United Nations A/C.6/64/SR.22

General Assembly
Sixty-fourth session

Official Records

Distr.: General
8 February 2010

Original: English

Sixth Committee

Summary record of the 22nd meeting
Held at Headquarters, New York, on Monday, 2 November 2009, at 10 a.m.

Chairman: Mr. Benmehidi . . . . . (Algeria)
later: Mr. Baghaei Hamaneh (Vice-Chairman) . . . . . (Islamic Republic of Iran)

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09-58945 (E)

The meeting was called to order at 10.15 a.m.

Agenda item 81: Report of the International Law Commission on the work of its sixty-first session (*continued*) (A/64/10 and A/64/283)

1. **Mr. Appreku** (Ghana), referring to the topic "Reservations to treaties", said that his delegation supported the position that a reservation or interpretative declaration must not be incompatible with the object and purpose of a treaty. In some cases there was little difference between a reservation and an interpretative declaration, since some of the latter were quasi-reservations or reservations in substance and effect. By their very nature, interpretative declarations and reactions to them were subjective judgements of the States parties formulating them. Since international tribunals were often called upon to interpret even bilateral treaties, it was clear that the task of drafting rules applicable to interpretative declarations in the context of multilateral treaties was a complex one. His delegation therefore favoured an approach that encouraged States parties to seek judicial interpretation in the event of disputes relating to the application or implementation of a treaty.

2. Efforts had been made over the past decade in the context of annual treaty events to discourage States parties from formulating or maintaining reservations to certain multilateral treaties that were considered to be at the heart of the United Nations mandate and goals. Provided that reservations did not defeat the object and purpose of a treaty, the right to formulate them could be an incentive for a State to become a party to a treaty, especially in cases where influential stakeholders might block consent to be bound if the treaty did not provide for the possibility of formulating reservations or interpretative declarations. In addition, some treaties had multiple purposes and objects, and certain reservations or interpretative declarations might relate only to a provision that had been formulated in discretionary or aspirational rather than mandatory language. In order to promote universal participation, it was perhaps preferable to attract a State party that might formulate a reservation, rather than for that State not to become a party at all, bearing in mind that a reservation or declaration might be withdrawn in the event of a change of administration or national policy. The practice of some States showed that, where there was pressure from lobbying groups for early ratification or accession to a particular treaty, a State might become a party but formulate reservations as a means of buying time for further reflection.

3. The topic "Expulsion of aliens" merited serious consideration by the Commission in order to fill gaps in existing law and improve normative standards. Abuse or maltreatment of aliens was a common phenomenon and had the potential to undermine friendship and good neighbourliness and to threaten international peace and security. Aside from the question of human rights in general, the sovereign prerogative of a State to expel aliens must not be exercised arbitrarily and without reasonable or justifiable cause. The Joint Africa-European Union Declaration on Migration and Development of November 2006 recognized the need to ensure respect for the dignity of migrants, whether documented or undocumented, and protection of the rights to which they were entitled under applicable international law, especially the right to equal treatment based on the principle of non-discrimination. Recognition of those principles was fundamental to any efforts aimed at the codification or progressive development of international law on the subject.

4. Aliens who were expelled should be given the opportunity to collect their personal belongings and withdraw their bank savings; even if an alien was undocumented and was residing unlawfully in the expelling State, it did not necessarily follow that his or her property had been acquired by unlawful means. Moreover, in the light of the numerous unpleasant experiences of many Ghanaians and other nationals around the world, his delegation believed that the right of an alien to have his or her case reviewed by a competent authority should entail the right to exhaust local remedies, including access to the courts. Too often, aliens were arrested in the street, rushed to detention facilities and then quickly dispatched to the nearest airport or land port. Some undocumented aliens were expelled against their will to countries of which they were not nationals without an effort to ascertain their true identity, simply because they possessed a travel document of the receiving country, which they might have obtained by fraud. According to the judgment of the International Court of Justice in the case of *Nottebohm (Liechtenstein v. Guatemala)*, possession of a passport was not conclusive evidence of nationality.

5. Some bilateral or plurilateral agreements or memorandums of understanding aimed at regulating

migration — most of which were concluded between developed and developing countries in order to combat human trafficking and stem illegal immigration — had at times been arbitrarily interpreted to justify the indiscriminate mass or individual expulsion of aliens, even before the agreements had been ratified in accordance with the constitutional procedures of the receiving State. Some States had even sought to use instruments that were intended only as expressions of political commitment and not as legally binding instruments as a pretext to carry out arbitrary expulsions. In addition, it should not be lawful for a donor country to tie the granting of development aid to the reception of aliens expelled en masse or individually, regardless of the circumstances of their expulsion.

6. A number of lessons had been learned from the case of *Larbi-Odam and Others v. the Member of the Executive Council for Education (North-West Province) and the Minister of Education*, in which the Constitutional Court of South Africa had unanimously upheld the appeal against expulsion of eight foreign teachers with temporary or permanent residence permits, many of them Ghanaians. The appellants in the case had been invited to an interview for an appointment at a school, after which some aggrieved citizens had coerced the school principal to hold a second interview, from which the appellants had been excluded. After failing to secure the appointment, the appellants had been served with notices to leave the country because the loss of their employment status had meant that they could not renew their residence permits. The Constitutional Court had upheld their appeal. Its judgement had established a number of principles that could be considered by the Commission. First, it had emphasized the need to accord aliens the right to have their case reviewed by competent authorities whose decisions must also be subject to judicial review. Second, it had underscored the importance of the right to exhaust local remedies, including the right to appeal to the highest court if the matter so merited. To the credit of the South African authorities, the appellants had not been arbitrarily expelled after the trial judge had ruled against them; they had been granted leave to appeal to the Constitutional Court. Third, the Court had taken into account the need to respect family life and the need for property guarantees. A few of the teachers who had been facing expulsion had been living in South Africa for several years; some had married South African citizens, with whom they had had children, while others had acquired immovable property. Fourth, the Court had affirmed that aliens, as human beings, were entitled to be treated with the same dignity as citizens and should not be subjected to unfair discrimination.

7. Aliens were sometimes placed in extrajudicial detention without adequate food or washing facilities for days prior to their expulsion. Although dignity could be a broad or elusive concept, as observed in the *Larbi-Odam* case, what amounted to undignified treatment might depend on the particular experience of the victim of the wrongful expulsion. The Commission might therefore wish to consider elaborating on the concept of dignity in order to fill any lacunae in existing norms. It should also give special attention to the question of mass expulsions.

8. With regard to the topic “Protection of persons in the event of disasters”, his Government had put in place national policies and legislation to address disaster risk reduction. The Ghanaian National Disaster Management Organization, established in 1996, had drawn up strategic disaster management plans at the national, provincial and district levels to tackle the most pressing disaster risks, including floods, drought, pest and insect infestations, epidemics and industrial and radiological hazards. The key challenges to the implementation of the plans were inadequate capacity-building, lack of resources and coordination and limited public awareness. National policies also recognized the need for subregional, regional and international cooperation on transboundary issues relating to water, air quality and disease. His Government therefore supported the Africa Regional Strategy for Disaster Risk Reduction, which had been adopted in the context of the United Nations International Strategy for Disaster Reduction, as well as the Yokohama Strategy for a Safer World and the Hyogo Framework for Action 2005-2015.

9. His delegation was pleased that the Commission had made efforts to solicit input from leading humanitarian agencies. The principles and guidelines adopted by them and other entities involved in humanitarian diplomacy and disaster relief reflected different approaches based on needs, rights or obligations. However, they were not necessarily legally binding. Moreover, insufficient attention had been paid to the need for a legal framework to underpin the implementation of the existing international strategies for disaster reduction. The draft articles should fill

those gaps and, subject to agreement, could eventually result in the adoption of a convention outlining the rights and obligations of States with regard to disaster prevention and mitigation.

10. In order to ensure that its work was not overtaken by events, and bearing in mind the momentum generated by the forthcoming United Nations Climate Change Conference on issues relating to the impact of climate change on disaster hazards, the Commission's work should keep pace with the Hyogo Framework for Action 2005-2015. In addition, in order to ensure system-wide coherence, the Committee and the Commission should ensure that future resolutions adopted by the General Assembly concerning disaster reduction contained a request to the Secretary-General to include in the relevant reports information on the progress of the Commission's work. The Commission could also request the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) to include legal questions in surveys sent to national disaster management authorities, in addition to the information which it solicited from capitals itself. The need for disaster-stricken countries to be provided with scientific and technical assistance free of charge or financial aid on concessional terms had also been highlighted by some agencies and States and should be further considered by the Commission.

11. His delegation agreed that there should be no distinction between natural and man-made disasters, since in many cases the two were linked. The definition of "disaster" should be framed both in terms of the effect of an event and in terms of the occurrence of the event itself. Furthermore, the Commission should focus on both response to and preparedness for disasters, since mitigation efforts had a greater chance of success if appropriate preparatory measures had already been taken, a fact recognized in many of the relevant international strategies and General Assembly resolutions. Almost all the relevant documents adopted by humanitarian agencies called for a "culture of prevention", since the disproportionate emphasis on disaster mitigation and response had been costly and had achieved limited results. The Commission should also clarify terms such as protection, response, hazards, risk and man-made or technological disasters.

12. His delegation agreed that a "without prejudice" clause in respect of armed conflict should be included in the draft articles, so as to avoid some of the pitfalls that had prevented consensus on other issues on the Committee's agenda. The concept of responsibility to protect, however, should be excluded from the scope of the topic, in keeping with the Secretary-General's view expressed in his recent report on the subject (A/63/677) that the responsibility to protect applied only to genocide, war crimes, ethnic cleansing and crimes against humanity. Moreover, although the Constitutive Act of the African Union established the right of the Union to intervene in a member State when such crimes occurred, the parameters for the implementation of that concept were still under discussion, as they were within the United Nations.

13. Lastly, his delegation commended the work carried out on the topic of shared natural resources and would submit written comments on it in due course.

14. **Ms. Mhuircheartaigh** (Ireland), referring to the topic "Protection of persons in the event of disasters", said that her delegation had no difficulty with draft article 1 on the scope of the topic as provisionally adopted by the Drafting Committee (A/CN.4/L.758) or with the suggestion that the Commission should focus initially on State actors before considering the applicability of the draft articles to non-State actors. It also agreed that the Commission should focus first on mechanisms for dealing with disasters that had occurred, leaving the important questions of prevention and risk management for a later stage of its work. Her delegation supported draft article 2 on the purpose of the draft articles and agreed with the view of the Special Rapporteur that the concept of responsibility to protect did not apply to disaster response.

15. More generally, the Commission's examination of the topic should be carefully calibrated. Her delegation could accept a reference to a rights-based approach to disaster relief, in the sense that any assistance provided should take account of the rights of the affected persons. However, such a reference should be limited to a general assertion of the applicability of human rights without specifying which rights or seeking to qualify their applicability in the context of disasters. It would be useful to complement a reference to rights with a reference to needs.

16. It would not be helpful to focus on broad conceptual debates at the expense of progress on the technical task of building a legal framework to underpin and facilitate disaster relief. A number of complex legal issues required examination, including questions of access, entry and freedom of movement of

personnel or organizations into affected territories and their legal status and immunities; customs clearance and tax or duty arrangements for relief and humanitarian supplies; and identification and recognition of professional qualifications for humanitarian and specialized personnel. As set out in the memorandum by the Secretariat on the topic (A/CN.4/590), some of those issues were already addressed by various provisions in a number of bodies of law and relevant bilateral arrangements. Useful guidance was also to be found in the desk study on law and legal issues in international disaster response and the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance prepared by the International Federation of Red Cross and Red Crescent Societies (IFRC). The Commission should focus on those issues and formulate a set of arrangements which, on the basis of a request or the consent of the affected State, could be implemented immediately in the event of a disaster, at the time of greatest stress on the receiving State, when the speed of response was critical.

17. With regard to the definition of disaster, no distinction should be drawn between natural and man-made disasters. The initial definition in draft article 3 as provisionally adopted by the Drafting Committee was a good basis for discussion. If the applicability of the provisions to be elaborated were made contingent on a request from or the consent of the receiving State, the definition of disaster might not raise significant difficulties in practice. Nonetheless, a number of issues might merit further consideration by the Commission. In particular, the definition was qualified by the requirement that the event or events seriously disrupted the functioning of society. Her delegation wondered whether reliance on the concept of "society" could exclude a disaster affecting a region or regions within a State, but not a State as a whole, and also whether that concept would adequately capture circumstances in which a disaster had effects in a cross-border region. Any framework produced by the Commission would be particularly valuable in cross-border cases, and they should therefore not be excluded by the definition.

18. The draft articles should not encroach on the well-established rules of international humanitarian law, and a provision clarifying that point should be included. However, it might be better if draft article 4 specified that the draft articles were "without prejudice" to the rules of international humanitarian law; such a formulation would also reflect more closely the views expressed in the Commission.

19. With regard to draft article 5 (Duty to cooperate), her delegation had no difficulty with a general reference to a duty to cooperate "as appropriate", provided that the implications did not go beyond the understanding of the concept as established in customary international law.

20. Her delegation welcomed the commencement of consultations between the Commission and key humanitarian actors, including the United Nations and IFRC, in accordance with General Assembly resolution 63/123. Such interaction was also consistent with the General Assembly's earlier recognition of the central and unique role of the United Nations in providing leadership and coordination in humanitarian response and should be continued as the Commission proceeded with its work. The practical experience of relevant organizations was valuable, and such legal projects as the IFRC International Disaster Response Laws, Rules and Principles (IDRL) programme were clearly relevant. In addition, States should inform the Commission about the practical views of their development assistance agencies, so that a clear understanding of needs and gaps in the current legal framework could be established.

21. **Mr. Rodiles Bretón** (Mexico), speaking on the topic "Shared natural resources", said that there were many complex issues associated with transboundary hydrocarbon deposits in terms of prospecting, exploration and exploitation, and their commercial nature differed from that of water resources. It was difficult to establish a general regime for such resources, since the States in which they were located had different geographical and geological characteristics and differing national laws governing exploration and exploitation. Nonetheless, the Commission's work on the topic continued to be relevant for such purposes as determining the basic standards applicable to exploitation by the States in which oil and gas resources were located.

22. In its judgment in the *North Sea Continental Shelf* cases (*Federal Republic of Germany/Denmark*; *Federal Republic of Germany/Netherlands*), the International Court of Justice had referred to equitable exploitation of transboundary deposits that took account of geological and geographical factors and the unity of the deposits in question. The Court had held

that it was not a question of applying equity simply as a matter of abstract justice, but of applying a rule of law which itself required the application of equitable principles.

23. State practice showed that, in many cases, the problem of regulating the exploration and exploitation of transboundary deposits, particularly hydrocarbons, was resolved through bilateral agreements concluded by the parties concerned. Nonetheless, there were general principles applicable to the regulation of the exploitation of shared natural resources, in particular the precautionary principle, equitable and reasonable utilization, the obligation to cooperate on exploration and exploitation, and the principle of *sic utere tuo ut alienum non laedas*. Although the regulation of transboundary hydrocarbon deposits was a sensitive and complex subject, the Commission could fill the gaps in the general principles applicable to the exploitation of such resources and to the basic rights and obligations of the States which shared them, without prejudice to bilateral solutions which States might wish to establish.

24. **Ms. Florescu** (Romania), referring to the topic "Protection of persons in the event of disasters", said that her delegation had previously expressed the view that the topic should be limited to natural disasters but nonetheless appreciated the efforts made to define the scope *ratione materiae*, *ratione temporis* and *ratione personae* of the draft articles and to distinguish disasters from situations covered by international humanitarian law. Her delegation also supported the rights-based approach taken in the draft articles. In draft article 2 (Definition of disaster) as proposed by the Special Rapporteur, her delegation supported the inclusion of a "without prejudice" clause dealing with the application of international humanitarian law, since there might be situations in which it was not possible to draw a clear-cut distinction between an armed conflict and a disaster.

25. With regard to draft article 3 (Duty to cooperate) as proposed by the Special Rapporteur, it was important to strike the right balance between the principle of cooperation among States, including the affected State, in the event of a disaster and other applicable principles of international law. The link between the obligation to cooperate and the role of the State should be further analysed, in particular the question of whether disaster response should take place only following a request from an affected State or whether other States could act on their own initiative to enforce the right of persons to be assisted. In that context, consideration of whether a responsibility to assist existed, at least at a basic level, would be an important, albeit sensitive, aspect of future work on the subject.

26. On the topic "Shared natural resources", her delegation welcomed the Commission's initiative to prepare a study on the question of including shared oil and gas resources in its analysis of the topic. Currently, the joint management of shared natural resources was addressed by the States concerned in each individual case, and any regulations drawn up were specific to that situation. Since oil and gas resources were frequently shared, however, the issue merited broader examination.

27. Her delegation commended the general framework proposed for the Commission's consideration of the topic "The obligation to extradite or prosecute (*aut dedere aut judicare*)". Though not exhaustive, it encompassed a wide range of issues, and her delegation particularly welcomed the inclusion of the relationship between the two elements of the obligation and the relationship between the obligation and the principle of universal jurisdiction. Fulfilment of the obligation was important because it ensured the prosecution of serious crimes of international concern and consequently contributed to respect for the rule of law and international law.

28. With regard to the topic "Treaties over time", her delegation welcomed the conclusions of the Study Group established by the Commission on the scope of the topic, working methods and the possible outcome of the Commission's work. It also looked forward to the submission the following year of a report on subsequent agreement and practice as addressed in the jurisprudence of the International Court of Justice and other international courts and tribunals of general or ad hoc jurisdiction.

29. **Mr. Jilani** (Observer for the International Federation of Red Cross and Red Crescent Societies), speaking on the topic "Protection of persons in the event of disasters", said that his delegation appreciated the efforts made by the Commission to ensure that its work complemented the ongoing work of the Federation to implement the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (IDRL

Guidelines). A number of States had already adopted new regulations on the basis of the Guidelines or were conducting or planning formal reviews of existing domestic laws. Some of the older global and regional treaties relating to disaster cooperation did not cover non-State actors. His delegation therefore welcomed the Commission's decision to address the rights and duties of those actors as well as those of States, in line with the IDRL Guidelines and recent treaties such as the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations and the Agreement on Disaster Management and Emergency Response of the Association of Southeast Asian Nations (ASEAN).

30. His delegation appreciated the Commission's acknowledgement of the traditional approach of IFRC to disaster response, which was based on needs but informed by rights. Human rights must be considered a critical component of the regulatory framework for disaster response; in particular, humanitarian assistance was a fundamental right, as affirmed in the Principles and Rules for Red Cross and Red Crescent Disaster Relief. At the same time, not all practical problems could be solved using a rights-based approach, as the Commission acknowledged in its report.

31. The definition of disaster raised a number of complex issues. No single definition would be adequate for all purposes; the definition adopted by the Commission should therefore be directly informed by the nature and extent of the legal consequences that it was considered to trigger. Nonetheless, it was necessary to distinguish between situations of armed conflict and other types of humanitarian emergency. Armed conflicts, whether or not they coincided with a natural disaster, involved unique operational dynamics and were governed by international humanitarian law. The rules governing relief for disasters that did not involve conflict were and should continue to be distinct from those governing armed conflict situations. A simple saving clause on the application of humanitarian law might not capture those distinctions.

32. Lastly, cooperation was critical to effective disaster response. National Red Cross and Red Crescent societies had a unique role in cooperating with the public authorities as auxiliaries in the humanitarian field, both under international law and under the domestic law of the countries in which they were established. That role had been clarified in resolution 2 of the thirtieth International Conference of the Red Cross and Red Crescent, and his delegation hoped that the draft articles would take account of it.

33. **Mr. Valencia-Ospina** (Special Rapporteur), welcoming the interest shown by the Committee in the topic "Protection of persons in the event of disasters", said that the five draft articles set out in document A/CN.4/L.758 had been adopted by consensus by a Drafting Committee composed of more than two thirds of the Commission's membership. They had been submitted to the Commission at a plenary meeting on the last day set aside for substantive consideration of topics. That late submission had prevented the Commission from adopting commentaries to the draft articles; as a result, and in accordance with the Commission's practice, the text of the draft articles was not included in the Commission's report. Bearing in mind the debate just concluded in the Committee, the Commission at its next session would adopt the five draft articles and commentaries thereto, together with any additional provisions that might be adopted on the basis of proposals to be made in his third report on the topic.

34. During the Committee's deliberations, a number of delegations had commented on the three draft articles proposed in his second report (A/CN.4/615). However, in order to place the Commission's work on the topic in its proper perspective, account must be taken of the five draft articles provisionally adopted by the Drafting Committee, as many other delegations had done in their statements. Those five draft articles represented the common ground found by the Commission on the scope *ratione materiae*, *ratione personae* and *ratione temporis* of the draft articles, the definition of disaster and the core principle of cooperation. They also demonstrated how the Commission had tackled the legal and political issues raised at the outset of its work, such as the relationship between the needs-based and rights-based approaches to disaster response; the extension of the definition of disaster beyond natural disasters to cover man-made disasters and even aspects of armed conflict; the relationship between the draft articles and international humanitarian law in the case of armed conflict; and the coverage to be accorded to the various phases of a disaster situation, in particular the pre-disaster phase, and to non-State actors.

35. In that connection, it might be useful to highlight some of the changes introduced by the Drafting Committee following the plenary debate in the

Commission. Those changes appeared to have anticipated many of the comments made by delegations in the Sixth Committee during the current session. For example, scope and purpose were now addressed in two separate draft articles, as several delegates had suggested. That change had helped to clarify the references to rights and needs, which guided the interpretation of the ensuing draft articles. Draft article 2 as provisionally adopted by the Drafting Committee (A/CN.4/L.758) stated the purpose of the draft articles. It struck a balance between a rights-based and a needs-based approach, emphasizing the importance of the needs of disaster victims, while also affirming that they were entitled to "full respect for their rights". That reference to rights carried with it the understanding that the relevant bodies of law allowed substantial derogations from certain rights during emergencies. That understanding would inform the development of future rules.

36. In its draft article 3 the Drafting Committee had chosen to narrow the definition of disaster by referring to "a calamitous event or series of events", as suggested by some members of the Sixth Committee. In addition, the definition no longer explicitly excluded armed conflict. The Drafting Committee had reasoned that the earlier definition proposed might unnecessarily prevent the application of the draft articles to disasters in territories where armed conflict was ongoing — a concern also raised by many delegations in the Sixth Committee. The Drafting Committee had chosen to address armed conflict in a new draft article 4, which stipulated that the draft articles did not apply to situations to which the rules of international humanitarian law were applicable.

37. With respect to new draft article 5 (Duty to cooperate), the Drafting Committee had made the following changes to the Special Rapporteur's initial proposal, a number of which had also been suggested by members of the Sixth Committee: the reference to civil society, which some had considered overly broad and vague, had been replaced by the narrower term "relevant non-governmental organizations", and a reference to the International Committee of the Red Cross had been added in recognition of that organization's vital role in delivering humanitarian assistance. The Drafting Committee had understood that the term "as appropriate" in draft article 5 allowed for the differentiated levels and forms of cooperation that States owed to the various actors mentioned. That understanding could be explained in the commentaries to the articles.

38. Two important features of the duty to cooperate were worth mentioning. First, cooperation was a duty incumbent on all States, not just States affected by a disaster or States rendering humanitarian assistance. Although the specific aspects of that duty had yet to be fleshed out, States had a general duty to consider requests for assistance in good faith; share information, expertise and technology wherever possible; and obey domestic laws when carrying out assistance operations in foreign territories. Second, the duty to cooperate was inherently reciprocal in nature and, therefore, although the draft articles referred primarily to a duty of States, they would also address the entitlement of States to receive cooperation.

39. Other issues had been addressed through exclusion. The draft articles adopted by the Drafting Committee made no reference, for example, to the concept of solidarity, which had been subsumed under the duty to cooperate. With regard to the concept of the responsibility to protect, it had been generally agreed that it did not apply to disaster response.

40. Draft article 5 had been provisionally adopted by the Drafting Committee on the understanding that a provision on the primary responsibility of the affected State would be included in a future draft article. He intended to propose such an article in his third report, to be grounded in the principles of sovereignty and non-intervention, expressed in the requirement of the consent of the affected State. His report would also contain proposals in respect of other applicable principles, including humanity, neutrality, impartiality and non-discrimination. The views expressed by the Sixth Committee would be reflected in that report, which he intended to submit to the Commission at its sixty-second session. It seemed clear from the Committee's discussion that the path traced by the first five draft articles was the right one and that it would lead to the achievement of the objective of progressively developing and codifying the law relating to protection of persons in the event of disasters.

41. **Mr. Petrič** (Chairman of the International Law Commission), introducing chapters IX, XI and XII of the Commission's report (A/64/10), recalled that the Commission had decided to include the topic "The obligation to extradite or prosecute (*aut dedere aut*

judicare)", the subject of chapter IX, in its programme of work in 2005. In 2009, the Commission had established an open-ended Working Group with a mandate to draw up a general framework to guide the Commission's future consideration of the topic. The Working Group had agreed on a proposed general framework, reproduced in paragraph 204 of the Commission's report, which outlined as comprehensively as possible the questions to be considered, without assigning any order of priority. It comprised seven sections: (1) the legal bases of the obligation to extradite or prosecute; (2) the material scope of the obligation; (3) the content of the obligation; (4) the relationship between the obligation and other principles, such as universal jurisdiction; (5) conditions for the triggering of the obligation; (6) the implementation of the obligation; and (7) the relationship between the obligation and the surrender of the alleged offender to a competent international criminal tribunal (the so-called "third alternative").

42. The general framework did not take a position on whether treaties constituted the exclusive source of the obligation to extradite or prosecute or whether that obligation also had a basis in customary international law. It did not provide a definite answer to the question of how comprehensive the Commission's approach to the topic should be. It was understood, however, that the work on the topic would not involve a detailed consideration of extradition law or of the principles of international criminal law. The aim of the general framework was to facilitate the work of the Special Rapporteur in the preparation of future reports. It would be left to the Special Rapporteur to determine the order in which the questions were to be considered and the structure of, and linkages between, his planned draft articles on the various aspects of the topic.

43. Turning to chapter XI on the topic "The most-favoured-nation clause", he noted that the Commission had established a Study Group, which had been tasked with undertaking a preliminary assessment of the draft articles on most-favoured-nation clauses adopted by the International Law Commission in 1978 and drawing up a road map for future work. The Study Group would be preparing papers on the eight topics listed in paragraph 216 of the Commission's report, which would shed additional light on questions concerning the scope of most-favoured-nation clauses and, in particular, their interpretation and application in relation to investment. As part of that effort, the Group would compile background material on the various types of most-favoured-nation provisions, particularly in the area of investment, and on the work done on the topic in other forums, such as the World Trade Organization and the United Nations Conference on Trade and Development. It would also be examining the linkages between the most-favoured-nation clause and related principles, such as national treatment and non-discrimination; its application in regional economic integration agreements and free trade agreements; and some contemporary problems, particularly the issues encountered in the *Maffezini v. Spain* case.

44. In a preliminary assessment of the 1978 draft articles, the Study Group had noted that in its earlier work the Commission had viewed the most-favoured-nation clause as a unique legal institution, although it had initially taken up the topic in the context of the examination of the question of treaties and third States. The 1978 draft articles fell into three categories. First, there were articles that raised important issues relating to the current relevance of the 1978 draft articles in the light of subsequent developments. Those articles included article 7 (Legal basis of most-favoured-nation treatment), article 8 (The source and scope of most-favoured-nation treatment), article 9 (Scope of rights under a most-favoured-nation clause), article 10 (Acquisition of rights under a most-favoured-nation clause), article 16 (Irrelevance of limitations agreed between the granting State and a third State), article 23 (The most-favoured-nation clause in relation to treatment under a generalized system of preferences) and article 24 (The most-favoured-nation clause in relation to arrangements between developing States).

45. A second category of articles, including article 25 (The most-favoured-nation clause in relation to treatment extended to facilitate frontier traffic) and article 26 (The most-favoured-nation clause in relation to rights and facilities extended to a landlocked third State), was also of some interest, although it was not entirely clear what the scope of those articles was in the contemporary context. Some of the issues they covered had already been the subject of further elaboration, for instance in article 126 of the United Nations Convention on the Law of the Sea (Exclusion of application of the most-favoured-nation clause).

46. Lastly, there was a set of draft articles that did not raise any issues of core relevance to the Study Group's work, either because they were essentially "without prejudice" clauses or because they were premised on

distinctions that were no longer prevalent or reflected self-evident propositions that were consistent with contemporary practice.

47. While it had been agreed that the Study Group would focus on the most-favoured-nation clause in the context of investment — with draft articles 9 and 10 as the basic points of departure for its work — it had been considered necessary to reflect further on the scope of the exercise, since limiting the work to investment treaties, for example, would mean addressing the problematic question of the definition of "investment". Caution had also been advised in extrapolating from one area to another, particularly bearing in mind that there was no multilateral regime that covered the area of investment. One of the papers to be prepared would delve further into the 1978 draft articles in order to enable the Study Group to clarify and reach an understanding about the Commission's earlier work and ensure that there was a clear delineation between that work and the current exercise.

48. With regard to chapter XII on the topic "Treaties over time", in 2009 the Commission had established a Study Group to consider the issues to be covered, working methods, and possible outcome of work on the topic. The main question had been whether the work of the Study Group should focus on subsequent agreement and practice, or whether it should follow a broader approach by also dealing with other issues such as: (a) the effects of certain acts or circumstances on treaties (termination and suspension, other unilateral acts, material breaches and changed circumstances); (b) the effects of supervening sources of international law on treaties (effects of successive treaties; supervening custom; *desuetudo* and obsolescence); and (c) amendments and *inter se* modifications of treaties. The Group had decided that it should focus first on subsequent agreement and practice, while continuing to explore the possibility of approaching the topic from a broader perspective.

49. With regard to the working methods of the Study Group, it had been emphasized that the work to be undertaken should be a collective effort. The Chairman of the Study Group would prepare a report, to be submitted in 2010, on subsequent agreement and practice as addressed in the jurisprudence of the International Court of Justice and other international courts and tribunals. Other interested members of the Study Group had been encouraged to submit contributions on the issue of subsequent agreement and practice, particularly at the regional level or in relation to special treaty regimes or specific areas of international law. Members had also been invited to provide contributions on other issues falling within the broader scope of the topic.

50. As regards the possible outcome of the Commission's work, it had been underlined that the final product should provide practical guidance for States. The idea of elaborating a repertory of practice, to be accompanied by a number of conclusions, had received broad support in the Study Group, but the need to remain flexible had also been stressed.

51. *Mr. Baghaei Hamaneh (Islamic Republic of Iran), Vice-Chairman, took the Chair.*

52. **Mr. Hafner** (Austria) said that the list of issues drawn up by the Working Group on the topic of the obligation to extradite or prosecute provided a very broad framework for further deliberation, encompassing the whole regime of extradition, with all its ramifications and requirements. It would be of interest to see whether rules of customary international law could be discerned in the matter and, if so, whether they were restricted to certain crimes or were general in scope. In that regard, the question of the meaning and definition of "international crime" would doubtless resurface.

53. The principle of universal jurisdiction was only indirectly related to the obligation to extradite or prosecute. The latter obligation existed only if jurisdiction existed, irrespective of the grounds for jurisdiction; it was only in that perspective that the question of universal jurisdiction might arise. As to the conditions for the triggering of the obligation to extradite or prosecute, the Commission would have to examine the different approaches to compliance with a request for extradition, either merely formal examination or substantive scrutiny of the request. Clarification of whether the latter question would be addressed under "standard of proof" would be helpful.

54. The issue of guarantees in cases of extradition had recently raised a number of concerns and become the subject of inter-State negotiations. A question that had arisen frequently was whether diplomatic assurances were acceptable and sufficient to enable the requested State to avoid responsibility under human rights conventions. The issue of guarantees was closely related to that of control of the implementation of the obligation to extradite or prosecute, specifically the

question of the extent to which control measures such as the attendance of consuls at proceedings held in the requesting State would suffice to guarantee respect for the conditions of extradition.

55. As to the "third alternative", or the relationship between the obligation to extradite and prosecute and the surrender of the alleged offender to a competent international criminal tribunal, there might not be sufficient material to discern an established pattern of practice that could lead to general rules. In any case, that question was not a matter of priority in future work on the topic.

56. On the topic of treaties over time, his delegation concurred with the Study Group's conclusion that it should focus on the issue of subsequent agreement and practice before considering whether or not to broaden the scope of the topic.

57. **Mr. Aguiar Patriota** (Brazil), referring to the topic "Reservations to treaties", said that his delegation had noted with satisfaction the approach taken by the Commission in developing the Guide to Practice, particularly its decision not to deviate from the relevant provisions of the 1969, 1978 and 1986 Vienna Conventions on the Law of Treaties. Since the topic was a technical one with potentially serious practical implications, the formulation of draft guidelines was the best alternative. That said, his delegation encouraged the Commission to make an effort to streamline the draft guidelines and make them more user-friendly.

58. His delegation welcomed the content of guidelines 2.4.0 and 2.4.3 *bis*; the practice of formulating interpretative declarations in writing and the adoption of specific rules for communicating them would contribute to a more stable and predictable legal order. The Commission might, however, explore ways of strengthening the language of those provisions. It was important to address the issue of interpretative declarations, since they were part of current practice in international law and were not specifically regulated by the Vienna Conventions. However, a cautious approach was warranted in view of the rather limited practice on the matter.

59. With regard to guideline 2.9.3 and draft guidelines 3.5 and 3.5.1 it would be useful to elaborate further on the practical aspects of the recharacterization of an interpretative declaration. His delegation shared the Commission's view that approval of, opposition to or recharacterization of an interpretative declaration might be formulated at any time by any contracting State or international organization, although it would seem preferable to have such actions taken within a certain time frame. With regard to guideline 2.9.9, his delegation would appreciate clarification of the second paragraph, concerning the relevance of silence in determining whether a State or international organization had approved an interpretative declaration.

60. Concerning reservations to the constituent instrument of an international organization as dealt with in guidelines 2.8.7 and 2.8.8 the Commission had correctly taken the position that such a reservation required the acceptance of the competent organ of the organization, unless otherwise provided in the founding instrument. However, notwithstanding the inclusion of the catch-all phrase "subject to the rules of the organization", his delegation still had some doubts as to whether guideline 2.8.8 was sufficiently comprehensive.

61. Guideline 2.8.1 correctly set a deadline for raising objection to specific reservations. However, it was not clear whether the deadline would also apply to international dispute resolution bodies or treaty mechanisms asked to assess the impermissibility of reservations. His delegation noted the careful wording of guidelines 3.2 and 3.2.1 to 3.2.5 and agreed that contracting States or organizations might assess the permissibility of reservations to a treaty, as might dispute settlement bodies and treaty monitoring bodies, depending on their constitutive acts and the powers conferred on them by States and international organizations. It also noted that, as explained in the commentary to draft guideline 3.2, the verb "assess" was to be regarded as neutral and did not prejudge the question of authority underlying the assessment that might be made by different entities. With respect to draft guidelines 3.3 and 3.3.1, a distinction should be made between, on the one hand, reservations that were compatible with the object and purpose of a treaty and addressed provisions that could be subject to a reservation and, on the other, reservations that did not meet those criteria.

62. Concerning the topic "Expulsion of aliens", as other delegations had noted, it was not yet clear what the exact meaning of "expulsion" was or what situations would be covered by the draft articles. That lack of clarity perhaps had to do with differences in

domestic laws. Brazilian legislation, for instance, envisaged four situations in which foreigners could not enter or stay in the country: denial of entry, deportation, expulsion and extradition. The Commission had decided that its consideration of the topic would not include the issue of extradition, but it was not clear which of the other three situations would be addressed. The laws and rules governing denial of entry, deportation and expulsion in Brazil differed significantly. Expulsion was an exceptional measure applied to those who might represent a threat to national security or public order. For an individual to be expelled, domestic legislation required a more complex administrative process than for denial of entry or deportation, and expulsion was formalized by means of a presidential decree. Expelled individuals were not allowed to return to the country unless another presidential decree was issued.

63. With regard to the approach taken to human rights in draft articles 8 to 14, his Government wished to emphasize that human rights were indivisible, interdependent and interrelated and must be respected at all times, in accordance with the applicable international treaties. Some rights might be at greater risk in the event of expulsion, and it might therefore be appropriate to emphasize certain rights by specific reference. His delegation was concerned, however, about the implications of that approach in respect of other possible rights that were not specifically mentioned and was of the view that draft article 8 should refer to "human rights" rather than to "fundamental rights". States had the sovereign right to expel foreigners in accordance with their domestic legislation, but that right must be exercised in strict compliance with international principles and norms, in particular those concerning human rights law and refugee law, and with human rights treaties, which created obligations for States regarding the protection of individuals, regardless of their nationality, religion, sex or ethnicity. That caveat should always be clear.

64. In the papers to be prepared by the Working Group on the topic of the most-favoured-nation clause, there should be in-depth consideration of the impact of such clauses on development and on the interaction between developed and developing States. In its report, the Commission had highlighted a number of provisions of the 1978 draft articles on most-favoured-nation clauses that were thought still to be relevant, but it had failed to mention draft article 30, concerning new rules of international law in favour of developing countries. The issue of development was an aspect of the 1978 draft articles that his delegation would prefer to retain and even expand.

65. In order for the Commission to carry out its work on the topic properly, it was essential to gather as much information as possible regarding regional economic integration processes, investment treaties and other initiatives that included most-favoured-nation clauses. His Government would submit written comments in due course on the application of such clauses under the regional mechanisms of which Brazil was a part, such as the Southern Common Market (MERCOSUR).

66. **Mr. McLay** (New Zealand), referring to the topic "Responsibility of international organizations", said that his delegation would support the Commission's addressing expressly in draft articles and commentaries the specific questions set out in paragraph 27 of its report concerning international responsibility between States and international organizations.

67. International organizations differed greatly in their purposes, functions membership and competence. Provision should be made for the special circumstances of particular organizations, supplementing the *lex specialis* provision in draft article 63. He welcomed the recognition elsewhere in the draft, for example in draft article 9, of the diversity of international organizations and their rules. In draft article 6, the test of "effective control" for attributing conduct might not be appropriate for all kinds of international organizations.

68. In view of the scarcity of practice and hence the lack of clarity and certainty concerning the right of international organizations to take countermeasures, the clarification provided by draft articles 51 and 21, paragraph 2, and the commentaries thereto was very welcome. They made it clear that countermeasures should not be a primary means of ensuring compliance of member States and that countermeasures should be subject to the organization's rules. The new general provisions in Part Six were also a positive development, especially draft articles 64, 65 and 66.

69. On the topic "Reservations to treaties", his delegation strongly supported simplifying and shortening the draft guidelines. A separate document setting out the main principles underlying the Guide to Practice would be very worthwhile. As for interpretative declarations, although it was appropriate that the regime for reservations should not simply be

transposed to them, it would be useful for the two regimes to be substantially aligned with regard to interpretative declarations that could be recharacterized as reservations in the light of the definition of "reservation" in the Vienna Convention on the Law of Treaties.

70. The Special Rapporteur's fifth report on expulsion of aliens (A/CN.4/611 and Corr.1) and his restructured work plan (A/CN.4/618) provided useful guidance on how the topic might progress. It might be helpful for the Commission to look closely at the direction the topic should take, the structure of the draft articles and the nature and form of any eventual instrument. His delegation supported the approach of a broad reference to human rights followed by draft articles on specific rights of particular importance in the context of expulsion.

71. On the topic "Protection of persons in the event of disasters", his delegation commended the willingness of the Special Rapporteur to complement a rights-based approach with a consideration of the needs of individuals. Those affected by disasters would derive practical benefit from a focus on the consequences that might flow from rights, including implementation and enforcement. The central principle underpinning protection in the event of disasters was cooperation. It would be useful for the Commission to consider other principles as well, such as neutrality, impartiality and non-discrimination.

72. Under the topic "Shared natural resources", he looked forward to a study of the aspects relating to transboundary oil and gas resources. While reserving judgement on the outcome, his delegation tended to the view that the topic was not ripe for codification.

73. The proposed general framework prepared by the Working Group for consideration of the obligation to extradite or prosecute appeared relevant and useful. Since it was often difficult to fulfil such an obligation for evidential reasons, it would be helpful to have the Commission's views as to the point at which the obligation to pursue extradition or prosecution would be regarded as satisfied. A fundamental question was whether the obligation existed under customary international law; the customary nature of the obligation should be examined in relation to specific crimes.

74. It was disappointing that no report had been presented on the important and topical issue of immunity of State officials from foreign criminal jurisdiction. That topic should certainly be considered during the Commission's sixty-second session.

75. The road map prepared by the Study Group for its future work on the most-favoured-nation clause seemed an excellent way to move the topic forward. On the topic of treaties over time, his delegation looked forward to the report on subsequent agreement and practice and supported the proposal of deriving guidelines from a representative repertory of practice.

76. **Mr. Clarke** (United Kingdom) commenting on the obligation to extradite or prosecute, said that the obligation stemmed from treaties and could not yet be regarded as a rule or principle of customary international law. The terms of a relevant international agreement must govern both the crimes in respect of which the obligation arose and the question of whether the custodial State had discretion as to whether to extradite or to prosecute. When the Commission reverted to the topic, it should begin by systematically reviewing relevant international treaty provisions, domestic legislation and judicial decisions. His delegation would support further work along those lines and welcomed the establishment of the open-ended Working Group.

77. With regard to the topic "The most-favoured-nation clause", much jurisprudence had been generated since 1978, both within the World Trade Organization (WTO) and by tribunals in arbitration concerning investment treaties. It was worthwhile for the Study Group to clarify the scope of most-favoured-nation clauses and the extent to which the 1978 draft articles remained applicable. On the other hand, detailed studies on the interpretation and scope of most-favoured-nation clauses relating to trade and investment had been undertaken by the United Nations Conference on Trade and Development (UNCTAD) and the Organization for Economic Cooperation and Development (OECD), and the Study Group should avoid replicating the existing body of work.

78. The Study Group should consider whether most-favoured-nation clauses had any relevance outside the sphere of trade and investment and, if so, whether any broad principles could be derived concerning their scope and application. That would help the Study Group assess the continuing relevance of the 1978 draft articles. Such broad conclusions might, of course, be difficult to draw. The interpretation of most-

favoured-nation clauses by tribunals had been heavily dependent on the particular wording of the clause in question, and there was some doubt whether the interpretation of such clauses would ultimately be a suitable subject for codification. His delegation also questioned the value of the proposed study of the relationship between most-favoured-nation clauses and national treatment clauses. That relationship must be considered in the context in which the clauses occurred, for example in WTO agreements or bilateral investment treaties, and it would be difficult for the Study Group to derive any generally applicable principles in that regard.

79. Concerning the topic "Treaties over time", the Chairman of the Study Group should take the narrower approach, focusing on subsequent practice and agreement, rather than the broader approach, taking account of all the possible factors that might affect the operation of a treaty over the course of its existence. Issues such as spent treaties, supervening impossibility of performance, dispute resolution, interpretation, termination or withdrawal were all dealt with to some extent by reference to the original treaty provisions or to the residual rules of the Vienna Convention on the Law of Treaties and parallel rules of customary international law. It might not be practical or possible to go further than the Convention itself. If, however, the Commission identified any significant lack of practice, jurisprudence or guidance in that area, it would be useful to pursue the topic.

80. **Mr. Momtaz** (Islamic Republic of Iran), commenting on the three draft articles proposed by the Special Rapporteur on the protection of persons in the event of disasters, said that the topic should deal exclusively with natural disasters, to the exclusion of man-made catastrophes, and the definition of "disaster" should make that clear. The Commission could provide some examples of natural disasters, such as earthquakes, floods, drought or volcanic eruptions. The definition should include a reference to significant and widespread human, material or environmental loss and also to serious human hardship to reflect the fact that disasters might not necessarily result in loss of human life but might significantly worsen living conditions by damaging infrastructure. As the topic covered the field of humanitarian assistance, the term "assistance" in the title might be preferable to "protection".

81. His delegation was not convinced of the relevance, feasibility and utility of a rights-based approach to the topic. Moreover, such an approach seemed to imply that an affected State must accept international assistance, whereas in State practice assistance had always been provided in response to a request or authorization on the part of the affected State and was intended to supplement, rather than substitute for, action by the affected State. An affected State was obliged to assist its own population in the event of a disaster and was entitled to ensure the coordination of relief measures and to receive aid, upon request, from other States and from intergovernmental organizations. It was not, however, obliged to accept all the offers of assistance that might be forthcoming, and it could indeed refuse an ill-intentioned offer.

82. His delegation agreed that the concept of responsibility to protect did not apply to disaster situations. That concept was still far from being an established consensual norm, or even an "emerging principle", and, moreover, was limited to the four grave crimes of genocide, war crimes, ethnic cleansing and crimes against humanity. According to the principles of State sovereignty and non-interference in internal affairs the consent of the affected State was essential for international cooperation. Given the unique status of the United Nations, the affected State did not have the same obligation to cooperate with other international organizations that it had to cooperate with the United Nations. The concept of civil society was not established in law, and solidarity was not an international legal principle. Draft article 3 therefore required redrafting in order to articulate clearly the scope and limits of the duty to cooperate under the Charter of the United Nations and international law.

83. With regard to the topic "The obligation to extradite or prosecute (*aut dedere aut judicare)*", it was to be hoped that the proposed general framework would help the Commission make tangible progress on the topic. In view of the diversity of international practice on the matter, the Commission should focus on codification rather than on progressive development. It should also note that, according to established practice, States were not obliged to extradite their nationals, nor were they obliged to extradite in the absence of a treaty obligation towards the requesting State or if the requirement of double criminality was not met. The Commission should not examine the question of surrendering suspects to international criminal

tribunals, since that matter was governed by different legal rules.

84. The topic of treaties over time was very important. The Study Group should concentrate on the issue of subsequent practice and agreement, treating it as a question of interpretation. The work of the Study Group should not in any way undermine the principles of stability and continuity in treaty relations.

85. **Mr. Boonpracong** (Thailand) said that the obligation to extradite or prosecute was an important element in the fight against impunity. The list of questions/issues prepared by the Working Group was appropriate and balanced. The source of the obligation to extradite or prosecute and its relationship with universal jurisdiction should be carefully explored. It was important to examine whether and to what extent the obligation could be exercised with regard to specific crimes under customary international law in the absence of treaty obligations. To reach that conclusion, there must be general, uniform and consistent State practice and *opinio juris*, which did not yet seem to be the case. Currently, the obligation was regarded as a matter of judicial cooperation based on treaties. It would be helpful for the Committee to study the topic in parallel with the scope and application of universal jurisdiction.

86. In its future work on the topic, the Commission could seek clarification about the applicability of the obligation to different crimes, including crimes under international law, and could examine how States defined its scope of application and the conditions surrounding the obligation in their domestic law. Other principles of international law, especially *nullum crimen sine lege, nulla poena sine lege* and *non bis in idem*, also applied to the obligation to extradite or prosecute.

87. Those principles underlay Thailand's 2008 Extradition Act, which provided that an extradition request for a Thai national could be met in accordance with an extradition treaty, or if the person concerned consented to the extradition, or if agreement was reached with the requesting State on the basis of reciprocity. The extradition process was triggered by a formal request submitted via the diplomatic channel or to the Attorney-General. The competent authorities were allowed a certain degree of discretion, provided that the offence was an extraditable once, for instance, not a political or military offence. In the absence of an extradition treaty, the requesting State could commit itself to granting reciprocity. A separate procedural regime, conducted expeditiously, since the merits were not considered, but in accordance with the principle of due process, applied to extradition cases. His delegation welcomed the emphasis placed by the Commission on national legislation and decisions and had furnished details of its domestic law and regulations.

88. **Mr. Joyini** (South Africa) said that in considering the legal basis of the obligation to extradite or prosecute it was necessary, first, to identify the types of crimes that were subject to the obligation under customary international law and, second, to list the treaties in which the obligation figured. State practice, including recourse to the international criminal tribunals, had shown that crimes against humanity, war crimes, and genocide constituted the subject matter of the obligation under customary law. A number of counter-terrorism conventions had placed a treaty law obligation upon ratifying States in the matter of prosecution or extradition.

89. The material scope of the obligation considered by the Commission should be limited to international crimes of concern to the entire international community, as crimes under domestic law were already regulated through extradition processes. It should however be left to domestic legal systems to determine the content of the obligation to extradite or prosecute, except where an international tribunal had jurisdiction to decide whether a national prosecution was being carried out impartially. The order in which the two elements of the obligation were observed was important. Where a State had jurisdiction, it should prosecute; but if it was unwilling or unable to do so, it should defer to the State seeking extradition.

90. The principle of universal jurisdiction was not synonymous with the obligation to extradite or prosecute. The limitations on extradition in accordance with the principles of *nullum crimen sine lege, nulla poena sine lege* and *non bis in idem* continued to apply. In the practice of extradition, some solutions had been found to conflicts between the obligation to extradite and other governing principles such as due process or protection against torture, which might be lacking in a requesting State. The requested State might, for instance, make the extradition dependent upon its concerns being met by the State seeking extradition.

91. As for the "third alternative" of surrendering an alleged offender to a competent international criminal tribunal, it should not be subject to the rigours or difficulties of the extradition process. An international

tribunal to which a requested State was a party should be regarded as an extension of its own jurisdiction.

Agenda item 79: Report of the United Nations Commission on International Trade Law on the work of its forty-second session (*continued*)
(A/C.6/64/L.10 and L.11)

92. **Ms. Köhler** (Austria), introducing draft resolution A/C.6/64/L.10 on the report of the United Nations Commission on International Trade Law on the work of its forty-second session, said that over 70 Member States had sponsored the draft resolution; those listed were joined by Benin, the Islamic Republic of Iran, Latvia, Malaysia and the Republic of Moldova. Paragraphs 1 to 4 and 8 referred to the progress achieved by the Commission during the year. Paragraph 10 reaffirmed the importance, in particular for developing countries, of the work of the Commission concerned with technical assistance and cooperation in the field of international trade law reform and development. It included a new subparagraph (e), which noted the Commission's request for the Secretariat to explore the possibility of establishing a presence in regions or specific countries through, for example, having dedicated staff in United Nations field offices, collaborating with such existing field offices or establishing Commission country offices with a view to facilitating the provision of technical assistance with respect to the use and adoption of Commission texts. The other paragraphs were similar to those in the previous year's resolution.

93. Introducing draft resolution A/C.6/64/L.11 on the Practice Guide on Cross-Border Insolvency Cooperation, of the United Nations Commission on International Trade Law, she said that the resolution expressed appreciation to the Commission for the completion and adoption of the Practice Guide; requested the Secretary-General to publish the text of the Practice Guide and transmit it to Governments; recommended due consideration of the Practice Guide by judges, insolvency practitioners and other stakeholders involved in cross-border insolvency proceedings; and recommended also that all States continue to consider the implementation of the Model Law on Cross-Border Insolvency.

The meeting rose 12.55 p.m.