of areas of major ecological importance as demilitarized zones prior to an armed conflict or at its outset, they observed that it raised several important questions that required further examination, both with regard to the practical application of such a provision and its normative implications. A doubt was also expressed with regard to the legal foundation of this draft principle and to its realization.

160. While some members were of the view that this provision related to phase I, peacetime obligations, some other members pointed out that it could apply also to phase II, during armed conflict, or even phase III, concerning post-conflict obligations. Suggestions were accordingly made to extend the temporal scope of draft principle 5, as well as to address the legal implications of such zones *vis-à-vis* the other parties to a conflict, including obligations not to attack them. It was observed that the conclusion of mutual agreements between the parties to a conflict establishing such areas and zones would offer a higher degree of protection than unilateral designations; the draft principle should include language to that effect. Some members also expressed the view that cultural and natural heritage sites should fall within the scope of this draft principle. A proposal was made to include a separate draft principle on nuclear-weapon-free zones, regarding the protection of the environment therein, and on the need for third States to meet the obligations they had undertaken to respect such zones.

161. Several members encouraged the Special Rapporteur to analyse the complex legal and practical issues that arose in connection with this draft principle in more detail in her next report and to elaborate the proposed regime.

(j) *Future programme of work*

162. Some members expressed support for the proposal by the Special Rapporteur for her third report to address the law applicable in post-conflict situations and issues that had not yet been examined during phase II, and to provide a summary analysis of the three phases. Nevertheless, it was also observed that it was not entirely clear how the Special Rapporteur intended to proceed with the topic after her third report and it was hoped that this could be clarified further. It was suggested that an outline of the draft principles envisaged by the Special Rapporteur should be elaborated so as to facilitate work.

163. Regarding specific issues to be considered in the third report, the view was expressed that the Special Rapporteur should analyse other treaties on international humanitarian law limiting means and methods of warfare that might have an adverse effect on the natural environment in greater depth, examining in particular developments in new technologies and weaponry. The Special Rapporteur's intention to consider the question of occupation in relation to both phases II and III was welcomed by a number of members. It was also suggested that the Special Rapporteur should propose draft principles relating to the training of armed forces and the development and dissemination of relevant educational materials. Finally, the view was expressed that the Special Rapporteur should include propositions concerning ways and means in which international organizations can contribute to the legal protection of the environment in relation to armed conflict. Some members encouraged the Special Rapporteur to structure the future draft principles to correspond with the temporal phases.

164. Some members welcomed the Special Rapporteur's intention to continue consultation with other entities, such as the ICRC, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and UNEP, as well as regional organizations. They also agreed that it would be useful if States could continue to provide examples of legislation and relevant case law.

3. Concluding remarks of the Special Rapporteur

165. In the light of the comments made during the plenary debate concerning the structure and methodology of the report and the draft principles, the Special Rapporteur considered it useful to clarify that the overall outline for the topic would consist of several draft principles grouped together in relation to their functional purpose, so as to reflect to the extent possible the three temporal phases. It was further reiterated that the draft principles proposed in the present report related to the second temporal phase (during armed conflict), which was the focus of the report. The placement and numbering of the draft principles should therefore be seen in that context and were accordingly provisional in nature; draft principles on phases I and III would be added in a future report. The Special Rapporteur shared the view that the topic needed a proper preamble, which might be elaborated at a later stage of the process. Furthermore, the Special Rapporteur emphasized that the question of what other rules might apply during an armed conflict, including rules and principles of international environmental law, was the core of the topic, and she was therefore in full agreement with the comments made regarding the necessity of addressing these issues. However, in the light of the focus of the second report on identifying rules and principles of the law of armed conflict that related to the protection of the environment, it was not possible to add other fields of the law into that examination. Such an examination would be done at a subsequent stage.

166. In response to questions raised with regard to the use of the terms "environment" and "natural environment" in the draft principles, the Special Rapporteur explained that the rationale behind this was linked to the scope of the topic, which was broad and referred to the term "environment".

As such, this must be reflected in the provision on scope and purpose. The draft principles relating to phase II, however, reflected provisions of the law of armed conflict that used a narrower concept, namely the "natural environment". In order not to be perceived as expanding the scope of the law of armed conflict, the term natural environment had been retained for that specific context. It was this distinction that the two terms had sought to capture.

167. The Special Rapporteur noted that draft principle 1 had generated much debate. She clarified that the proposed formulation "the environment is civilian in nature" was informed by the principle of distinction in the law of armed conflict between civilian objects and military objectives, which meant that the environment must fall into one or other of those two categories for the purpose of applying the law of armed conflict. It was this notion that she had sought to capture in her formulation. She had refrained from referring to the environment as a civilian "object", since it could be confusing, although in her view, parts of the environment could constitute a civilian object. Nevertheless, she agreed that labelling the environment as a whole an "object" would not be appropriate. Since the proposition had created some confusion, she considered that it might be better to avoid its further use in the draft principle.

168. Concerning the term "collateral damage", the Special Rapporteur observed that the concept had become almost synonymous with damage to civilians and civilian property that might occur as a consequence of a legitimate attack and was directly linked to the principle of proportionality. In the light of the comments made in the debate, the Special Rapporteur suggested that it could be deleted from the draft principles.

169. With regard to the views expressed by some members that the prohibition against reprisals was not a rule under customary international law, the Special Rapporteur stressed that the purpose of the topic was not to establish customary rules but to set a standard. Furthermore, in view of the large number of States parties to Additional Protocol I, it would be regrettable if the Commission were not in a position to recognize that important prohibition or downplayed it.

170. Finally, the Special Rapporteur expressed the view that it would not be appropriate for the Commission to attempt to address the question of thresholds with regard to certain terms used in the law of armed conflict, in particular with regard to articles 35 and 55 of Additional Protocol I, as had been suggested by some members.