

EFFECTS OF ARMED CONFLICTS ON TREATIES

Statement of the Chairman of the Drafting Committee

Mr. Pedro Comissário Afonso
6 June 2008

Mr. Chairman,

I have the honour to introduce the 4th report of the Drafting Committee, this time on the topic “Effects of armed conflicts on treaties”. The report is contained in document A/CN.4/L.727.

It will be recalled that last year, the plenary, at its 2946th meeting, on 2 August 2007, referred draft articles 1 to 3, 5, 5 *bis*, 7, 10 and 11, as proposed by the Special Rapporteur in his third report (A/CN.4/578 and Corr.1) to the Drafting Committee, as well as draft article 4, as proposed by the Working Group on the Effects of Armed Conflicts on Treaties. At the current session, the Plenary at its 2964th meeting, held on 16 May, referred draft articles 8, 8 *bis*, 8 *ter*, 8 *quater*, 9 and 14, as proposed by the Working Group, as well as draft articles 12 and 13, as proposed by the Special Rapporteur, to the Drafting Committee. The Drafting Committee also had before it a series of policy guidelines prepared by the Working Group last year and this year.

The Drafting Committee held four meetings on 29 May, 2, 3 and 4 June 2008, and I am pleased to report that it completed, on first reading, a set of 18 draft articles on the “Effects of armed conflicts on treaties”. I wish to note that the Drafting Committee has one more task to complete. With respect to draft article 5, the Special Rapporteur will prepare during the break an annex for consideration when we resume our work in July. The adoption of the draft articles by the Plenary

at the present stage will allow the Special Rapporteur sufficient time to prepare, intersessionally, the commentaries.

Allow me to pay tribute to the Special Rapporteur, Mr. Ian Brownlie whose mastery of the subject, perseverance and positive disposition greatly facilitated the task of the Committee. I would also wish to express my appreciation to the members of the Committee for their active participation in the deliberations of the Committee and their valuable contributions. I would equally be remiss if I did not mention the contribution of the Working Group which has immensely facilitated the task of the Drafting Committee.

Before turning to the substance of the draft articles, allow me to recall that the Working Group, in this year's report (A/CN.4/L.726), noted that the Drafting Committee should also take into account the possibility of withdrawal from certain types of treaties, as one of the consequences of the outbreak of armed conflict, alongside suspension or termination. The Committee considered this possibility in relation to a number of draft articles, while at the same time recognizing that withdrawal has not been a major element in the practice and doctrine, and that the considerations relevant to withdrawal were not necessarily the same as for termination or suspension, and that withdrawal had to be mentioned only where appropriate. I will indicate the draft articles where the Committee decided to include the possibility of withdrawal.

Structurally the draft articles could be divided into several clusters: Draft articles 1 and 2 are introductory in nature, dealing with scope and use of terms. Draft articles 3, 4 and 5 are the core provisions of the text which reflect the underlying foundation of the draft articles of favouring legal stability and continuity. Draft articles 6 and 7 extrapolate from the basic principles in draft articles 3 to 5 a number of basic legal propositions. Draft articles 8 to 12 address various ancillary aspects of termination, withdrawal and suspension. Draft articles

13 to 18 deal with a number of miscellaneous issues and include a number of saving clauses.

Mr. Chairman,

I shall now turn to the substance of the draft articles, beginning with draft article 1.

Draft article 1. Scope

Draft article 1 situates, as the point of departure for the elaboration of the draft articles, the Vienna Convention on the Law of Treaties, of 1969 (the ‘Vienna Convention’), article 73 of which provides, *inter alia*, that the provisions of the Convention do not prejudice any question that may arise in regard to a treaty from the outbreak of hostilities between States. Thus, the present draft articles apply to the effects of an armed conflict in respect of treaties between States. This formulation tracks the language of article 1 of the Vienna Convention.

Bearing in mind the proposal of the Working Group, the Drafting Committee amended the draft article by adding a reference at the end of the sentence to “when at least one of the States is a party to the armed conflict”. The Working Group had recommended such specification in order to indicate that the draft articles was also to cover the position of third States parties to a treaty with a State involved in an armed conflict. Accordingly, the draft articles extend to three scenarios: (a) the treaty relations between two States engaged in an armed conflict; (b) the treaty relations between a State engaged in an armed conflict and a third State not party to that conflict; and (c), the situation of the effect of an internal armed conflict on the treaty relations of the State in question with third States.

The Drafting Committee decided, on the suggestion of the Working Group, that the question of the effect on treaties involving international organizations should not be considered in the draft articles at this stage. Therefore, the present draft articles do not consider the effect of armed conflict on treaties involving international organizations.

The title of the draft article is “scope”.

Draft article 2. Use of terms

Draft article 2 provides definitions for two key terms used in the draft articles.

Paragraph (a) defines the term “treaty”, and reproduces the formulation in article 2(1)(a) of the Vienna Convention.

Paragraph (b) defines the term “armed conflict” and is based on the version initially proposed by the Special Rapporteur, with some refinements, which was, in turn, based on the resolution on this topic adopted in 1985 by the Institute of International Law. It should be reiterated that there was no intention to provide a definition of armed conflict for international law generally, which would have been difficult and beyond the scope of the topic. Instead, the proposed definition is intended as a working definition for the purposes of the present draft articles only.

The definition applies to treaty relations between States Parties to an armed conflict and a State party to an armed conflict and a third State. The formulation of the provision, particularly the reference to “between a State party to the armed conflict and a third State”, is intended to cover the effects of an armed conflict which may vary according to the circumstances. Accordingly, it also covers the situation where the armed conflict only affects the operation of a treaty with regard

to one of the Parties to a treaty, and it recognizes that an armed conflict may affect the obligations of Parties to a treaty in different ways. That phrase also serves to include the possible effect of an internal armed conflict on a treaty with a third State within the scope of the draft articles.

There were views in the Drafting Committee that the definition of armed conflict retained an element of circularity to it, namely, that the provision was seeking to define armed conflicts by reference to conflicts “likely to affect” treaties, when such likelihood is established by the present draft articles. The Committee dealt with this issue by making it clear that it was the effect on the “application” of the treaty which was the subject matter of the draft articles.

As regards the requirement of intensity implied in the phrase “which by their nature and extent are likely to affect”, an element of flexibility has been retained in the draft articles to accord with the wide variety of historical situations. Hence, in some situations, it is possible to say that the level of intensity is less of a factor, for example, in relation to low-level conflict in a border-region which, despite such a low level of intensity, drastically affects the application of bilateral treaties regulating the control of border traffic. On the other hand, the Committee recognized that there exist historical situations where the nature and extent of the armed conflict does have a bearing on the application of treaties.

The Committee considered a proposal to make the inclusion of internal armed conflict more explicit in the provision, but decided against doing so in order to avoid reflecting specific factual scenarios in the draft, and, accordingly, running the risk of *a contrario* interpretations excluding other scenarios. The commentaries will provide examples of the wide range of possibilities, including the situation of where an entirely internal armed conflict has an effect on a treaty with a third State. Other examples of situations covered by the draft articles for reflection in the

commentaries include special cases such as blockade and the situation of occupation during an armed conflict.

The title of the draft article is “Use of terms”.

Draft article 3. Non-automatic termination or suspension

Draft article 3 is of an overriding significance. It establishes the basic principle of legal stability and continuity. On that it incorporates the key developments in the 1985 resolution of the Institute of International Law, shifting the legal position in favour of a regime establishing a presumption that an outbreak of armed conflict does not as such cause the suspension or termination of the treaty. At the same time, it was recognized that there was no easy answer to reconcile the principle of stability, in draft article 3, with the fact that in practice the outbreak of armed conflict does have the result of terminating or suspending treaty obligations.

The Committee considered whether to replace “necessarily” with “automatically” in order to be consistent with the title, but decided against it, since “necessarily” was closer to *ipso facto*, which the Special Rapporteur had used in his initial proposal, on the basis of article 5 of the resolution adopted by the Institute of International Law.

The Committee refined the text to make it more consistent with that of draft article 2 by clarifying, in subparagraph (a), that what was being referred to was “State parties” to the armed conflict, and, in subparagraph (b), that what is covered is the operation of treaties between “a State party” to the armed conflict and a third State.

The Committee decided not to include the possibility of withdrawal from a treaty in draft article 3, since withdrawal involves a conscious decision by a State, whereas draft article 3 deals with the automatic application of law.

The title remains “Non-automatic termination or suspension”.

Draft article 4. Indicia of susceptibility to termination, withdrawal or suspension of treaties

Draft article 4 follows from the content of draft article 3. The outbreak of armed conflict does not necessarily put an end or suspend the operation of the treaty. It is another key provision of the draft articles. It is based on a reformulation prepared by the Working Group, replacing the initial reference to the “intention of the parties” by a number of specific indicia to be taken into account when considering the susceptibility of treaties to suspension or termination.

The only change made to the chapeau concerns the inclusion of withdrawal from treaties as one of the possibilities open to States parties to an armed conflict. The question of withdrawal in the present article provides an appropriate context for its inclusion in subsequent ancillary draft articles.

As regards the indicia listed in subparagraphs (a) and (b), the Committee considered proposals to replace “indicia”, including “factors” and “criteria”, but decided to retain “indicia” so as to avoid any implication that they are established requirements. They are to be viewed as mere indications of susceptibility which would be relevant for particular cases depending on the circumstances. It was also understood in the Committee that the indicia listed in subparagraph (b) were not to be seen as being exhaustive. Indeed, it should be recalled that articles 31 and 32 of

the Vienna Convention, which are referred to in subparagraph (a), themselves contain a number of indicia to be taken into account.

The Committee considered a proposal to also regard the question of the legality of the use of force as one of the factors to be taken into consideration under draft article 4, but decided to leave the matter to be resolved within the context of the application of draft articles 13 to 15.

It was further recognized in the Committee that it cannot be assumed that the effect of armed conflict between Parties to the same treaty would be the same as that on treaties between a party to an armed conflict and a third State. It was decided that this aspect would be dealt with in the commentary.

The Drafting Committee considered a number of formulations for the title but settled on the version initially proposed by the Special Rapporteur with the inclusion of the reference to withdrawal and the deletion of the reference to “in case of an armed conflict”, which was superfluous. The title adopted by the Committee is “Indicia of susceptibility to termination, withdrawal or suspension of treaties”.

Draft article 5. Operation of treaties on the basis of implication from their subject matter

Draft article 5 is a new provision, but has its origins in former draft article 7, as proposed by the Special Rapporteur. The reference to “necessary” implication, as contained in the original text has been removed so as to avoid any possible contradiction with draft article 4. In addition, the initial reference to “object and purpose” was replaced with “subject matter” on the recommendation of the Working Group. The text was refined at the end with the replacement of “inhibit” by “affect” which is more in line with the language used in the draft articles.

The original draft article 7 included a list of categories of treaties whose subject matter involved the necessary implication that they would continue in operation during an armed conflict. It was the recommendation of the Working Group that the list instead be appended to the draft articles. The Drafting Committee decided that the content of former draft article 7, paragraph 1, in an adjusted form, should be located after draft article 4 as new draft article 5. A proposal to include it as an additional paragraph in draft article 4 was not considered appropriate as it would have affected the balance of that article.

In addition, the Drafting Committee agreed to include an annex containing a list of categories of treaties the subject matter of which involves the implication that they continue in operation during armed conflict, based on the list contained in the Special Rapporteur's initial proposal for paragraph 2 of draft article 7. However, the consideration of those categories of treaties, including an exposition of State practice, would be reflected in the commentary to draft article 5. It was understood that in the preparation of the annex account would be taken of the preferences expressed by States in the debate in the Sixth Committee and by Commission members in the plenary. The Drafting Committee did not, however, have the opportunity to discuss the categories to be included in the annex. As mentioned earlier, the Special Rapporteur will prepare a proposal for that annex, for the consideration of the Drafting Committee at the second part of our session. Here, I draw the attention of the Commission to the footnote at the end of draft article 5, which makes the necessary cross-reference to the Annex.

The title of draft article 5 is "Operation of treaties on the basis of implication from their subject matter"

Draft article 6 [5 bis]. Conclusion of treaties during armed conflict

Draft articles 6 and 7 should be read in sequence. They were included to preserve the principle *pacta sunt servanda*; and they are in line with the basic policy of the draft articles, which seeks to ensure the legal security and continuity of treaties. These two draft articles reflect the fact that States may, in times of armed conflict, have dealings with one another.

Draft article 6 contains two paragraphs. Paragraph 1 reflects the basic proposition that an armed conflict does not affect the capacity of a State party to that conflict to enter into treaties. The provision initially appeared as draft article 5 *bis*, after what has now become draft article 7. However, the Committee decided to reverse the order of the two draft articles since the present provision deals with a potential treaty, while draft article 7 envisages the existence of a treaty.

One proposal that was made was to specify that what was meant was the “legal” capacity of States. It was recognized that even if, technically speaking, the provision deals with the effect of armed conflict on the capacity of States to enter into agreements, as opposed to the effect on the treaty itself, it was thought useful nonetheless to retain the paragraph in the draft articles. The provision was further refined to indicate the capacity “of a State Party to that conflict”, so as to indicate that there may be only one State party to the armed conflict, as in situations of internal armed conflict. The Committee also considered, but did not accept, a proposal to delete the draft article, and to reflect it in the commentary.

Paragraph 2 has its origin in the Special Rapporteur’s initial proposal for draft article 5 which the Drafting Committee separated into two provisions: one of which has been included in this draft article, and the other remains in draft article 7. It deals with the practice of States parties to an armed conflict expressly

agreeing during the armed conflict either to suspend or to terminate a treaty which is operative between them at the time.

The title of the draft article is “Conclusion of treaties during armed conflict”.

Draft article 7 [5]. Express provisions on the operation of treaties

Draft article 7 deals with the further possibility of treaties expressly providing for their continued operation in situations of armed conflict. It lays down the general rule that where a treaty so provides it continues to operate in situations of armed conflict. It was noted that the draft article rests on a substantial amount of doctrine and practice which recognizes the making of lawful agreements even in the situation of armed conflict.

The Drafting Committee undertook its consideration of this draft article on the basis of a proposal of the Special Rapporteur which contained two ideas: (a) the continued operation in times of armed conflict of a treaty in accordance with its own express terms; and (b) the possibility of the States parties to the treaty subsequently agreeing, during the armed conflict, either to suspend or to terminate the treaty. The Committee finally decided to separate the two concepts, keeping the first as the subject of this draft article, and placing the latter as paragraph 2 in draft article 6.

As for the formulation of draft article 7, the Committee proceeded on the basis of a proposal which focused on the “operativeness” of the types of treaties under discussion not being affected by a conflict. This proposal was further refined to become the text now before you. Initially, the provision referred to the continuation “in force” of the treaty. Some proposals were made to refer instead to continuing to “apply” or to “operate”. The Committee decided on the latter option

since it felt that the emphasis should be placed not on whether the treaty remained in force or whether it was potentially applicable, but rather on whether it was actually operational in the context of armed conflict.

The Drafting Committee also considered whether to retain the reference to the treaty “expressly” providing for continuance during an armed conflict. There was a view in the Committee that such a qualifier was unnecessarily limiting, since there existed treaties which, although not expressly providing therefore, continued in operation by implication. However, on balance, it was decided to retain a stricter formulation, which clearly covers only treaties containing such express provisions, and to leave treaties which by necessary implication continue in operation to be covered by the application of draft articles 4 and 5.

Other proposals included deleting the provision, as it was purely expository in nature, or locating it as a further subparagraph under draft article 4.

The title of the draft article is “Express provisions on the operation of treaties”.

Draft article 8. Notification of termination, withdrawal or suspension

Draft article 8 establishes a basic duty of notification of termination, withdrawal or suspension from the treaty. The text eventually adopted is substantially the same as that which had been worked out by the Working Group, based on article 65 of the Vienna Convention, albeit streamlined and adjusted to the context of armed conflict. The intention behind the draft article was to establish a basic duty of notification, while recognizing the right of another State party to the treaty to raise an objection, but not to go further. In other words, in such situations there would be a dispute that would remain unresolved, at least for the remainder

of the conflict. The Committee thought that it was not feasible to maintain a fuller equivalent of article 65, as it was illusory to want to impose a peaceful settlement of disputes regime for the termination, withdrawal from or suspension of treaties in the context of armed conflict.

In paragraph 1, the Drafting Committee aligned the text with the Vienna Convention, replacing “wishing” by “intending”, and then adding the words “of that intention” at the end in order to specify what the object of the notification was. The Committee also considered the possibility of rendering the last phrase as “of its claim” which is the language in the Vienna Convention, but decided against it so as to more clearly distinguish this procedure from that in article 65 of the Vienna Convention.

On the reference to “or its depositary”, the Drafting Committee considered a proposal to change it to “and its depositary”, or to delete the reference to “other States”. However, it finally retained the text as initially proposed since it is the function of the depositary to notify the parties. Furthermore, the Committee was aware, of course, that there are treaties which do not have depositaries. Accordingly, the possibility of notifying either the States parties or the depositary needs to be provided for in paragraph 1. However, as regards the taking effect of the notification, what is important is the moment at which the other State party or States parties receive the notification, and not the moment at which the depositary receives the notification. Hence, no reference to the depositary is made in paragraph 2.

On the formulation of paragraph 2, the Committee considered a proposal to specify that it is the “termination, suspension or withdrawal” which takes effect upon receipt of the notification. However, it was decided to retain the reference only to the “notification” taking effect, since adopting the proposed amendment would have had the effect of indicating that the termination, suspension or

withdrawal would take place immediately upon receipt when it is anticipated in paragraph 3 that a party to the treaty retains the right to object termination.

As regards paragraph 3, the initial proposal contained a reference to objection to “such” termination, withdrawal, or suspension of the operation of the treaty which suggested that the termination, withdrawal or suspension had already taken place by virtue of the notification, which was not what was intended in paragraph 2. The intention of the paragraph is to preserve the right that may exist under a treaty or general international law to object to the termination, suspension or withdrawal of the treaty. Hence, the objection is to the intention to terminate, suspend or withdraw, which is communicated by the notification envisaged in paragraph 1. Proposals for refinement included to state “intention”, “claim”, “any attempt” or “purported termination, withdrawal or suspension”. The solution the Committee settled on was simply to remove the word “such” so as to indicate that the objection is to the proposed termination, withdrawal or suspension, but without suggesting that the termination, withdrawal or suspension has already occurred. These issues will be discussed more fully in the commentary.

The title of draft article 8 is “Notification of termination, withdrawal or suspension”.

Draft article 9 [8 bis]. Obligations imposed by international law independently of a treaty

Draft articles 9 to 11 seek to establish a modified regime modeled on articles 43 to 45 of the Vienna Convention. Draft article 9, based on a proposal of the Working Group, has its roots in article 43 of the Vienna Convention. Its purpose is to preserve the requirement of the fulfillment of an obligation under general

international law, where the same obligation appears in a treaty which has been terminated or suspended, or from which the State party has withdrawn, as a consequence of an armed conflict. This latter point, namely, the linkage to the armed conflict, was added by the Drafting Committee in order to put the provision into its proper context for our purposes. Furthermore, the words “as a result of the application of the present draft articles or of the provisions of the treaty”, which had been included in the earlier version on the basis of the text appearing in article 43 of the Vienna Convention, was considered unnecessary and was deleted.

The Committee considered proposals to delete the concluding phrase “independently of that treaty”, or to replace it by “general international law”, but finally held that it was preferable to retain that aspect of the formulation of the Vienna Convention.

The title of the draft article is “Obligations imposed by international law independently of a treaty”.

Draft article 10 [8 *ter*]. Separability of treaty provisions

Draft article 10 deals with the possibility of the separability of provisions of treaties which are affected by an armed conflict. The text submitted to the Drafting Committee was prepared by the Working Group this year on the basis of article 44 of the Vienna Convention.

The Committee first considered a concern that the initial version of the chapeau, which was based on its counterpart in article 44 of the Vienna Convention, gave the impression that the default rule was that the entire treaty was either terminated or suspended unless there were grounds for separation of provisions. It was noted that the issue regarding the effect of armed conflict was different from that envisaged in the Vienna Convention, in the sense that there

exists practice where the effect of an armed conflict on some treaties is only partial. To have it otherwise would be to suggest that the effect is always on the entire treaty.

Suggestions on how to deal with this matter included deleting the draft article and adding a further paragraph to draft article 4, indicating that in some cases the effect on a treaty of an armed conflict could be partial; or indicating in the chapeau of draft article 4 “...a treaty *or provisions of a treaty*”. The Committee, however, decided to retain draft article 10, but to deal with the matter by means of a reformulation of the chapeau which you now have before you, and which no longer emphasizes the pre-existence of a right in the treaty to terminate, withdraw from or suspend.

The Committee saw no need to amend subparagraphs (a) to (c) which are verbatim the text of their equivalents in article 44.

The title of the draft article is “Separability of treaty provisions”.

Draft article 11 [8 *quater*]. Loss of the right to terminate, withdraw from or suspend the operation of a treaty

Draft article 11 is also based on the equivalent provision in the Vienna Convention, namely, article 45. This provision deals with the loss of the right to terminate, withdraw from or suspend the operation of a treaty. Other than adding an express reference to the context of an armed conflict in the chapeau, the draft article proved uncontroversial.

The title of the draft article is “Loss of the right to terminate, withdraw from or suspend the operation of a treaty”.

Draft article 12 [9]. Resumption of suspended treaties

Draft article 12 deals with the resumption of treaties which were suspended as a consequence of an armed conflict. The Drafting Committee proceeded on the basis of a formulation proposed by the Working Group which replaced an earlier reference to the criterion of the intention of the parties by a simple cross-reference to the indicia in draft article 4. The Committee considered a proposal to include the element of immediate resumption, but decided against it so as to allow the question of when a treaty is resumed to be solved on a case-by-case basis. The Drafting Committee, having elected to use the term “indicia” in the title of draft article 4, decided to replace the reference to “the criteria in draft article 4” by the formula “the indicia referred to in draft article 4”.

The title of the draft article is “Resumption of suspended treaties”.

Draft article 13 [10]. Effect of the exercise of the right to individual or collective self-defence on a treaty

Draft article 13 is the first of three articles which the Drafting Committee, following the recommendation of the Working Group, based on the relevant resolution of the Institute of International Law, adopted at the Helsinki session in 1985.

This draft article covers the situation of a State exercising its right of individual or collective self-defence in accordance with the Charter of the United Nations. Such State is entitled to suspend in whole or in part the operation of a

treaty incompatible with the exercise of that right, subject to the limitation that the Security Council could subsequently determine that such an act of self-defence in reality constituted an act of aggression. This latter element is covered by draft articles 14 and 15.

Draft article 13 follows the formulation in article 7 of the resolution of the Institute of International Law, and has not been amended in substance by the Drafting Committee.

The title of draft article 13 is “Effect of the exercise of the right to individual or collective self-defence on a treaty”.

Draft article 14 [11]. Decisions of the Security Council

Draft article 14 seeks to preserve the legal effects of decisions of the Security Council, taken under Chapter VII of the Charter of the United Nations. It has the same function as article 8 of the 1985 resolution of the Institute of International Law. The Drafting Committee decided that it preferred the approach, taken by the Special Rapporteur, of presenting the provision in the form of a “without prejudice” clause, instead of the formulation adopted by the Institute which was cast in more affirmative terms. The preference in the Committee was not to deal directly with the powers of the Security Council in these draft articles. Following the approach of the Institute could have had consequences on matters outside the scope of these articles. Furthermore, the Committee, on balance, thought that the text proposed by the Special Rapporteur was more precise since it included a reference to decisions taken under Chapter VII of the Charter of the United Nations. On this latter point, there was a view in the Drafting Committee in

favour of deleting the reference to the “provisions of Chapter VII”, so as to reflect the possibility that the Council could take decisions under other chapters of the Charter. However, the Committee decided to retain the reference to Chapter VII because the context of the draft articles was that of armed conflict.

The title of the draft article is “Decisions of the Security Council”.

Draft article 15. Prohibition of benefit to an aggressor State

Draft article 15 is a new provision. Following the recommendation of the Working Group to consider the resolution of the Institute of International Law, the Drafting Committee decided to include a draft article to cover the content of article 9 of that resolution. This new provision prohibits an aggressor State from benefiting from the possibility of termination, withdrawal from or suspension of a treaty as a consequence of the armed conflict it has provoked. The formulation of the provision is based on in the text of article 9 of the Institute’s resolution, with some adjustments, particularly to include the possibility of withdrawal from a treaty and to specify that we are dealing with treaties that are terminated, withdrawn from or suspended *as a consequence* of the armed conflict in question.

The Committee considered proposals for refining the reference to “within the meaning of” in the first line, including “contrary to”, but decided to retain the text as found in the resolution of the Institute of International Law.

The title of the draft article is “Prohibition of benefit to an aggressor State”. I might add here that this title was specifically chosen to emphasize that the provision dealt less with the question of the commission of aggression, and more with the possible benefit, in terms of the termination, withdrawal from or

suspension of a treaty that might be attained by an aggressor State from the armed conflict in question.

Draft article 16 [12]. Rights and duties arising from the laws of neutrality

Draft article 16 is a further “without prejudice” clause, in this case seeking to preserve the rights and duties of States arising from the laws of neutrality. It is presented as a new formulation which the Drafting Committee preferred since the version referred to the Drafting Committee - which had been proposed by the Special Rapporteur – had made a more specific reference to the “status of third States as neutrals”. It was felt that the reference to “neutrals” was, as a matter of drafting, imprecise, as it was not clear whether it referred to formal neutrality or mere non-belligerency. The change to “laws of neutrality” does not constitute a substantive change from the proposal made by the Special Rapporteur. The reformulation turns the provision into more of a saving clause.

The title of the draft article is “Rights and duties arising from the laws of neutrality”.

Draft article 17 [13]. Other cases of termination, withdrawal or suspension

Draft article 17 preserves the possibility of termination or suspension of treaties arising out of the application of other rules of international law, in the case of the four examples listed in subparagraphs (a) to (d), by the application of the Vienna Convention. The provision was uncontroversial and was adopted in the form originally proposed by the Special Rapporteur, with the two changes suggested by the Working Group, namely, adding “Other” to the title, to indicate that these grounds are additional to those in the present draft articles, as well as the

addition of “inter alia” at the end of the chapeau to clarify that what follows is an indicative list. In addition, the Committee subsequently added withdrawal to the list of possible effects listed in the chapeau.

The title of the draft article therefore is “Other cases of termination, withdrawal or suspension”.

Draft article 18 [14]. Revival of treaty relations subsequent to an armed conflict

The last provision, draft article 18, seeks to deal with the fact that, in practice, States parties to an armed conflict have, subsequent to that conflict, entered into specific agreements regulating the revival of treaties which may have been terminated or suspended as a consequence of the conflict. The draft articles do not prejudice the right of States to enter into such agreements. The Drafting Committee proceeded on the basis of a revised text agreed upon in the Working Group, which was accepted by the Drafting Committee with some changes. The initial version referred to the “competence” of parties. This was changed to “right”, as the concept of competence had a specific meaning under the Vienna Convention. In addition, the text was further clarified by specifying that we are referring here to the right of “States” parties to the conflict.

The title of the draft article is “Revival of treaty relations subsequent to an armed conflict”.

Mr. Chairman,

This concludes my presentation of the report of the Drafting Committee on this topic which is submitted to the plenary with the recommendation that it adopt, on first reading, the set of 18 draft articles on the effects on armed conflicts on

treaties. As mentioned earlier, the plenary will also have the opportunity during the second part of this year's session, to consider the Drafting Committee's proposal for an Annex to the draft articles.

Thank you.