



# General Assembly

Seventy-first session

Official Records

Distr.: General  
5 December 2016

Original: English

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## Sixth Committee

### Summary record of the 30th meeting

Held at Headquarters, New York, on Thursday, 3 November 2016, at 10 a.m.

*Chair:* Mr. Ahmad (Vice-Chair) ..... (Pakistan)

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*In the absence of Mr. Danon (Israel), Mr. Ahmad (Pakistan), Vice-Chair, took the Chair.*

*The meeting was called to order at 10.10 a.m.*

**Agenda item 78: Report of the International Law Commission on the work of its sixty-eighth session**  
(continued) (A/71/10)

1. **The Chair** invited the Committee to continue its consideration of chapters X to XII of the report of the International Law Commission on the work of its sixty-eighth session (A/71/10).

2. **Mr. Bondiuk** (Ukraine) said that the topic "Protection of the environment in relation to armed conflicts" was of particular importance to his country, which had suffered from foreign armed aggression, and that the Special Rapporteur's third report (A/CN.4/700) made a valuable contribution to the ongoing debate on the environmental and civilian impact of armed conflict and its aftermath. Environmental degradation, during and after armed conflicts, had a direct impact on human beings and called for immediate action in the context of the Sustainable Development Goals and environmental law. With regard to the draft principles provisionally adopted by the Drafting Committee, draft principle 4 (Measures to enhance the protection of the environment) was in line with the resolution on the protection of the environment in areas affected by armed conflict adopted at the second session of the United Nations Environment Assembly, on the initiative of Ukraine.

3. His delegation wished to stress the importance of the practical implementation by all States of relevant international law to reduce the environmental impacts of conflicts which, moreover, continued to have direct consequences for human well-being and enjoyment of fundamental human rights. It should accordingly be highlighted in draft principle 16 that toxic and hazardous remnants of war not only caused or risked causing damage to the environment but also threatened human health, as discharges from damaged industrial facilities, military waste and explosive ordinance caused direct harm to the civilian population.

4. Draft principle 15 (Post-armed conflict environmental assessments and remedial measures) was also particularly relevant to eastern Ukraine on account of pollution and other consequences of

damaged industrial sites and flooded mines. Cooperation of all parties with international agencies was therefore important in order to assess and remedy damage, particularly where it posed threats. His delegation also welcomed draft principle 18 (Sharing and granting access to information), which had a vital part to play in facilitating mediation and harm reduction. His Government would continue to give its full support to the issue of protection of the environment in relation to armed conflicts, and urged the Commission to continue its work on the topic.

5. **Mr. Santolaria** (Peru), addressing the topic "Crimes against humanity", noted that all such crimes, whether or not committed in time of armed conflict, came within the general scope of draft article 2 (General obligation) of the draft articles provisionally adopted by the Commission. It was important to highlight that the draft articles did not seek to replace or compete with the legal framework already existing in that regard, formed inter alia by a number of international conventions and the statutes of various international courts and tribunals, but rather, to complement them, notably in respect of prevention and punishment. An example of that complementarity was that the definition of crimes against humanity in the draft articles almost fully reflected article 7 of the Rome Statute of the International Criminal Court. On the question of the criminal responsibility of legal persons, it should be noted that, according to the draft articles, each State was required, subject to the provisions of its national law and to its legal principles, to take measures, where appropriate, to establish its criminal, civil or administrative liability.

6. On the topic "Protection of the atmosphere", his delegation welcomed the progress made in respect of the draft guidelines and the preambular paragraphs, particularly with a view to the sustainable and equitable utilization of the atmosphere, reconciling economic development with protection of the environment and having regard to the interests of present and future generations. It was important that the draft guidelines should not interfere with the consideration of issues relating to climate change, ozone depletion and long-range transboundary air pollution, or seek to fill any gaps in treaty regimes. His delegation welcomed the fact that the interrelationship between the law of the atmosphere and other fields of international law, such as law of the sea, international

trade and investment law and international human rights law, might usefully be dealt with in 2017.

7. With regard to the topic “Protection of the environment in relation to armed conflicts”, it was important to protect the environment before, during and after an armed conflict. Accordingly, consideration should be given to the possibility of taking preventive measures to keep damage to the minimum during such conflict, as well as to the designation of areas of major environmental and cultural importance as protected zones. His delegation took particular note of the specific provision in the draft principles for the application to the natural environment, with a view to its protection, of the principles and rules of the law of armed conflict on distinction, proportionality, military necessity and precautions in attack and its prohibition of attacks against the natural environment by way of reprisals.

8. **Mr. Adamhar** (Indonesia), addressing the topic “Protection of the environment in relation to armed conflicts” and the draft principles provisionally adopted by the Commission, said that the duty to designate certain areas as protected zones under draft principle 5 [I-(x)], which also related to the rights of indigenous peoples, was firmly grounded in international law. That duty was independent of the existence of any declaration concerning such a designation, which was discretionary and to be made only where appropriate. It was incumbent upon the parties to a conflict to make such a proper and prudent distinction. The submission of a statement to that effect could only substantiate the assessment made by the parties on a case-by-case basis. His Government, as a matter of policy under a 2009 law on the protection of the environment, made regular determinations of areas considered to have a significant environmental and economic dimension, referred to as “eco-regions”, and granted them special protection. The Commission might accordingly wish to take into account relevant State practice in relation to such environmentally protected zones, bearing in mind that protection was warranted in time of peace should be even more substantial in time of war.

9. As for issues relating to indigenous peoples, his delegation continued to regard them as irrelevant to the draft principles. Indonesia had been one of the first countries to support the Declaration on the Rights of

Indigenous Peoples, adopted by the General Assembly in 2007, at which time it had submitted an interpretative statement to the effect that its entire population had always remained unchanged and that, as a multicultural nation, it did not discriminate against its peoples on any grounds. Just as it had considered that Declaration to be not applicable in the context of Indonesia, although useful for the promotion and protection of the human rights of those whom it was intended to protect, so his delegation considered that any provision that might be taken to express or create a substantive or procedural obligation in regard to such people would not be applicable to the Indonesian context.

10. **Ms. Samarasinghe** (Sri Lanka), welcoming the Special Rapporteur’s fifth report on the topic “Immunity of State officials from foreign criminal jurisdiction” (A/CN.4/701), particularly with regard to the question of limitations and exceptions to such immunity, said that, as the debate on that aspect of the topic was still at an early stage, her delegation would limit itself to a few preliminary comments on that question. Given the legally complex and politically sensitive nature of the question of limitations and exceptions, her delegation shared the view that the topic should be approached with a great deal of caution. Indeed, it might be premature to discuss emerging trends unless clearly established rules of customary law could be identified.

11. With regard to draft article 7, which was based on the conclusion in the report that limitations and exceptions to the immunity of State officials from foreign criminal jurisdiction did apply to State officials in the context of immunity *ratione materiae*, it was unclear whether customary international law recognized the existence of an exception to such immunity from foreign criminal jurisdiction. In that connection, the Special Rapporteur might not have sufficiently followed the analytical process of identification of customary international law referred to in the report.

12. The principle of sovereignty of States or the will of their peoples should not be subordinated and the stability of inter-State relations must not be undermined; nor should normal diplomatic relations between States be so disturbed as to defeat the course of international justice rather than contribute to the

protection of human rights. There must be a delicate balance between the principle of State sovereignty and the maintenance of stable relations among States, on the one hand, and the fight against impunity and the need for accountability, on the other. Exceptions and limitations should not be used to disturb the peace, interfere in the internal affairs of States or permit politically motivated prosecutions. Her delegation therefore shared the view that the focus should be on codification rather than on progressive development in the matter of limitations and exceptions.

13. **Mr. Shin Seung Ho** (Republic of Korea), said that his delegation wished to thank the Special Rapporteur for the topic “Protection of the environment in relation to armed conflicts” for her tireless efforts to elucidate the topic over the past five years, and the Drafting Committee for structuring the text of the draft principles according to the three temporal phases of armed conflict, welcoming in particular the inclusion of preventive and remedial measures in the overall architecture. As part of the Commission's efforts to ensure consistent terminology, it would be desirable for it to clarify, for the purposes of such protection, whether the concern was with the natural environment or the environment in general. His delegation would also like the Commission to consider whether any principles or relevant practices were applicable to both international and non-international conflicts.

14. On the topic “Immunity of State officials from foreign criminal jurisdiction”, his delegation welcomed the Special Rapporteur's fifth report, which drew not only on a rich and systematic survey of the practices of States, as reflected in treaties, but also on domestic legislation, and international and national case law. The question of limitations and exceptions to such immunity was both legally important and politically sensitive and therefore required great caution. The commentaries to draft articles 2 (f) and 6 provisionally adopted by the Commission would serve to clarify the core terms used in the draft articles and thereby allow Member States to better understand them when interpreting and applying the relevant international legal instruments.

15. Turning to the provisional application of treaties and the draft guidelines on the topic, which could serve as useful point of reference in the domestic application

of treaties, he said that his delegation supported draft guideline 10, but wished to see it amended in accordance so far as possible with articles 27 and 46 of the 1969 Vienna Convention on the Law of Treaties. Since, moreover, the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations had not yet entered into force, the question whether its provisions on provisional application should be placed on the same footing as article 25 of the 1969 Convention merited careful consideration.

16. **Mr. Rao** (India), noting that the debate on the Special Rapporteur's fifth report on the topic “Immunity of State officials from foreign criminal jurisdiction” was preliminary, said that, in view of the normative implications of the phrase “limitations and exceptions”, his delegation agreed with her methodology and choice of title for draft article 7 (Crimes in respect of which immunity does not apply). The Special Rapporteur's approach was consistent and systematic, based on State practice as reflected in treaties and domestic legislation, as well as on international and national case law.

17. Because of the complex and politically sensitive issues involved, the Commission should proceed with caution in deciding whether to focus on the codification or the progressive development of international law in that area. Indeed, the International Court of Justice had expressed the opinion that there was no customary law exception to the rule according immunity from criminal jurisdiction with regard to incumbent Ministers for Foreign Affairs, in the *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)* case and, in the context of State immunity, in the *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)* case.

18. Crimes of corruption, referred to in subparagraph 1 (b) of the draft article, needed to be supported by sufficient State practice demonstrating their character as serious international crimes, like the other crimes listed therein. It should also be determined whether acts of corruption were acts performed in an official capacity, and thus fell within the scope of immunity *ratione materiae*.

19. On the topic “Provisional application of treaties”, he said that provisional application would depend on the provisions of domestic law, including the manner

of expressing consent. As India was a dualistic State, a treaty would not automatically form part of its domestic law and would apply only under internal procedures. The provisional application of a treaty before its entry into force in a particular State would therefore run counter to the principle of dualism.

20. On the topic “Protection of the environment in relation to armed conflicts”, the draft principles proposed should not be in conflict with obligations arising under existing conventions, and work on the topic should not duplicate efforts already undertaken within existing regimes.

21. **Ms. Du Pasquier** (Observer for the International Committee of the Red Cross), addressing the topic of protection of the environment in relation to armed conflicts, said that there was an urgent need to find better ways of addressing the immediate and long-term consequences of damage to the natural environment in relation to armed conflict and that preventive action was also required. For there to be better legal protection during armed conflict, existing rules under international humanitarian law must be better disseminated, implemented and enforced. Sometimes, however, normative weaknesses also needed to be addressed through a reinforcement of the law. Protection of the natural environment during armed conflict was one such area in which the law would benefit from further clarification and development. It needed to be made clearer, for example, how other bodies of international law might provide complementary protection to the environment, including during armed conflict. The International Committee of the Red Cross strongly supported the continuation of work on the topic into the next quinquennium, with due regard for existing rules of international humanitarian law.

22. **Ms. Escobar Hernández** (Special Rapporteur on the topic “Immunity of State officials from criminal jurisdiction”) thanked the members of the Committee for their constructive comments which would be helpful both to the Commission and to herself as they continued to work on the topic.

23. Notwithstanding the provisional nature of most delegations’ comments, different views appeared to have emerged on the scope and content of the topic, and particularly on the limitations and exceptions to immunity. She noted with appreciation the widespread

support for the conclusion reached in her report regarding immunity for Heads of State, Heads of Government and Ministers for Foreign Affairs. On the question of limitations and exceptions to immunity *ratione materiae*, the differing views expressed by delegations confirmed the need for the Commission to consider without preconceptions that important matter, which had been further compounded by other factors in recent years. She had noted the points made regarding the procedural aspects of immunity, including the need to respect the rules of due process and to guard against politically motivated applications against State officials, and would take them into account in her sixth report, which would be submitted in 2017.

24. **Mr. Comissário Afonso** (Chairman of the International Law Commission), noting the remarkable progress made on the important and challenging topics covered by the Commission's report on the work of its sixty-eighth session (A/71/10), thanked the members of the Committee for their constructive debate thereon. The views expressed by States, both orally and in writing, were extremely precious for the Commission as it continued to discharge its mission regarding the progressive development of international law and its codification. In that context, he renewed the request to Governments to submit their comments on the draft conclusions on identification of customary international law and the draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties adopted on first reading; they would be of invaluable assistance for the second reading.

25. He also encouraged Governments to provide the Commission, by 31 January 2017, with information on the issues listed in chapter III of its report and reminded them that they had been invited by the Secretariat to respond to the questionnaire on ways and means for making the evidence of customary international law more readily available, by 1 May 2017. He assured the members of the Committee that the Commission, as a collective body, would take into account all their comments and observations as it advanced further in its work.

**Agenda item 165: Report of the Committee on Relations with the Host Country (A/71/26)**

26. **Mr. Emiliou** (Cyprus), speaking as Chair of the Committee on Relations with the Host Country and introducing the report of the Committee (A/71/26), said that during the reporting period, concerns had been raised about the issuance and timeliness of issuance of entry visas to representatives of Member States. The Committee expected that those concerns would be duly addressed in accordance with applicable international law, in a spirit of good faith and cooperation. The Committee also expected that the host country would continue to assist permanent missions and their staff in opening bank accounts. The host country had made significant efforts to do so over the previous year, and there were currently no outstanding issues in that regard.

27. **Mr. Chaboureau** (Observer for the European Union), speaking also on behalf of the candidate countries Albania, Montenegro, Serbia and the former Yugoslav Republic of Macedonia; the stabilization and association process country Bosnia and Herzegovina; and, in addition, Iceland, the Republic of Moldova and Ukraine, expressed appreciation for the Committee's work in addressing issues faced by the diplomatic community as well as the efforts of the host country to promote mutual understanding between that community and the people of New York. The often practical issues dealt with by the Committee went to the heart of preserving the legal regime governing the status of the United Nations and the rights and obligations of diplomatic agents. Observance of the privileges and immunities of diplomatic personnel rested on solid legal principles. It was accordingly essential to safeguard the integrity of the relevant body of international law, particularly the Headquarters Agreement, the Vienna Convention on Diplomatic Relations and the Convention on the Privileges and Immunities of the United Nations.

28. He thanked the host country for its continued efforts to ensure the timely issuance of entry visas to representatives of Member States and observers, while encouraging it to pursue further improvements. He was pleased that there were no outstanding issues with regard to obtaining suitable banking services, and expected that the host country would continue to assist permanent missions and their staff in obtaining such

services. He endorsed the conclusions and recommendations set out in the report of the Committee, an important forum that allowed Member States to communicate matters of concern and engage in constructive dialogue with the host country.

29. **Ms. Rivero** (Cuba) said that the policy of placing restrictions on the movements of Cuban diplomats and Cuban international civil servants accredited to the United Nations or working in the Organization was unjust, selective, discriminatory and politically motivated, as well as constituting an arbitrary violation of the host country's obligations under the Headquarters Agreement and customary norms of diplomatic law. The host country had still not taken practical steps to eliminate that arbitrary and unjustifiable measure, which prevented Cuban staff from travelling outside a 25-mile radius measured from Columbus Circle, New York, in contravention of the general rule on the free movement of diplomats, and should be lifted immediately.

30. With respect to the acceleration of immigration and customs procedures, the observance of diplomatic courtesy and guarantees for the proper treatment of the diplomatic personnel of Member States at airports were of vital importance. Her delegation appreciated the efforts of the host country in that regard and urged it to further improve the training of police, security, customs and border control officials, with a view to maintaining respect for diplomatic privileges and immunities. In particular, her delegation recognized the efforts and cooperation of the representatives of the host country office, with whom it had worked in a respectful and professional atmosphere in the preparations for the high-level segment of the current session of the General Assembly. The United States Parking Programme for Diplomatic Vehicles should be implemented in an appropriate, fair, non-discriminatory and efficient manner, in accordance with international law.

31. **Mr. Al Arsan** (Syrian Arab Republic) said that he welcomed the efforts of the host country to resolve the issues brought to its attention by the Committee on Relations with the Host Country, particularly those that impaired the ability of permanent missions to perform their work effectively. Unfortunately, several unresolved difficulties had arisen during the reporting period. Despite the progress that had been made in



ensuring access to banking services, the Permanent Mission had recently received letters from several banks stating that the accounts of certain diplomats would be closed, or that additional accounts would not be opened. The letters cited United States laws imposing so-called sanctions on Syria. In another case, a Syrian diplomat had been denied service at a New York department store. The incident had been particularly humiliating because it had taken place in full view, in the presence the diplomat's young daughter. The United States authorities had also refused to grant work permits to the families of Syrian diplomats, without providing legal justification.

32. The unilateral coercive measures imposed on Syria were illegal and contravened the Charter of the United Nations, the 2030 Agenda for Sustainable Development and the relevant international conventions. They had been adopted in order to put pressure on the Syrian Government for political reasons that were well known to everyone. In any event, those measures explicitly did not apply to Syrian diplomats or their families. The host country had an obligation to address such difficulties and respect the privileges and immunities of diplomats under the relevant international instruments and, in particular, the Headquarters Agreement. However, the United States Mission to the United Nations had either ignored the issues or cited company policies as a pretext for its inaction. His delegation urged it to explain and resolve the issues in a prompt and genuine manner. The Committee on Relations with the Host Country should seek to fulfil its objectives in a way that went beyond adopting an annual resolution.

33. **Mr. Nasimfar** (Islamic Republic of Iran) said that the Committee on Relations with the Host Country had a unique responsibility for addressing issues arising in relations between the United Nations and the host country in relation to the implementation of the Headquarters Agreement and the Convention on the Privileges and Immunities of the United Nations, with a view to facilitating the representation of Member States in accordance with international law. Recalling that General Assembly resolution 2819 (XXVI) requested the Secretary-General to report to the Committee on Relations with the Host Country on the implementation of the Headquarters Agreement, he reiterated that the Secretary-General was a party to that Agreement and should ensure that its provisions were

implemented consistently. That practice had been discontinued in recent years and should be revived.

34. The working methods of the Committee on Relations with the Host Country needed to be improved so that it could make constructive use of its unique powers in a spirit of mutual cooperation. For instance, it would be useful for the Sixth Committee to consider the agenda item at the start of each session in order to allow time to negotiate the relevant draft resolution in consultation with capitals.

35. While his delegation appreciated the efforts of the host country authorities to fulfil their responsibilities, it had serious concerns regarding the application of discriminatory secondary screening procedures on Iranian diplomats at airports. Section 11 of the Convention on the Privileges and Immunities of the United Nations clearly stipulated that representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations should, while exercising their functions and during the journey to and from the place of meeting, enjoy certain privileges and immunities, including inviolability for all papers and documents and the same immunities and facilities in respect of their personal baggage as were accorded to diplomatic envoys. Secondary intrusive searches and the questioning of diplomats by immigration officers were inconsistent with the host country's obligations and must be discontinued. It was in the interests of all Member States to improve the performance of the Organization and its accredited permanent missions, and to address any related difficulties.

36. **Mr. Simonoff** (United States of America) said that his country was proud to serve as host to the United Nations and took that role and its obligations under the Headquarters Agreement very seriously. The Committee on Relations with the Host Country was a valuable forum in which to discuss issues relating to the presence of the dynamic diplomatic community in New York and to address its concerns. The host country greatly valued the Committee's cooperation and constructive spirit and appreciated the participation of numerous observer delegations in its meetings. The fact that non-members could participate in the Committee's meetings has helped make its

deliberations open and more representative of the United Nations diplomatic community.

37. Between 1 January and 28 October 2016, the Host Country Section of the Permanent Mission of the United States to the United Nations had issued more than 4,500 visas to members of the diplomatic community. It had assisted Member States in resolving issues involving banking and financial services, and looked forward to continuing to work closely with delegations over the following year.

**Agenda item 77: United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law**  
(continued) (A/71/432) (A/C.6/71/L.17)

*Draft resolution A/C.6/71/L.17: United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law*

38. **Ms. Abayena** (Ghana), introducing the draft resolution on behalf of the Bureau, said that the text largely replicated General Assembly resolution 70/116. The preambular paragraphs contained new provisions reflecting events that had occurred over the previous year. Paragraph 2 authorized the Secretary-General to carry out the activities specified in his report for 2017, with financing from the regular budget, including the International Law Fellowship Programme, with a minimum of 20 fellowships; the continuation and further development of the audiovisual library; and the dissemination of legal materials to developing countries. Paragraph 3 authorized the Secretary-General further to expand those activities with financing from any voluntary contributions that may be received. Paragraph 5 authorized the Secretary-General to award additional fellowships, first from the regular budget and then from voluntary contributions. Paragraph 6 requested the Secretary-General to consider admitting self-funded candidates for participation in the training courses. Paragraph 8 requested the Secretary-General to continue to include resources under the proposed programme budget for the biennium 2018-2019 for the activities in question. Paragraphs 12 and 13 expressed appreciation for the desktop publishing initiative of the Codification Division and recommended that resources should be made available for that purpose. Paragraph 14

requested voluntary contributions for the preparation of the international law handbook.

**Agenda item 82: Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives** (continued) (A/71/513, A/C.6/71/L.18)

*Draft resolution A/C.6/71/L.18: Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives*

39. **Ms. Nyrhinen** (Finland), introducing the draft resolution on behalf of the Bureau, said that Greece and Hungary had joined the sponsors. Violations of the security and safety of diplomatic and consular missions and representatives continued to take place, causing concern in the international community. The draft resolution, which reflected the determination of the Member States to oppose and redress such incidents, was based on General Assembly resolution 69/121 with some minor changes further to informal consultations.

**Agenda item 83: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization**  
(continued) (A/71/33, A/C.6/71/L.16)

*Draft resolution A/C.6/71/L.16: Commemoration of the seventieth anniversary of the International Court of Justice*

40. **Mr. Katota** (Zambia), introducing the draft resolution on behalf of the Bureau, said that the draft resolution had been formulated on the basis of a recommendation set out in the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. The text reflected a compromise that had been reached by the Special Committee. In the informal consultations of the Sixth Committee, the general view had been that it should be retained verbatim.

*The meeting rose at 12 p.m.*