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EFFECTS OF ARMED CONFLICTS ON TREATIES

Report of the Working Group

1. Introduction

1. The International Law Commission, at its 2928th meeting on 31 May 2007, established a Working Group, to be chaired by Mr. Lucius Caflisch,¹ to provide further guidance regarding several issues which had been identified in the Commission's consideration of the Special Rapporteur's third report.
2. The Working Group held eight meetings from 10 to 24 July 2007.

¹ The composition of the Working Group was announced at the 2933rd meeting, on 10 July 2007, as being as follows: Mr. L. Caflisch (Chairman), Mr. I. Brownlie (Special Rapporteur), Mr. P. Comissário Afonso, Ms. P. Escameia, Mr. S. Fomba, Mr. G. Gaja, Mr. M.D. Hmoud, Ms. M.G. Jacobsson, Mr. R.A. Kolodkin, Mr. D.M. McRae, Mr. B.H. Niehaus, Mr. G. Nolte, Mr. B. Ojo, Mr. A. Pellet, Mr. A.R. Perera, Mr. E. Vargas Carreño, Mr. M. Vázquez-Bermúdez, Mr. N. Wisnumurti, Ms. H. Xue, Mr. C. Yamada and Mr. E. Petrič (ex officio).

3. The work programme of the Group was organized into three clusters of issues: (1) matters related to the scope of the draft articles; (2) questions concerning draft articles 3, 4 and 7, as proposed by the Special Rapporteur in his third report;² and (3) other matters raised during the debate in the plenary. The Working Group completed its consideration of the first two clusters, but was unable to complete its work on the third cluster.

2. Recommendations of the Working Group

4. The Working Group recommends that:

(1) Draft articles 1 to 3, 5, 5 bis, 7, 10 and 11, as proposed by the Special Rapporteur in his third report, be referred to the Drafting Committee, with the following guidance:

(a) As regards draft article 1:

- (i) The draft articles should apply to all treaties between States where at least one of which is a party to an armed conflict;
- (ii) In principle, the consideration of treaties involving international intergovernmental organizations should be left in abeyance until a later stage of the Commission's work on the overall topic, at which point issues of the definition of international organizations and which types of treaties (namely whether treaties between States and international organizations or also those between international organizations *inter se*) would be considered;
- (iii) The Secretariat should be requested to circulate a note to international organizations requesting information about their practice with regard to the effect of armed conflict on treaties involving them.

² A/CN.4/578.

- (b) With regard to the definition of “armed conflict” reflected in article 2, paragraph (b), for purposes of the draft articles:
- (i) In principle, the definition of armed conflict should cover internal armed conflicts with the proviso that States should only be able to invoke the existence of internal armed conflicts in order to suspend or terminate treaties when the conflict has reached a certain level of intensity;
 - (ii) Occupation in the course of an armed conflict should not be excluded from the definition of “armed conflict”.
- (c) Concerning draft article 7:
- (i) The phrase “object and purpose” in paragraph 1 should be replaced by “subject-matter” to be in line with the formulation proposed for draft article 4 (see below); and the provision be placed closer to draft article 4;
 - (ii) Paragraph 2 should be deleted and the list contained therein be included in an appendix to the draft articles with the indication that:³
 - The list is non-exhaustive;
 - The various types of treaties on the list may be subject to termination or suspension either in whole or in part;
 - The list is based on practice and, accordingly, its contents may change over time.
- (d) As regards draft articles 10 and 11, the Drafting Committee should proceed along the lines of articles 7, 8 and 9 of the resolution of the Institute of International Law adopted in 1985.

³ The Drafting Committee should reconsider the list taking into account the views expressed in the plenary debate.

(2) The following revised formulation for draft article 4 should be referred to the Drafting Committee:

“In order to ascertain whether a treaty is susceptible to termination or suspension in the event of an armed conflict, resort shall be had to:

(a) Articles 31 and 32 of the Vienna Convention on the Law of Treaties; and

(b) The nature and extent of the armed conflict, the effect of the armed conflict on the treaty, the subject-matter of the treaty and the number of parties to the treaty.”

(3) Draft article 6 bis should be deleted and its subject-matter reflected in the commentaries, possibly to draft article 7.

(4) The Working Group should be re-established at the sixtieth session of the Commission, in 2008, to complete its work on remaining issues relating to draft articles 8, 9, and 12 to 14.
