

## 3229th MEETING

Wednesday, 23 July 2014, at 10 a.m.

Chairperson: Mr. Kirill GEVORGIAN

*Present:* Mr. Candioti, Mr. Comissário Afonso, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Gómez Robledo, Mr. Hassouna, Ms. Jacobsson, Mr. Kamto, Mr. Kittichaisaree, Mr. Laraba, Mr. Murase, Mr. Murphy, Mr. Niehaus, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Sir Michael Wood.

### Protection of the environment in relation to armed conflicts (*continued*) (A/CN.4/666, Part II, sect. F, A/CN.4/674)

[Agenda item 10]

#### PRELIMINARY REPORT OF THE SPECIAL RAPPORTEUR (*continued*)

1. The CHAIRPERSON invited the members of the Commission to resume their consideration of the preliminary report on the protection of the environment in relation to armed conflicts (A/CN.4/674).

2. Mr. SABOIA said that, despite the existence of some non-binding declarations and decisions, general guidelines from ICRC and a few provisions in treaties, much law-making still needed to be done in order to protect the environment before, during and after armed conflicts. In her introduction, the Special Rapporteur had skilfully dealt with the coexistence, during armed conflicts, of the law of armed conflict, international humanitarian law and rules on environmental protection and human rights. Her proposal to divide consideration of the topic into three temporal phases (before, during and after the conflict) was welcome and, notwithstanding the diverging views expressed in that connection, it seemed reasonable to give priority to the first and third phases, where practice and legal material were less abundant.

3. He was in favour of including conflicts between organized armed groups within a State in the definition of “armed conflict”, in line with the judgment in *Prosecutor v. Duško Tadić a/k/a “Dule”*, in order to cover non-international armed conflicts in which the State was not involved. The frequency of that type of conflict confirmed the need for just such a comprehensive definition. Iraq, Somalia and other African countries all offered examples of situations where non-State actors played a leading role in the conduct of hostilities from which the State was virtually excluded. It was therefore essential that non-State actors be bound by rules on environmental protection in times of conflict. The proposed definition of “environment” was interesting, but it should also include the human dimension in order to clarify the linkage between a clean environment and the survival and

sustainable development of humanity. Indigenous peoples were particularly vulnerable since their traditional way of life was close to nature.

4. Lastly, as far as sources were concerned, it would be useful to examine United Nations practice in protecting civilians during operations mandated by the Security Council. The work of the Peacebuilding Commission might also be of relevance when analysing the relationship between environmental damage, poverty, political tensions and internal armed conflicts.

5. Mr. NIEHAUS agreed with the Special Rapporteur that the approach to the topic must include not only *lex specialis* (the law of armed conflicts), but also other applicable fields of international law, such as environmental law and human rights law. He, too, was in favour of dividing the topic into three phases, but was not sure that one phase should be regarded as more important than another, especially as it was difficult, if not impossible, to draw a dividing line between them. Even if, logically speaking, preventive action before a conflict would offer the most efficient protection, many other measures could be adopted during and after a conflict. In any event, it was essential to emphasize, as the Special Rapporteur had done, that the Commission did not intend to modify the law of armed conflict, and it evidently had no reason to examine the root causes of armed conflicts.

6. On the other hand, he was not in favour of excluding protection of cultural heritage simply because it was already regulated by specific conventions, namely those of UNESCO, since those conventions were far from effective. The notion of “cultural heritage” should at least be revisited and the pertinent international provisions should be assessed. Nor was it logical, as Mr. Park had already pointed out, to exclude the cultural heritage from a definition of the environment that mentioned “characteristic aspects of the landscape”.

7. However interesting the question of weapons might be, it seemed premature to consider it at that stage of deliberations. Great caution would be required when considering the issue of refugees and displaced persons. The analysis contained in chapters X and XI of the preliminary report (environmental principles and concepts, and human rights and the environment, respectively) would be most helpful throughout work on the topic. In particular, the idea that a healthy environment had a bearing on the enjoyment of human rights was gaining ground, as was evidenced by the international community’s positive response to the topic under consideration and to that of the protection of the atmosphere. Lastly, like other members, he thought that the timetable proposed by the Special Rapporteur was too short.

8. Mr. EL-MURTADI SULEIMAN GOUIDER welcomed the preliminary report on the protection of the environment in relation to armed conflicts, which had advanced the work on the topic that had begun in 2011. It had to be remembered, however, that opinions within the Commission and the Sixth Committee were sharply divided as to the priority to be given to each of the three phases of protection. It would seem from paragraph 167 of the preliminary report that, in her following report, the

Special Rapporteur would focus on the second phase—during the conflict—perhaps at the expense of the other two. It was, however, obvious from the proliferation of conflicts around the world that the pre-conflict phase must not be neglected. In any event, it would be necessary to clarify the respective importance of the three phases, especially as the dividing line between them was not always crystal clear or immutable.

9. State practice also required closer scrutiny and, for that reason, it was to be hoped that more States would provide examples thereof. Many States had embodied environmental protection in their constitution, or in their legislation, and that protection, even if it was not necessarily associated with armed conflicts, applied at all times. Exchanges with other bodies should be encouraged, because the paucity of information on the topic under consideration was a big stumbling block. As far as the next stages of work were concerned, it would be helpful if the Special Rapporteur were to explain why she did not intend to cover situations where environmental pressure, including the exploitation of natural resources, triggered an armed conflict, especially as she acknowledged their significance. More thought should be given to the form of the outcome of work, it being understood that the final decision would lie with the General Assembly.

10. Ms. ESCOBAR HERNÁNDEZ approved of the Special Rapporteur's proposal to adopt a temporal approach to the topic, for it would bring out the fact that armed conflict could damage the environment not only on account of acts committed during hostilities, but also because of States' earlier action connected with military planning and the management of military activities outside a conflict (such as manoeuvres), or as a result of rules established in peacetime, such as rules of engagement, which might have an impact on the environment. That approach would likewise make it possible to demonstrate that hostilities could often have lasting repercussions on the environment that might impede post-conflict recovery and thus affect the population.

11. The division of the topic into temporal phases presupposed the identification of the actors at each stage and the rules or principles of public international law which applied to them. In that connection, the Special Rapporteur seemed to have taken the correct decision to consider the international legal system as a whole throughout all three phases in order to avoid the effects of fragmentation. Similarly, she had rightly elected to deal with the issue of human rights and the environment not as a new human right, but as a nexus of rights, the purpose of which was the enjoyment of a healthy environment. Although that approach was more difficult, it was appropriate from the legal and technical point of view. Indigenous peoples warranted special treatment when considering the topic, as did refugees.

12. The definition of "armed conflict" proposed in the preliminary report was sufficiently broad, but it was unclear why only non-international conflict was qualified by the adjective "protracted". The definition of the environment could include the notion of "cultural heritage", which encompassed all aspects of the landscape, both natural and human-made. In conclusion, she found the

proposed timetable of work rather short, especially if the preventive phase of environmental protection was going to be investigated in greater depth in subsequent reports.

13. Sir Michael WOOD said that the Commission must keep to the topic as it had been defined and not address undecided and often controversial questions of environmental or human rights law, or the rights of indigenous peoples. It was not for the Commission, under this topic, to decide whether sustainable development was a concept, a principle or a principle of international law, or to revisit the law on environmental protection. Similarly, as stated by the Special Rapporteur in paragraph 66 of her preliminary report, the Commission must not address the issue of the effects of certain weapons, for that was a complex and controversial matter that had traditionally been subject to negotiations between States. On the other hand, she must endeavour to identify the rules and principles applicable in peacetime that were of some relevance to the topic, which was not an easy task.

14. The preliminary report concerned the first phase of the protection of the environment in relation to armed conflicts and the Special Rapporteur apparently intended to tackle the other two phases in her subsequent reports, but she did not specify whether she intended to propose guidelines with respect to the first phase. She rightly referred to the Commission's work on the effects of armed conflicts on treaties,<sup>258</sup> which expressly addressed the status of treaties related to the international protection of the environment. It was, however, less certain that she was correct in saying that those draft articles, in particular draft article 3, enunciated a presumption that the existence of an armed conflict did not *ipso facto* terminate or suspend the operation of treaties. Draft article 3 did not enunciate a presumption; it was a statement. For that reason, it was hard to see how it could serve as a point of departure, because it said nothing about the actual continued application of treaties during an armed conflict, merely that they are not *ipso facto* terminated or suspended.

15. Some terms and expression required clarification, namely the terms "principles" and "rules", which were used variously in the report, while the expressions "principles and concepts" or "rules and principles" were obscure, to say the least. Although a distinction was drawn in the report between "political concepts" and "legal principles", both expressions were used pretty much indiscriminately. Could it be said that a "concept", which was apparently a political idea and not a legal rule, was a "candidate for continued application during armed conflict"?

16. The scope of the topic was not clearly delimited; differing points of view had been expressed on that subject in the Sixth Committee. It was to be hoped that the Special Rapporteur agreed that the topic under consideration must not serve as a pretext for undertaking a general study of the legal status of rules of international environmental law. Even if he was unsure how the division of the topic into three phases would work in practice, he agreed with the Special Rapporteur that the emphasis should be on the

<sup>258</sup> General Assembly 66/99 of 9 December 2011, annex. The draft articles adopted by the Commission and the commentaries thereto are reproduced in *Yearbook ... 2011*, vol. II (Part Two), pp. 107 *et seq.*, paras. 100–101.

first and last phases. There were already plenty of rules and practice related to the period of armed conflict itself and it was not the Commission's task to amend them. As far as the use of terms was concerned, if the Commission decided to include a definition of "armed conflict" in its draft text, it should encompass all types of armed conflict.

17. It was understandable that the Special Rapporteur preferred not to draw hasty conclusions as to the relevance or applicability of "environmental principles and concepts" in armed conflicts and intended to confine herself to determining whether they might remain applicable. However, she ran through them without saying how they fitted into the context of the topic. Moreover, it was unclear whether the principle of sustainable development was of immediate relevance to the topic, and doubtful whether it was applicable in armed conflicts. The same was true of the case law of the WTO Appellate Body. It was somewhat surprising that, when the Special Rapporteur referred to the case concerning *Balmer-Schafroth and others v. Switzerland*, she cited only the opinions of the dissenting judges and not the judgment of the European Court of Human Rights. The legal character of human rights was indeed different from that of the rules of international environmental law, which was why they might be of limited usefulness for the topic. Lastly, with regard to the future programme of work, he was pleased that the Special Rapporteur intended to prepare a more analytical, concrete second report and he supported her proposal to draw up non-binding guidelines.

18. Mr. HASSOUNA approved of the Special Rapporteur's step-by-step approach to the topic under consideration, which was certainly complex, since it concerned various international law regimes and drew on very similar, overlapping principles and concepts. Although they were inherently vague and imprecise, those principles and concepts did exist and had to be coordinated and made central to any guidelines that were formulated.

19. The Special Rapporteur understandably wished to limit the scope of the topic for practical, procedural and substantive reasons. However, in view of the fact that pressure on the environment and movements of refugees or displaced persons were both the result and the cause of armed conflict, it might be useful to pay some attention to them. The issue of certain types of weapons could be dealt with in the commentary to the draft guidelines, by explaining that considerations regarding them were without prejudice to the rules and conventions applying to them.

20. He approved of the Special Rapporteur's intention to base the definition of the notion of "armed conflict" on the articles on the effects of armed conflicts on treaties; the proposed definition seemed consonant with that given in the Rome Statute of the International Criminal Court. Reference to non-international armed conflicts was warranted in light of the aim and purpose of the work, because armed conflicts, international or otherwise, were likely to have harmful consequences on the environment. It could also be made plain that, for the purpose of the topic, armed conflict presupposed a certain level of organization and intensity. Those were the criteria normally used for interpreting common article 3 of the 1949 Geneva Conventions for the protection of war victims. Failing that,

it should at least be made clear that internal disturbances and tension taking the form of riots, isolated and sporadic acts of violence, or other similar acts, were not regarded as armed conflicts. If the guidelines covered all three phases of armed conflict, it would also be essential to establish criteria for determining when a conflict began and ended.

21. He approved of the Special Rapporteur's approach to defining the environment and her definition of it, especially as it mentioned natural resources. He welcomed the consultation of organizations operating in various fields of international law, such as ICRC. It would be interesting to know what the Special Rapporteur thought of its controversial study of the rules of customary international humanitarian law, which had been published in 2005.<sup>259</sup>

22. The Special Rapporteur identified five environmental principles and concepts that were likely to remain applicable during armed conflicts, and said that the extent to which they applied would be addressed later. The legal status of most of them, including the principle of sustainable development, was uncertain and, at first sight, those principles and concepts did not seem to fall within the ambit of customary international law. In the interests of the progressive development of international law, the Special Rapporteur should therefore spell out in her following report the implications of those principles in an armed conflict in order to maximize the proposed guidelines' usefulness in practice.

23. The legal status of the concept of sustainable development was controversial and its relevance to the topic was questionable, for it generally applied in a context very different to that of armed conflict. The examples given in the preliminary report of the principles of prevention and precaution were mainly drawn from European experience. The practice followed in other regions, such as North America, should also be explored. In order to illustrate the relationship between the environment and international human rights law, the examples quoted in the preliminary report could be supplemented with article 24 of the African Charter on Human and Peoples' Rights, which stated that "[a]ll peoples have the right to a general satisfactory environment favourable to their development".

24. When asking States for further information, the Commission should specify that information on practice in peacetime would also be helpful. The initial request gave the impression that the first phase preceding the conflict was not covered. Lastly, he considered that the outcome of the Commission's work on the protection of the environment in relation to armed conflicts should take the form of practical guidelines.

25. Mr. GÓMEZ ROBLEDO approved of the Special Rapporteur's method of identifying the rules and principles applicable before, during and after an armed conflict, and he endorsed Mr. Murase's proposal that the Commission focus on the second phase. The first question that had to be asked was whether the natural environment had to be regarded as a legal asset and protected as

<sup>259</sup> J.-M. Henckaerts and L. Doswald-Beck (eds.), *Customary International Humanitarian Law*, vol. I, *Rules*, vol. II, *Practice* (2 Parts), Cambridge University Press, 2005.

such, as was cultural property under the Convention for the Protection of Cultural Property in the Event of Armed Conflict, or whether it was protected only insofar as was necessary for the subsistence of the civilian population in wartime. In order to elucidate the linkage of the environment and human rights, the Special Rapporteur should examine how those rights had been construed by regional courts in cases concerning the natural environment. The recent case law of the Inter-American Court of Human Rights was of interest in that respect.

26. In order to determine which rights remained applicable during an armed conflict, the Special Rapporteur could distinguish between rights stemming exclusively from international humanitarian law, rights stemming exclusively from human rights instruments and rights deriving from both bodies of rules, as the International Court of Justice had done in the advisory opinion it had issued in 2004 on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.

27. The issue of the application of the principles of prevention and precaution during an armed conflict must be treated with great caution, as must the principle of sustainable development, which had prompted a lively debate among Member States of the United Nations, as well as the question of whether it was really a legal principle. Before defining the notion of “environment”, it would first be wise to determine whether the way in which it was interpreted differed in peacetime and wartime, in other words, if it was interpreted more broadly to encompass the human environment in peacetime and if it was confined to the natural environment in wartime. Another question that had to be explored was whether there were any customary obligations to protect the environment during an armed conflict irrespective of whether it was international. In the advisory opinion that it had issued in 1996 on the *Legality of the Threat or Use of Nuclear Weapons*, the International Court of Justice had held that article 35, paragraph 3, and article 55 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), which set forth the obligation to protect the natural environment, were powerful constraints for all States which had subscribed to those provisions. It would be helpful to determine what types of obligations were incumbent upon non-State actors in the event of a non-international armed conflict, especially as the obligation to protect the environment was not mentioned in the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II). In the same advisory opinion, the International Court of Justice had noted that States must take environmental considerations into account when assessing what was necessary and proportionate in the pursuit of legitimate military objectives, and had found that respect for the environment was one of the elements that went into assessing whether an action was in conformity with the principles of necessity and proportionality. The Special Rapporteur should base herself on that finding and identify the provisions of international environmental law that applied during an armed conflict. For example, it would be useful to know whether the principles of international humanitarian law regarding the protection of the civilian population were

also applicable to the protection of the natural environment. That would make it possible to determine whether the principle of distinction, which prohibited deliberate attacks on the civilian population, also prohibited deliberate attacks on the natural environment. As for the principle of proportionality, it would be necessary to investigate the question of how to assess “excessive” collateral damage to the natural environment, which presupposed finding out whether the natural environment had to be protected as such, or insofar as it contributed to the subsistence of the civilian population.

28. Mr. VALENCIA-OSPINA approved of the method employed by the Special Rapporteur and agreed that the Commission’s work must concern not only the first and third phases of armed conflict, but must also focus on the second. The sixth report on the protection of persons in the event of disasters<sup>260</sup> comprised a detailed analysis of the principle of prevention under international law and referred to numerous sources with regard to the international duty to cooperate for preventive purposes.

29. The report under consideration called for several general comments. First, contrary to her statement in paragraph 49 of her preliminary report, in chapter IX on the relationship with other topics addressed by the Commission, the Special Rapporteur mainly studied the provisions applicable in times of armed conflict, in other words, those which concerned the second and not the first phase. Second, she did not clarify the criteria for determining when the principles of international environmental law might apply during an armed conflict, and she ignored other relevant principles such as the principle of “common but differentiated responsibilities”, of cooperation or of access to information and access to justice on environmental matters. Third, apart from the principle of due diligence, she did not really explain why the principles she had identified were of relevance to the first phase. The relationship between those environmental principles and the rules of international humanitarian law on the measures that had to be taken before the outbreak of an armed conflict could have been touched upon. To mention just one example, the obligation set forth in article 36 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) concerned the first phase. It had to be noted that, in accordance with that article’s reference to “any other rule of international law applicable to the High Contracting Party”, the rules and principles of international environmental law had to be taken into consideration when new weapons, means and methods of warfare were developed. Article 35, paragraph 3, and article 55, paragraph 1, of the same Protocol, related to the protection of the natural environment against widespread, long-term and severe damage caused by methods or means of warfare, were also of relevance.

30. Turning to more specific aspects of the preliminary report, he emphasized with reference to the obligation to conduct environmental impact assessments that, in its judgment in the case concerning *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, the International Court of Justice had considered that such an obligation

<sup>260</sup> *Yearbook ... 2013*, vol. II (Part One), document A/CN.4/662.

existed under general international law when there was a risk that industrial activities might have a significant adverse impact in a transboundary context. In addition, in its advisory opinion on *Responsibilities and Obligations of States sponsoring persons and entities with respect to activities in the Area*, the International Tribunal on the Law of the Sea had confirmed the customary nature of that obligation, and had held that it might also apply to activities with an impact on the environment in an area beyond the limits of national jurisdiction and to resources that were the common heritage of mankind. Moreover, in paragraph 161 of the preliminary report, the Special Rapporteur stated that decisions within the inter-American system did not appear to implicitly reference principles of environmental law. However, in the judgment it had rendered in the case of the *Saramaka People v. Suriname*, the Inter-American Court of Human Rights had established the duty of States to conduct an environmental impact study in the context of extractive activities in the territory of indigenous groups. It had specified, in its judgment in the case of the *Kichwa Indigenous People of Sarayaku v. Ecuador* in 2012, the content of that duty on the basis of article 7, paragraph 3, of the International Labour Organization Convention (No. 169) concerning indigenous and tribal peoples in independent countries. Although generally speaking it was true that human rights law guaranteed the rights of the individual, while international environmental law focused on inter-State relations, in recent years those two areas had drawn closer together. Some principles of international environmental law had been incorporated into the field of human rights and vice versa. For example, the rights to access to information, public participation in the decision-making process and access to justice in environmental matters, which had originated in international human rights law, had been recognized in the Aarhus Convention and in the North American Agreement on Environmental Cooperation. Although they were international environmental law instruments, they established mechanisms enabling individuals to file claims that their provisions had not been enforced. As other members of the Commission had said earlier, the various procedural obligations that had been mentioned, including the obligation of conducting environmental impact studies, might be of relevance in the context of an armed conflict. Lastly, he supported the Special Rapporteur's proposed definitions of the terms "armed conflict" and "environment", subject to their revision at a later stage of the work.

31. Mr. WISNUMURTI said that he completely agreed with Mr. Murase that the Commission's work should focus on the second phase of the temporal approach chosen by the Special Rapporteur and not, as she proposed, on the first and third phases. He had been one of the members who had expressed that viewpoint during the consultations in 2013. It was regrettable that the Special Rapporteur had not borne it in mind sufficiently, especially as she recognized that it was impossible to draw a clear-cut dividing line between the three phases and that, as work progressed, the rules pertaining to them would tend to blend into one another. For that reason, they should be accorded the same weight. As far as the second phase was concerned, some principles of and rules on environmental protection during armed conflicts had already been embodied in the Convention on the prohibition of military or any other hostile use of environmental modification

techniques and in Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I). The emergence of new kinds of armed conflicts and their impact on the environment meant that further efforts must be made to adopt rules, guidelines or conclusions that specifically addressed that question.

32. While the scope of the topic under consideration must include protection of the cultural heritage, in order to fill any gaps in the legal instruments on the subject which had been adopted by UNESCO, he agreed with the Special Rapporteur that the root causes of armed conflicts and the effects of particular weapons must be excluded. On the other hand, the repercussions on the environment of movements of refugees and displaced persons should be examined, albeit with great caution. He did not understand why the Special Rapporteur appeared to exclude international armed conflicts from the analysis of the second phase and why she wished to focus on non-international armed conflicts.

33. The phrase added to the definition of "armed conflict" by the Special Rapporteur was unnecessary, for the provision which she had taken as her basis already covered non-international armed conflicts. The proposed definition of "environment" was too narrow to encompass all the aspects of the environment that might be affected by an armed conflict and, as it was non-exhaustive, it might give rise to diverging interpretations. Lastly, he failed to see how the concepts and principles examined in chapter X of the preliminary report could apply directly to the protection of the environment in relation to armed conflicts. They required further discussion.

34. Mr. FORTEAU said that he fully subscribed to the comments made by Mr. Šturma. The preliminary nature of the Special Rapporteur's report and the fact that it scarcely went beyond the threshold to the topic meant that it was premature to adopt a substantive position. While chapters IX and IV were most instructive, as Mr. Niehaus had said, it would be advisable to determine to what extent the practice of States and the international organizations mentioned was representative of contemporary general practice. Similarly, it would be wise to clarify the weight to be given to national courts' practice. On the other hand, the definitions proposed in chapter VII seemed to be appropriate as they stood.

35. The temporal approach adopted by the Special Rapporteur as the sole method of addressing the topic did not seem suitable, because a number of questions, including that of responsibility, could arise in each of the three phases. Similarly, the criterion of "peacetime/wartime" used to identify the rules and principles of relevance to the topic seemed to be ambiguous and simplistic, for some conventions concerning environmental protection applied in both instances, while others excluded any application to military matters, even when it came to preventive aspects. For that reason, a thematic approach should be added or adopted in preference to the temporal approach. In other words, the only way to arrive at the nub of the topic was to begin by determining, subject by subject, what existing rules, what instruments or what general principles of environmental law were likely to apply to the environment

in relation to armed conflicts, rather than repeating general principles of environmental law some of which, such as sustainable development, might well not apply to armed conflicts. In that respect, the preliminary report kept the Commission on tenterhooks. That was particularly true of chapter X of the report. Only once the relevant material had been gathered on the extent to which existing rules on environmental law applied to armed conflicts would it be possible to decide what codification, or progressive development, could be contemplated. Moreover, the Special Rapporteur should specify which of those exercises was expected of the Commission.

36. Mr. PETRIČ said that the main problem posed by the topic under consideration was that of points of convergence between international environmental law and the law of armed conflict. It was regrettable that the States particularly concerned by current or recent armed conflicts had hardly responded to the Commission's request for information on their practice and case law in that sphere.<sup>261</sup> He therefore supported the Special Rapporteur's proposal to renew the invitation that had been addressed to them and, perhaps, to make the request more specific.

37. With regard to the first phase of protection of the environment in relation to armed conflicts, defence and preparations for international conflicts on the one hand and military interventions abroad on the other were usually the two chief concerns of States, above all those in the West, and for that reason there was abundant legal material on those matters. That was not the case with regard to preparations for potential internal armed conflicts, whether or not they involved Governments, for States were reluctant to contemplate their occurrence. There was therefore little practice in that area, hence thinking in terms of progressive development would be warranted.

38. The three-phase approach was the right way to address the topic and he supported the idea of devoting an initial report to the first phase. He believed that, notwithstanding that methodology, the Special Rapporteur had basically opted for a comprehensive approach to the topic—the only one that was suitable bearing in mind the long-lasting nature of some conflicts—for she recognized that there was no clear-cut division between those phases. While the Special Rapporteur rightly excluded the causes of conflict from the scope of the topic, it was regrettable that she also excluded the cultural heritage. The question of the use of certain weapons that had a critical impact on the environment should not be completely ignored, and the matter of refugees and displaced persons should not be neglected either, since human rights were a dimension of the topic.

39. In principle and on a provisional basis, he approved of the proposed definition of the term "armed conflict" and endorsed Mr. Hassouna's comments with regard to the criteria of the intensity and duration of conflicts between armed groups within a State. The legal consequences of those conflicts, especially responsibility for any damage caused, should be examined. The definition of the term "environment" was acceptable, but it would be wise to clarify the link between characteristic aspects of the countryside and the cultural heritage.

40. With regard to chapter X, he agreed with the members of the Commission who considered that it would be inadvisable to enter into a discussion of the legal status or the nature of principles and concepts related to the environment as such, and that it would be wiser to study the manner in which they applied and their role in the event of an armed conflict, because they were really designed for peacetime. The same was true of human rights, which played a crucial role in the event of a conflict although they had also been formulated for normal circumstances. In that respect, it was regrettable that the Special Rapporteur mentioned only indigenous peoples without paying any attention to other minorities, especially as she excluded refugees and displaced persons from the scope of the topic. It did not seem advisable for the Special Rapporteur to deal with the very extensive subject of the protection of the marine environment in her second report. He would welcome some clarification on that point.

*The meeting rose at 1 p.m.*

### 3230th MEETING

*Thursday, 24 July 2014, at 10.05 a.m.*

*Chairperson:* Mr. Kirill GEVORGIAN

*Present:* Mr. Candioti, Mr. Comissário Afonso, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Gómez Robledo, Mr. Hassouna, Ms. Jacobsson, Mr. Kamto, Mr. Kittichaisaree, Mr. Laraba, Mr. Murase, Mr. Murphy, Mr. Niehaus, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Sir Michael Wood.

### Cooperation with other bodies (*concluded*)<sup>\*</sup>

[Agenda item 14]

#### STATEMENT BY REPRESENTATIVES OF THE AFRICAN UNION COMMISSION ON INTERNATIONAL LAW

1. The CHAIRPERSON welcomed the representatives of the African Union Commission on International Law (AUCIL) and invited them to present developments in the work of AUCIL in areas of common interest.

2. Mr. THIAM (African Union Commission on International Law) said that the establishment of AUCIL had been prompted by the objectives and principles set forth in articles 3 and 4 of the Constitutive Act of the African Union, which underscored the importance of accelerating the African continent's socioeconomic development by promoting research in all fields. One of the chief aims of AUCIL was to strengthen and consolidate the principles of international law and to work out common approaches to its development, while constantly endeavouring to maintain high standards in major fields of international law.

<sup>261</sup> See *Yearbook ... 2013*, vol. II (Part Two), p. 15, para. 28.

<sup>\*</sup> Resumed from the 3228th meeting.