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Chair: Ms. Anderberg (Vice-Chair) . . . . . (Sweden)

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19-18943 (E)

In the absence of Mr. Mlynár (Slovakia), Ms. Anderberg (Sweden), Vice-Chair, took the Chair.

The meeting was called to order at 3.05 p.m.

Agenda item 79: Report of the International Law Commission on the work of its seventy-first session (*continued*) (A/74/10)

1. **The Chair** invited the Committee to continue its consideration of chapters VI, VIII and X of the report of the International Law Commission on the work of its seventy-first session (A/74/10).

2. **Ms. Weiss Ma'udi** (Israel), referring to the topic "Immunity of State officials from foreign criminal jurisdiction", said that while Israel attached great importance to ending impunity, the legal principle of immunity of State officials from foreign criminal jurisdiction was as imperative as ever; it was firmly established in the international legal system and had been developed to protect State sovereignty and equality, prevent political abuse of legal proceedings and allow State officials to perform their duties properly. Israel continued to have concerns regarding the draft articles provisionally adopted by the Commission thus far, and believed that the comments made by all States at the current session should be read together with the comments made in the past.

3. Despite the progress made at the seventy-first session of the Commission with regard to procedural safeguards, Israel remained very concerned that some of the draft articles provisionally adopted so far had failed to accurately reflect customary international law on the subject or to adequately acknowledge that fact. In particular, Israel shared the view of many other States regarding the unsatisfactory treatment of the issue of immunity *ratione personae* in draft article 3 and the exceptions to immunity *ratione materiae* in draft article 7 adopted by the Commission at its sixty-ninth session.

4. On the issue of persons enjoying immunity *ratione personae*, while it was specified in the draft articles that only Heads of State, Heads of Government and Ministers for Foreign Affairs were entitled to such immunity, under customary international law, the category of State officials enjoying such immunity was wider and depended on the particular character of their functions. That position was supported by the case law of the International Court of Justice. The Commission should therefore reconsider its approach on the matter, particularly given the response from States thus far. On the issue of exceptions to the applicability of immunity *ratione materiae*, Israel shared the view that the exceptions stipulated in draft article 7 corresponded neither to international law in force nor to any "trend" in that direction. Accordingly, draft article 7 should be completely altered, if not deleted.

5. That being said, any discussion of exceptions – which, in any event, would be an attempt to propose *lex ferenda* only and was not be encouraged – must be held in conjunction with the discussion of safeguards rather than separately from it. Her delegation was pleased that the Special Rapporteur had stressed, as stated in the report of the Commission (A/74/10), that the draft articles contained in her seventh report were designed to apply to the draft articles as a whole, including draft article 7. Nevertheless, Israel shared the position expressed by other States that the use of procedural safeguards would not be sufficient to cure the flaws inherent in some of the draft articles, including draft article 7.With regard to the procedural safeguards themselves, which were the subject of the Special Rapporteur's seventh report, under international law, questions of immunity were preliminary in nature; as such, they should be considered at the earliest possible stage, *in limine litis*.

6. Referring to the draft articles proposed by the Special Rapporteur in her seventh report (A/CN.4/729), she said that immunity was a procedural threshold that ought to prevent the initiation of any criminal proceedings. Her delegation therefore agreed with the Special Rapporteur that the purpose of draft article 8 (Consideration of immunity by the forum State) was to indicate that immunity should be considered at the earliest possible time. However, the wording of the draft article did not properly reflect that view. Although paragraph 1 stated that the "competent authorities of the forum State shall consider immunity as soon as they are aware that a foreign official may be affected by a criminal proceeding", paragraph 2 only required the State to determine immunity "at an early stage of the proceeding, before the indictment of the official and the commencement of the prosecution phase".

7. In the view of Israel, immunity must be determined as soon as the forum State became aware that a foreign official might be affected by a criminal proceeding. Any text that was adopted for the draft article should more accurately reflect the purpose of the draft article, as described by the Special Rapporteur, and the current state of the law. With regard to paragraph 3, Israel agreed that immunity should be considered if the competent authorities of the State intended to take a coercive measure against a foreign official. The determination of whether a measure was coercive should be done on a case-by-case basis, based on the

nature of the measure and whether it would directly affect the performance of the official's functions.

8. In paragraph 1 of draft article 9 (Determination of immunity), the provision that it was for the courts of the forum State to determine the immunity of State officials from foreign criminal jurisdiction appeared to be incompatible with the provisions in draft article 8, paragraphs 1 and 3, that immunity should be considered by the competent authorities of the forum State as soon as they were aware that a foreign official might be affected by a criminal proceeding. In that connection, Israel shared the view of some members of the Commission that there was an apparent over-reliance in the draft articles on the judiciary in determining issues of immunity. While that might reflect criminal procedures in civil law systems, it did not reflect the practice in systems where executive and prosecutorial authorities played a more prominent role. Moreover, communication between the forum State and the State of the official regarding questions of subsidiarity or complementarity should be carried out by the executive and prosecutorial authorities before any indictment and before the matter reached any court. Stipulating that courts alone had the power to determine immunity overlooked the diversity of legal systems and would create divergences regarding the temporal and procedural phases in which the issue of immunity could be determined.

9. The position of Israel, like that of several members of the Commission, was therefore that it would be preferable to refer to the competent authorities of the forum State or simply the forum State. Similarly, draft article 3, paragraph (b), where the term "immunity from foreign criminal jurisdiction" referred to protection from the exercise of criminal jurisdiction solely by judges and courts, should be amended to refer in a more general manner to protection from the exercise of any criminal jurisdiction by any authority of the forum State.

10. Immunity should be determined by the competent authorities of the forum State at the highest levels and only after consultation with the State of the official, because the decision regarding whether to institute a criminal investigation carried, in and of itself, the risk of violating the official's immunity under customary international law. In that connection, Israel was pleased that several members of the Commission had highlighted the central role of the diplomatic channel in communications between the forum State and the State of the official. Bilateral consultations enabled the forum State to assess all relevant information, including issues of subsidiarity or complementarity, and played an important role in ensuring the stability of international relations and the sovereign equality of States. Israel shared the view expressed by several members that invocation of immunity should trigger consultations between the two States concerned, with the effect of suspending criminal proceedings for a reasonable period during such consultations. Her delegation would welcome further discussions on whether there were additional formal or informal mechanisms that would make it mandatory for the forum State to allow the State of the official to have its legal position or other relevant information made known to the forum State so that it could be taken into account before any decision on immunity was made by the forum State.

11. Her delegation did not agree with the underlying assumption in draft article 10 (Invocation of immunity) that the State of the official must invoke immunity *ratione materiae* in order for the question of immunity to be considered. There should be a presumption of immunity in the case of foreign State officials, unless the State of the official expressly clarified the lack of immunity or waived immunity, or until determination of its absence was made. Presumption of a lack of immunity could lead to abuse and the circumvention of the immunity of State officials. Israel shared the view expressed by several members of the Commission that the invocation of immunity was not a prerequisite for its application, as immunity existed as a matter of international law. Her delegation was concerned that the procedures for invoking immunity set forth in the draft article could lead to the de facto breach of immunity *ratione materiae* in the time preceding the invocation of immunity by the State of the official. In addition, the requirement to invoke immunity in writing, as proposed in paragraph 3 of the draft article, did not reflect international practice, as the right to immunity was often communicated orally.

12. With regard to paragraph 6, Israel believed that no distinction should be made between immunity *ratione personae* and immunity *ratione materiae* in terms of the requirement to invoke immunity. Accordingly, her delegation agreed with the proposal made by some Commission members that, in cases where immunity was not invoked, the forum State should still consider or decide *proprio motu* the question of immunity as soon as it was aware of the status of the foreign State official or of the acts involved. Israel also agreed that there was no obligation to invoke immunity immediately.

13. Israel had concerns about paragraph 4 of draft article 11 (Waiver of immunity), as it would be difficult to deduce "clearly and unequivocally" from a treaty a de facto a waiver of immunity. The paragraph should be deleted, because it could lead to ambiguous and unwelcome outcomes, given that States had varying interpretations of such provisions in treaties.

14. Turning to draft article 13 (Exchange of information), she said that Israel welcomed efforts to improve cooperation and the exchange of information between the forum State and the State of the official, as direct dialogue at the highest levels of government was of crucial importance for balancing the need to combat impunity with the importance of protecting State officials from politically motivated criminal jurisdiction. With regard to paragraph 2, Israel was of the view that it should be possible to exchange information through all existing channels, including the diplomatic channel, at all times, in order to encourage and facilitate the transfer of information at the earliest possible stage. Her delegation agreed that the State of the official should be able to refuse a request for information if it considered that the request affected its sovereignty, public order (*ordre public*), security or essential public interests, as set out in paragraph 4. The exercise of that right should not serve as grounds for declaring that immunity did not apply; accordingly, the word "sufficient" should be deleted from paragraph 6.

15. Having said all of the above, Israel shared the view of some Commission members that the list of grounds for refusal of a request for information should not aim to be exhaustive. States might also wish to refuse such requests on the grounds that they were a provocation or that they were designed to facilitate the bypassing of applicable immunity under customary international law.

16. With regard to draft article 14 (Transfer of proceedings to the State of the official), Israel was of the view that States with the closest and most genuine jurisdictional links should have primary jurisdiction, as they were generally best able to promote the interests of justice. As a rule, foreign jurisdiction over State officials should not be exercised as a first resort. Indeed, when the State of the official was willing to assess the case at hand in a genuine manner and handle it within the appropriate legal framework, which might but must not lead to criminal proceedings, the forum State should be under an obligation to decline to exercise its jurisdiction in favour of the jurisdiction of the State of the official, in accordance with the principle of subsidiarity. Israel supported the inclusion of a provision to ensure that a forum State could not arbitrarily deny a request for the transfer of proceedings, as proposed by several members of the Commission.

17. While her delegation welcomed the acknowledgment by the Special Rapporteur regarding the status of the proposals as constituting progressive development of international law, Israel reiterated the need to take into account State practice and existing legal positions. A more cautious and nuanced approach was necessary, particularly as some of the draft articles dealt with matters regarding which there was ample State practice, such as that concerning the consideration of the principle of subsidiarity in determining immunity and the use of formal and informal consultations to obtain relevant information.

18. With regard to the Special Rapporteur's future programme of work, which might include the question of cooperation with international criminal courts and the impact on immunity of State officials from foreign criminal jurisdiction, Israel wished to recall that draft article 1, as provisionally adopted by the Commission, stated that the "present draft articles apply to the immunity of State officials from the criminal jurisdiction of another State", and that the Commission stated in paragraph (6) of its commentary to the draft article 1 that "the immunities enjoyed before international criminal tribunals, which are subject to their own legal regime, will remain outside the scope of the draft articles". The Commission should not deviate from the original purpose and scope of application of the draft articles. Her delegation agreed with the view advanced during the Commission's debate that the judgment dated 6 May 2019 of the Appeals Chamber of the International Criminal Court in the case of the *Prosecutor v. Omar Hassan Ahmed Bashir (Decision under article 87(7) of the Rome Statute on the non-compliance by Jordan with the request by the Court for the arrest and surrender or Omar Al-Bashir)* was not the final word on the matter, and believed that the judgment was open to numerous interpretations and of limited application.

19. While Israel welcomed the Special Rapporteur's efforts to explore potential safeguards to the immunity of State officials from foreign criminal jurisdiction, the draft articles as provisionally adopted by the Commission did not reflect the current state of the law and in fact undermined well-established legal principles that continued to be applicable to, and necessary for, the conduct of international relations. If the Commission wished to propose the progressive development of the law in a certain direction, then it should be transparent about it. If it was seeking to give expression to *lex lata*, then it had missed the mark. In either case, a more detailed and robust engagement with Member States on the topic was necessary for the Commission's contribution to be useful and effective. The comments of States should be reflected in the text of the draft articles and the commentaries thereto. In the light of the many concerns raised by States and the implications of the draft articles for customary international law, deliberations on the final outcome of work on the topic were highly premature. It was not feasible to envisage

the adoption of the draft articles in the form of a convention at the current stage.

20. **Mr. Kowalski** (Poland) said that his delegation welcomed the adoption of the draft principles on protection of the environment in relation to armed conflicts on first reading and would strive to submit detailed comments on the topic in the future.

21. Turning to the topic "Immunity of State officials from foreign criminal jurisdiction" and the draft articles proposed by the Special Rapporteur in her seventh report (A/CN.4/729), he said that the wording of the draft articles should be more consistent in terms of which entity was responsible for determining immunity. While it was stated in draft article 9, paragraph 1, that "the courts" were responsible, in draft article 10, paragraphs 5 and 6, it was "the organs that are competent" that were responsible, mirroring the wording of "the competent authorities" used in draft article 8, which, however, concerned consideration of immunity, not determination of immunity.

22. With regard to draft article 10, paragraph 6, his delegation was of the view that the appropriate State authorities should decide *proprio motu* on the application of immunity in respect of all State officials who enjoyed immunity, whether *ratione personae* or *ratione materiae*. In respect of draft article 11, paragraph 4, Poland doubted that a treaty provision applicable between the forum State and the State of the official could be interpreted as an implied or express waiver. Draft article 14, paragraph 2, should be amended to indicate that once a transfer had been requested, the forum State should suspend the criminal proceedings "for a reasonable period of time" until the State of the official had made a decision concerning that request, because the suspension of criminal proceedings in the forum State could be indefinite if the State of the official did not make a decision.

23. Poland had supported the inclusion of the topic "Sea-level rise in relation to international law" in the Commission's programme of work, because of the significance of the topic and the impact of sea-level rise on a large number of States. However, contrary to the other topics on the agenda of the Commission, there was little State practice or treaty-based practice and few decisions of international courts and tribunals concerning sea-level rise.

24. **Ms. Sekhar** (India), speaking on the topic "Immunity of State officials from foreign criminal jurisdiction", said that the question of whether the immunity of State officials should prevail over the duty to prosecute and punish offenders had resurfaced in the light of new developments in international law. Recently, international and national courts that had prosecuted State officials had faced challenges in a number of areas, including jurisdictional matters and the enforcement of arrest warrants. Referring to the draft articles proposed by the Special Rapporteur in her seventh report (A/CN.4/729), she said that India agreed with the Special Rapporteur on the need for procedural safeguards and believed that the procedural safeguards set out in those draft articles could be useful to both the forum State and the State of the official. They might help to eliminate the risk of politicization of prosecutions and reduce instability in inter-State relations. Nevertheless, given that the topic of immunity of State officials had political, as well as legal, ramifications, in-depth research into relevant State practice was required.

25. Draft article 14 (Transfer of proceedings to the State of the official) should expressly provide that the State of the official might request a transfer of proceedings relating to its official from the forum State. There was a need to achieve a balance between the interests of the forum State and those of the State of the official, in line with the principle of reciprocity. With regard to the question of whether the Special Rapporteur should propose a mechanism for the settlement of disputes between the forum State and the State of the official in the draft articles, India was of the view that such a mechanism was not necessary; draft article 15, on consultations, was sufficient. Any differences between the forum State and the State of the official could also be settled through the diplomatic channel.

26. India welcomed the inclusion of the topic "Sea-level rise in relation to international law" in the programme of work of the Commission. Sea-level rise would result in the submersion of land, thereby raising complex issues of sovereignty and access to natural resources. It would also change the existing boundaries of maritime zones, which would have political, economic and security implications. In addition, the Commission should address the impact of sea-level rise on people's livelihoods and displacement in coastal areas. The draft articles on the protection of persons in the event of disasters adopted by the Commission were a useful starting point in that regard.

27. India had recently launched the Coalition for Disaster-Resilient Infrastructure, which built on the Sendai Framework for Disaster Risk Reduction 2015–2030 and was intended to help both developed and developing countries to build climate- and disaster-resilient infrastructure. The Coalition's secretariat, based in New Delhi, would facilitate knowledge exchange, provide technical support and promote capacity-building.

28. Turning to the topic "Protection of the environment in relation to armed conflicts", she said that protection of the environment during armed conflict was addressed in several international instruments, including The Hague Regulations of 1907, the Geneva Convention relative to the Protection of Civilian Persons in Time of War and the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts. Accordingly, any draft principles on the topic should not be in conflict with obligations arising under existing conventions, and any work on the topic should not duplicate efforts already undertaken within existing regimes.

29. **Mr. Oyarzábal** (Argentina), referring to the topic "Protection of the environment in relation to armed conflicts", said that the consideration of issues relating to protection of the environment in non-international armed conflicts and the responsibility of States for environmental damage was of great importance, because such discussions allowed the international community to examine whether current international norms and practices were indeed ensuring the effective protection of the environment during and after armed conflicts. The complementarities between the law of occupation and other areas of international law should be studied in greater depth, in particular the question of the civil liability of States.

30. Nonetheless, his delegation welcomed the inclusion of the principles of self-determination and permanent sovereignty over natural resources in the draft principles adopted by the Commission on first reading. That would entail the necessary limitation of the general framework for administration and use by the Occupying Power.

31. Draft principle 10 indicated that States should take measures aimed at ensuring that corporations and other business enterprises operating from their territories exercised due diligence with respect to the protection of the environment when acting in areas of armed conflict or in post-armed conflict situations. The normative framework – even when cast as non-binding – was developed in the context of responsible business practices in respect of human rights and the environment. In his delegation's view, the expansion of such a framework to armed conflicts required further analysis.

32. Turning to the topic of immunity of State officials from foreign criminal jurisdiction, he said that the regime of jurisdictional immunity had formal or procedural aspects that deserved to be addressed explicitly by the Commission, as they accounted for the effectiveness of the immunity rule. While national procedures for invoking immunity varied from State to State, certain legal standards were common to all States. In that connection, it was his delegation's understanding that the draft articles on the topic should provide rules setting out a common framework to guide States when they adopted rules on immunity in their domestic law.

33. With regard to the draft articles proposed by the Special Rapporteur in her seventh report (A/CN.4/729), his delegation believed that they should apply to the draft articles as a whole, and that separate draft articles for different types of immunity should be included only if they were deemed strictly necessary. In terms of substance, the draft articles in principle struck an acceptable balance between the rights of the forum State and the rights of the State of the official, and provided a good basis for future work. Nevertheless, his delegation favoured a more flexible approach to the invocation of immunity by the State of the official, to the extent that State practice confirmed that trend. A procedural regime that severely restricted the discretion of the State of the official might curtail the official's right to immunity.

34. His delegation hoped that the first reading would be completed in 2020, but suggested that the Commission first address the issue of the *ultra vires* acts of State officials and the relationship between immunity and recognition of States and Governments. In addition, the Commission should reflect on what form the final outcome of work on the topic should take.

35. Turning to the topic "Sea-level rise in relation to international law", he said that his delegation welcomed the Commission's decision to include the topic in its programme of work, as Argentina was concerned about sea-level rise and the impact on coastal and island States, in particular developing countries. His delegation was pleased that the Study Group would be working on the subtopics of issues related to the law of the sea, statehood, and protection of persons affected by sea-level rise. His delegation was particularly interested in the effects of sea-level rise on baselines and maritime zones and the consequences for statehood under international law should the territory of a State disappear. An approach based on international human rights law would enable the Commission to find solutions that addressed the humanitarian consequences of sea-level rise.

36. His delegation was pleased that the Commission had decided to include in its long-term programme of work the topic "Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law". The examination of secondary rules of international law

concerning the international responsibility of States in respect of reparation was of great importance. The inclusion of the topic would offer an opportunity for both the codification and the progressive development of international law, and would allow the Commission to analyse how the issue of reparation had been addressed by States and international tribunals. The Commission's work could provide useful guidance to all stakeholders in developing practical solutions. Accordingly, Argentina agreed that presenting the Commission's findings as draft guidelines or principles would be appropriate, as that would allow the Commission to identify existing rules, consider progressive development and propose best practices in the light of existing challenges.

37. **Mr. Kingston** (Ireland), referring to the topic "Immunity of State officials from foreign criminal jurisdiction", said that since the Drafting Committee had not provisionally adopted any of the draft articles proposed by the Special Rapporteur in her seventh report (A/CN.4/729), his delegation's comments would be preliminary and general in nature. The Special Rapporteur had indicated her intention to reorder the draft articles; his delegation believed that that would result in a clearer picture of the different procedural stages involved in the process. Consistency of terminology was important throughout the draft articles. The Special Rapporteur had used different formulations in relation to similar issues, as in draft articles 8 and 9, for instance. The Drafting Committee might wish to consider whether that was warranted. His delegation agreed with those members of the Commission who had highlighted how important it was to maintain consistency with the work of the Commission on other related topics, such as crimes against humanity and peremptory norms of general international law (*jus cogens*).

38. Ireland welcomed the Commission's recognition of the need to include procedural safeguards in the draft articles in order to prevent politically motivated or abusive exercise of jurisdiction against foreign State officials, and the analysis of that issue in the sixth and seventh reports of the Special Rapporteur (A/CN.4/722 and A/CN.4/729). His delegation was pleased that the draft articles focused on consultation and communication between the forum State and the State of the official. The relevant mechanisms and procedures of different legal systems should be reflected in the text.

39. Having previously underlined the need to distinguish between those aspects of the draft articles that constituted codification of existing international law and those that reflected progressive development, Ireland was pleased that the Special Rapporteur indicated in the report of the Commission (A/74/10) that draft articles 12, 13, 14 and 15 were proposals *de lege ferenda* constituting progressive development of international law. It would be helpful if that approach could be extended when drafting the commentaries to the draft articles as a whole.

40. His delegation had previously supported consideration of the dual components of the procedural aspects of immunity, namely timing and waiver, on the one hand, and safeguards, on the other, including in the context of draft article 7, as provisionally adopted by the Commission. In that connection, it looked forward to further discussion of the link between safeguards and draft article 7 and possible proposals for the inclusion of additional safeguards specifically linked to draft article 7.

41. While he recognized that members held differing views in relation to the question of whether the Special Rapporteur should propose a mechanism for the settlement of disputes between the forum State and the State of the official in the draft articles, his delegation was pleased that the Special Rapporteur had indicated that she would address that issue in her next report. Ireland would be interested to see the Special Rapporteur's proposals and analysis, and was of the view that dispute settlement mechanisms could potentially form part of the safeguards aimed at protecting the stability of international relations and avoiding political and abusive prosecutions.

42. Although it had been proposed that the first reading of the draft articles could be completed in 2020, a number of issues still needed to be addressed, as noted by the Special Rapporteur. Bearing in mind the importance of the topic, adequate time must be allocated for its consideration in full by both the Commission and the Committee.

43. Ireland welcomed the inclusion of the topic "Sea-level rise in relation to international law" in the Commission's programme of work, in the light of the environmental challenges facing low-lying States and small island States. Ireland also welcomed the establishment of the open-ended Study Group, which was expected to focus on issues related to the law of the sea, issues related to statehood and issues related to the protection of persons affected by sea-level rise. An in-depth examination of those issues would provide a solid basis for future constructive discussions within the Committee and would play an important role in identifying existing rules and gaps in the legal framework that the international community would need to address as part of its response to sea-level rise.

44. **Mr. Bagherpour Ardekani** (Islamic Republic of Iran) said that his delegation welcomed the adoption of the draft principles on protection of the environment in relation to armed conflicts. The draft principles and the commentaries thereto should apply to international armed conflicts only, as their application to non-international armed conflicts would, from a technical point of view, present difficulties in terms of the obligations of non-State actors and the threshold of non-international armed conflict. Moreover, non-international armed conflicts were different from international armed conflicts and should be governed by different rules. Those differences should be reflected in the draft principles. However, actions of non-State actors and insurgents during a non-international armed conflict that caused damage to the environment should entail the individual criminal responsibility of said non-State actors and insurgents at the national level.

45. With regard to the issue of protected zones, his delegation's understanding was that the aim of the draft principles was to fill existing gaps in international humanitarian law concerning the protection of the environment. An example of such a gap was the illustrative but not exhaustive list of vital infrastructure that must not be made the object of attack under article 56 of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts. The failure to mention oil platforms and other oil production and storage facilities was contrary to the intent of the drafters of the Protocol to protect the environment. Similarly, the term "environment" had been defined as including natural resources, which had been limited to mineral resources. However, his delegation was of the view that the term "natural resources" was not limited to mineral resources but included other high-value resources such as water. The illegal exploitation of natural resources and the diversion of watercourses in occupied territories by an Occupying Power could cause serious environmental damage. The prohibition of pillage of natural resources was applicable in situations of occupation, as well as during and after armed conflict.

46. His delegation agreed with the Commission that the established understanding of the concept of occupation was based on article 42 of the Hague Regulations, which stipulated that a territory was considered occupied "when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised." His delegation maintained, however, that the presence of armed forces was only one of the requirements of occupation; control of territory without such presence should also be taken into consideration. The notion had been recognized by the International Court of Justice, which had referred to it as the exclusive standard for determining the existence of a situation of occupation under the law of armed conflict. Draft principle 8, on human displacement, should also apply to situations of occupation. Furthermore, his delegation believed that the Occupying Power had a duty to avoid the forced displacement of populations when they were not in serious danger.

47. Turning to the topic "Immunity of State officials from foreign criminal jurisdiction", he said that his delegation was disappointed that, of the draft articles that had been provisionally adopted by the Commission at its sixty-ninth session, draft article 7, one of the most controversial draft articles from a methodological and substantive point of view, had been provisionally adopted by vote. That could not only adversely affect the working methods of the Commission, but also indicated that there had been a fundamental division of opinions on certain issues, making it difficult to conclude that the draft article reflected *lex lata*. His delegation doubted that the use of procedural safeguards could cure the substantive flaws inherent in the draft article. Moreover, the Special Rapporteur had embarked on progressive development of international law by proposing the draft article, which did not benefit from sufficient, widespread, representative and consistent State practice. Accordingly, his delegation did not believe that draft article 7 was an appropriate means of addressing the issue of immunity of State officials.

48. The immunity of officials was distinct from the immunity of States. In the commentary to the draft article, the Commission had made reference to a number of cases and national laws relating to the immunity of States in order to establish an exception to the immunity of officials from foreign criminal jurisdiction. Of course, such cases and laws could not be used to show a clear trend towards considering the commission of international crimes as a bar to the application of immunity *ratione materiae* of State officials from foreign criminal jurisdiction. Such exceptions should apply only in respect of the most serious crimes of concern to the international community, rather than in respect of specific crimes, as it was doubtful whether State practice and jurisprudence supported the inclusion of crimes such as torture and enforced disappearance.

49. His delegation found it difficult to see how there could be a conflict between immunity from jurisdiction in relation to the commission of international crimes and *jus cogens* norms. It was not possible to assume that the existence of criminal responsibility for any crimes under international law committed by a State official

automatically precluded immunity from foreign criminal jurisdiction; in addition, immunity did not depend on the gravity of the act in question. In other words, there was no recognized obligation, as a *jus cogens* norm, for third States to prosecute international crimes or to provide a civil remedy, although they might have a right to do so. It would be implausible if the obligation of third States to prosecute international crimes in their national courts constituted a rule of *jus cogens*.

50. The discussion of procedural issues was essential in order to ensure that the principle of immunity was respected, which was critical for safeguarding the stability of international relations and respect for the sovereign equality of States. The focus of the Commission should be on establishing procedural safeguards aimed at avoiding the politicization and abuse of criminal jurisdiction in respect of foreign officials. The draft articles proposed by the Special Rapporteur in her seventh report (A/CN.4/729) did not strike the right balance between respect for the sovereign equality of States and the need to combat impunity for the most serious international crimes. For instance, draft article 10 stated that the forum State had the authority to decide *proprio motu* on the application of immunity in respect of State officials who enjoyed immunity *ratione personae*.

51. With regard to draft article 11, the concept of an "express and clear" waiver of immunity should be elaborated. His delegation was of the view that waiver of immunity, as a procedural rule, was the exclusive right of sovereign State and should be declared by the State concerned in a manner that manifested the will of that State to waive the immunity of its official. In addition to being express and clear, the waiver should mention the name of the official whose immunity was being waived. Regarding paragraph 4, while his delegation admitted that immunity did not mean lack of responsibility, it could not agree with the Special Rapporteur that a general obligation deduced from a treaty in a substantive matter relating to individual responsibility could be deemed an express waiver. Indeed, as confirmed by the International Court of Justice in its judgment in *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, the substantive rules of international law could not trump procedural rules.

52. **Mr.** Elsadig Ali Sayed **Ahmed** (Sudan) said that the topic "Immunity of State officials from foreign criminal jurisdiction" raised a fundamental question regarding two underlying principles of international law: respect for State sovereignty and the fight against impunity. Historically, the law of immunity had developed on the basis of the notion of sovereign rights. That norm had been widely applied to several areas of international law, such as the law of diplomatic relations and State immunity, which were also the products of the Commission's work. Immunity of State officials had been widely acknowledged by the international community.

53. Such immunity was procedural in nature and served only as a procedural bar to criminal proceedings. The underlying substantive criminal responsibility remained. As such, immunity from foreign criminal jurisdiction should not be viewed as a loophole in the fight against impunity. The immunity of officials from foreign criminal jurisdiction should be respected on the understanding that it was only procedural.

54. The draft articles on the topic were meant to be without prejudice to any immunity that might be derived from special rules of immunity, such as diplomatic immunity. The commentary stated that in the event of a conflict between the draft articles and any special regime, the special regime would prevail. The Commission also considered that persons who were the subject of those special rules were "automatically excluded" from the scope of the draft articles. It would be helpful for the Commission to clarify whether the automatic exclusion took effect only in circumstances when an official enjoyed immunity under the special rules. In other words, whether, if, under the special rules, an official that did not enjoy immunity would be entitled to apply the draft articles to determine whether he/she enjoyed immunity on that basis. For example, it should clarify whether, if, under the Vienna Convention on Diplomatic Relations, a diplomatic agent that did not enjoy immunity in a given situation would be entitled to apply the draft articles for that purpose. That would be especially pertinent for members of military forces because of instances where status of forces agreements provided a hierarchy of applicable jurisdiction rather than immunity per se.

55. With regard to draft article 6, paragraph 3 (Criminalization under national law), given the controversy surrounding the immunity of State officials, his delegation hoped that the Commission would rely on peremptory norms of international law or *jus cogens* to resolve the matter. It was clear in law and jurisprudence that article 27 of the Rome Statute of the International Criminal Court was not problematic for States that had ratified the Statute, which were assumed to have waived such immunity. Problems would certainly arise, however, in determining the extent to which that article was binding on States that had not ratified the Statute, particularly when the Security Council adopted a resolution to refer a situation to the Court under

article 13 (b) of the Statute. It would be helpful for the Commission to clarify whether a State that had not ratified the Statute would be obliged to waive immunity under such a resolution, and whether, in that case, the source of the waiver would be the resolution, whereas a waiver should not be possible without ratification. According to the dominant view in international jurisprudence, immunity in such cases was a right of the State, not of the person. No one – not even the Security Council – could act on behalf of the State in such cases. Persons targeted in such resolutions continued to enjoy immunity and could invoke it before the International Criminal Court or any other international court. Any argument to the contrary would be spurious; in addition, a waiver of immunity was a judicial decision, and hence could not be taken by a political body such as the Security Council.

56. His delegation noted that the Commission had decided to confine the application of immunity *ratione personae* to the troika. A number of States had proposed the extension of immunity *ratione personae* to high officials beyond the troika, in recognition that contemporary foreign policy was often conducted by high officials other than the Minister for Foreign Affairs.

57. The courts of the forum State should consider the immunity of State officials from foreign criminal jurisdiction before the initiation of a prosecution that might affect a foreign official, before issuing a formal accusation or indictment against the official, and before taking any measures directed expressly at the official that imposed on him or her obligations that, if not fulfilled, might give rise to coercive measures that could impede the performance of his or her State functions, including measures that were precautionary in nature and that might be taken at the investigation or inquiry stage.

58. Caution should be exercised with regard to the Special Rapporteur's intention, expressed in her sixth report (A/CN.4/722), to analyse the relationship between the immunity of international officials from foreign criminal jurisdiction and international criminal courts, particularly following the ruling of the International Criminal Court on the obligation of Jordan to cooperate with the Court, in the *Al-Bashir* case. The judgment of the Appeals Chamber had been disappointing, even for some States that had ratified the Rome Statute, since it had been based on political rather than legal interpretations and had violated many well-established international treaties. To state that no rule of customary international law recognized the immunity of the Head of State in relation to international courts ran counter to stable rules of international law, under which such immunity existed in the horizontal relationship between States and no international court could exercise jurisdiction over a person whose arrest and surrender it had requested.

59. The judges of the Court had taken a highly dangerous and unwise step. It would appear from such reasoning that the parties to the Rome Statute, through the establishment of the Court, were usurping the rights of States that were not parties under international law. The Court had even violated article 10 of the Rome Statute itself, under which "nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law". The judges had violated customary international law by selecting from it only what served their interests in the judgment. In accordance with international law and the dominant international legal opinion, immunity in such cases was a right of the State, not of the person who enjoyed it. No one could act on behalf of the State in such cases.

60. Turning to the topic "Protection of the environment in relation to armed conflicts", he said that his delegation attached great importance to the principle of permanent sovereignty over natural resources and to peoples' rights. In the draft principles proposed by the Special Rapporteur in her second report (A/CN.4/728), the terms "environment" and "natural environment" had been used inconsistently and needed to be clarified. Moreover, environmental issues were not limited to the natural environment; they included human rights, sustainability and cultural heritage. His delegation supported the proposal, which had been discussed by the Commission, to revisit both terms at a later stage.

61. With regard to draft principle 17 (Remnants of war at sea), it was important to secure coastal States' cooperation in efforts to remove the remnants of war at sea. States could have specific rights and duties in that regard, depending on where the remnants were located. His delegation supported draft principle 13 ter (Pillage), draft principle 6 bis (Corporate due diligence) and draft principle 14 bis (Human displacement.

62. More detailed comments reflecting his delegation's position on the topic could be found in his written statement, available on the PaperSmart portal.

63. **Mr. Kanu** (Sierra Leone), referring to the topic "Protection of the environment in relation to armed conflicts", said that the draft principles adopted by the Commission on first reading contained provisions of varying normative value. Some reflected customary international law while others were non-binding recommendations. Given that the environment constituted part of the global commons and was not

necessarily territorially limited, his delegation agreed with the Special Rapporteur's decision not to make a distinction between international armed conflicts and non-international armed conflicts. Both types of conflict should be taken into account, since the objective was to protect the environment. Since his delegation hoped to submit written comments by the 2020 deadline, its comments at the current juncture would be preliminary in nature.

64. His delegation welcomed the provision in draft principle 8 that States and others should take appropriate measures to prevent and mitigate environmental degradation in areas where persons displaced by armed conflict were located, but noted that no definition of displacement was provided. Sierra Leone was pleased that in paragraph (5) of the commentary to the draft principle, the Commission made reference to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa; that instrument could serve as additional inspiration for the draft principle.

65. Sierra Leone agreed with the provisions of draft principle 10, on corporate due diligence, but believed that the State where a corporation was domiciled would have a greater duty to take appropriate measures, given that the State where the corporation operated might be facing governance challenges as a result of the armed conflict. Natural resources should be purchased or obtained in accordance with the laws of both States, as well as in an environmentally sustainable manner.

66. As a result of its own experience of conflict, Sierra Leone had previously called for the Commission to include in its programme of work the topics of the legal consequences arising out of the use of private armies in internal conflicts, the involvement of multilateral corporations in internal conflicts, and the use of private security agencies in internal conflicts. Those topics were important in the light of the judgment of the International Court of Justice in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, a case that turned on the responsibility of paramilitary units in internal conflicts and the tests applied by the International Criminal Tribunal for the Former Yugoslavia and the International Court of Justice to determine responsibility for acts of genocide. Sierra Leone was pleased, therefore, that the Commission's work on protection of the environment in relation to armed conflicts addressed some of those issues.

67. With regard to draft principle 11 (Corporate liability), his delegation agreed that it was important that corporations and other business enterprises, including subsidiaries acting under their de facto control, could be held liable for harm caused by them to the environment. That would require the provision of adequate and effective procedures, fair and equitable remedies, and reparations for individuals and communities.

68. Turning to the topic "Immunity of State officials from foreign criminal jurisdiction", he said that his delegation agreed with many States and members of the Commission that had suggested that the Commission should strike the right balance between respecting the imperatives of sovereignty and the contemporary demands for accountability, especially in relation to the most serious crimes of concern to the international community as a whole.

69. Sierra Leone welcomed the Commission's adoption of the draft articles concerning immunity *ratione personae* and immunity *ratione materiae*. However, to prevent the possible abusive application of draft article 7 and to reduce the risk of the draft articles giving rise to friction in international relations, the Commission should consider strong procedural safeguards, including in connection with the institution, invocation and waiver of immunity. In that connection, it was regrettable that the progress made in the Drafting Committee at the seventy-first session had not been as substantial as his delegation would have liked. His delegation urged the Commission to prioritize the topic in 2020, in view of its significance, and hoped that the first reading would be completed and that States and other observers would be given sufficient time to provide written observations.

70. Sierra Leone welcomed the inclusion of the topic "Sea-level rise in relation to international law" in the Commission's programme of work, given the disproportionate impact of sea-level rise on small island States, developing States and coastal States like Sierra Leone. However, the topic might pose a methodical challenge in that State practice in the area might be lacking and might not even be desirable.

71. Welcoming the establishment of a Study Group with a rotating membership, he said that his delegation agreed with that collaborative approach. The Commission should endeavour to strike a balance in its treatment of the subtopics identified; at a later stage, it might need to consider whether new or additional subtopics of concern to States should be examined by the Study Group. Work on the topic should seek to complement existing legal regimes, in particular the United Nations Convention on the Law of the Sea.

72. **Mr. Jiménez Piernas** (Spain) said that the procedural aspects of the immunity of State officials from foreign criminal jurisdiction were closely linked to the scope of such immunity. Regarding the debate on draft article 7 provisionally adopted by the Commission at its sixty-ninth session, Spain supported the establishment of a system of limitations and exceptions to immunity *ratione materiae*. Foreign State officials whose term of office had come to an end should not be entitled to invoke immunity *ratione materiae* in cases of the most serious crimes of international law, such as those enumerated in draft article 7, namely the crime of genocide, crimes against humanity, war crimes, the crime of apartheid, torture and enforced disappearance.

73. His delegation agreed in general that the procedural aspects of the immunity of State officials from foreign criminal jurisdiction should be considered as a whole in relation to the application of immunity, whether *ratione personae* or *ratione materiae*. Referring to the draft articles proposed by the Special Rapporteur in her seventh report (A/CN.4/729), he said that his delegation agreed with the stipulation in draft article 9 (Determination of immunity) that it should be for the courts of the forum State that were competent to exercise jurisdiction to determine the immunity of State officials from foreign criminal jurisdiction. In a State such as Spain, which was governed by the rule of law, the application of international rules on immunity of foreign officials from criminal jurisdiction was a matter for the national courts, with due regard for the separation of powers. The legal and procedural guarantees established in the Spanish legal system must be respected, especially those concerning the protection of the human rights of all citizens involved in judicial proceedings.

74. His delegation also agreed with the statement in draft article 10, paragraph 6, that the organs that were competent to determine immunity should decide *proprio motu* on its application in respect of State officials who enjoyed immunity *ratione personae*, whether the State of the official invoked immunity or not. In other words, the national courts must recognize *proprio motu* the inviolability of incumbent foreign Heads of State, Heads of Government and Ministers for Foreign Affairs, and of diplomatic and consular agents who were duly accredited by the receiving State.

75. His delegation also agreed with draft articles 12 to 15, which governed the procedural safeguards applicable between the forum State and the State of the official and constituted progressive development of international law. Under draft article 12, where the forum State had an obligation to notify the State of the official if it had sufficient information to conclude that the official might be tried by its courts. Provision was made, in draft article 13, for the exchange of information between those States; in draft article 14, for the transfer of criminal proceedings from the forum State to the State of the official; and, in draft article 15, for consultations between those States on matters concerning the determination of the immunity of the foreign official. All those draft articles also established the procedural safeguards to ensure that the official was fairly and impartially treated before the courts of the forum State. Those safeguards included the obligation for the authorities of the forum State to inform the State of the official, without delay, of such person's detention or any other measure that might affect his or her personal liberty, so that the official could receive the assistance to which he or she was entitled under international law.

76. With regard to future work on the topic, and as should be the case with any other topic on the Commission's agenda, his delegation would welcome the inclusion in the draft articles adopted on second reading of a mechanism for the settlement of disputes related to the interpretation and application thereof. The mechanism must be based on mandatory recourse to international arbitration or the International Court of Justice if the dispute was not settled through negotiation or any other means of settlement that the parties agreed to use. His delegation was favourable to the negotiation and adoption of an international treaty on immunity of State officials from foreign criminal jurisdiction on the basis of the draft articles that would be adopted by the Commission at its future sessions, in order to codify and progressively develop international law and ensure a higher degree of legal certainty on the topic.

77. **Mr. Bandeira Galindo** (Brazil), referring to the topic "Protection of the environment in relation to armed conflicts" and without prejudice to the written comments that his Government would submit, said that the Commission should not seek to change international humanitarian or environmental law, or to create new norms. Rather, it should focus on filling gaps in international humanitarian law relating to environmental protection, taking into account recent developments in international law.

78. While his delegation commended the Commission on the adoption of the draft principles on first reading, it wished to highlight the need for clarity as to the normative value of individual draft principles, many of which seemed to be of a more recommendatory nature. In particular, the word choice should reflect the non-binding nature of the text.

79. Turning to the topic "Immunity of State officials from foreign criminal jurisdiction", he said that Brazil looked forward to the completion of the Commission's work, with due attention to the comments and suggestions of Member States.

80. Referring to the topic "Sea-level rise in relation to international law", he said that his delegation took note with interest of the decision to establish an open-ended Study Group, which would, over the next two years, be able to gather significant material in order to address a pressing legal need of the international community. Given that the issues to be considered were complex and related to different areas of international law, the Study Group should work with care. In particular, solutions to the problems related to the topic should be compatible with the United Nations Convention on the Law of the Sea. Brazil supported the Study Group's recommendation that the Commission invite the comments of States on specific issues identified in Chapter III of the Commission's report (A/74/10).

81. **Ms. Norris** (Australia), referring to the topic "Protection of the environment in relation to armed conflicts", said that Australia supported the call for States, pursuant to their obligations under international law, to take effective measures to enhance the protection of the environment in relation to armed conflict, and welcomed the consideration by the Commission of additional measures that States could take to further that objective. In reference to the draft principles adopted by the Commission on first reading, she said that the Commission should clarify which ones reflected existing international law and which were intended as recommendations to enhance the protection of the environment beyond what was required as a legal obligation. The Commission should more clearly take into account the substantive differences between obligations related to international conflicts and those related to non-international conflicts.

82. A number of the draft principles were focused on reparation, remediation and restoration. It was important to understand how those draft principles would interact with concepts of State responsibility such as attribution, as many States participated in armed conflict as part of a coalition or pursuant to a mandate of an international organization, with close levels of interoperability. Her delegation welcomed the Special Rapporteur's appreciation of the intricacies of questions of allocation of responsibility.

83. On the topic "Immunity of State officials from foreign criminal jurisdiction", Australia welcomed the Commission's discussion of the procedural aspects of such immunity. The primary focus of the draft articles on the topic should be the codification of customary international law based on State practice and *opinio juris*. The Commission should clearly identify which of its proposals did not reflect existing law; in that connection, her delegation thanked the Commission for identifying draft articles 12 to 15, on procedural safeguards, as an exercise in the progressive development of international law.

84. Draft articles 8 to 16 were prescriptive in nature; her delegation looked forward to receiving the commentaries to those draft articles to clarify the methodology used to formulate them. The Commission should further consider the ways in which the distinction between immunity *ratione personae* and immunity *ratione materiae* was reflected in those draft articles.

85. It was regrettable that the Commission, at its sixty-ninth session, had provisionally adopted draft article 7, on proposed exceptions to immunity, which did not reflect any real trend in State practice, still less existing customary international law. Her delegation shared the concerns of those Commission members who doubted that the use of procedural safeguards could sufficiently rectify the substantive flaws inherent in the draft article. The international community could and must do more to ensure that State officials who committed international crimes were held to account, but draft article 7 was not an appropriate means of addressing the issue.

86. Australia emphasized that the immunity of State officials was procedural in nature and must not be equated with impunity. Immunity applied to the prosecution of State officials for international crimes in some, but not all, circumstances and in some, but not all, forums. That did not mean that State officials enjoyed impunity. State officials accused of international crimes could be prosecuted in their own State, before an international court with jurisdiction, or in the courts of a third State after waiver of immunity.

87. Turning to the topic "Sea-level rise in relation to international law", she said that sea-level rise, to which small island States in the Pacific were particularly vulnerable, was a significant concern and raised complex legal questions. The United Nations Convention on the Law of the Sea was the basis for the stability and good governance of the oceans. Given the urgency and potential consequences of sea-level rise, Member States must consider the ways in which international law could help them address those issues. Her delegation therefore welcomed the Commission's decision to move the topic to its current programme of work.

88. Australia supported the Commission's approach of drawing on current State practice concerning the

determination of baselines and the delimitation of maritime zones to inform its work on the topic. Australia would contribute to the Commission's work in that regard and encouraged States to publish geographical coordinates and deposit their charts with the Secretary-General to reinforce the stability and clarity that the Convention brought to ocean governance and maritime jurisdiction.

89. **Mr. Mulalap** (Federated States of Micronesia) said that Micronesia welcomed the Commission's decision to place the topic "Sea-level rise in relation to international law" on its current programme of work. The decision reflected, among other things, the Commission's careful attention to the pressing needs and interests of the international community as a whole, particularly as reflected in the views expressed in the General Assembly. Sea-level rise had implications in a geophysical sense and in terms of its potential implications for international law, including the law of the sea, the law of statehood, and international human rights law. The Commission's active and urgent consideration of the topic was timely, necessary and of relevance to the international community as a whole.

90. The leaders of the Pacific Islands Forum and Pacific small island developing States had made a commitment to working together, including through the development of international law, to ensure that once a Pacific country's maritime zones were delineated in accordance with the United Nations Convention on the Law of the Sea, those zones could not be challenged or reduced as a result of sea-level rise and climate change. That reflected the preference in international law for stability, certainty and orderly affairs, and was a fair and equitable way to address the impact of climate-change-induced sea-level rise, which had not been anticipated by the drafters of the Convention, on States such as Micronesia, which were particularly affected by such rise.

91. Micronesia and other States in the Pacific had relevant and consistent State practice in the area, practice that was grounded in their views of the relevant international law, including at the regional and subregional levels. Micronesia, in conjunction with those States, would contribute to the work of the Commission on the topic, including by providing regional and national comments in response to the Commission's call for information.

92. In that connection, it had recently deposited with the Secretary-General charts and lists of geographical coordinates of points for all its maritime zones and baselines and all its maritime delimitation treaties, in line with its obligations under the United Nations Convention on the Law of the Sea and the Charter of the United Nations. As part of that deposit, Micronesia had attached a set of observations that included references to, among other things, its understanding that it was not obliged to keep under review the maritime zones reflected in the official deposit, which had been delimited in accordance with the Convention, and its intent to maintain those zones in line with that understanding, notwithstanding climate-change-induced sea-level rise. It encouraged other States to deposit their maritime charts, coordinates, and treaties and submit similar observations. The development and identification of relevant State practice and corresponding *opinio juris* were key to the Commission's work on sea-level rise, and his delegation would help the Commission ascertain the degree to which current international law was able to respond to the implications of sea-level rise and where there was a need for States to develop practicable as well as legal solutions.

93. Turning to the topic "Protection of the environment in relation to armed conflicts", he said that his delegation welcomed the draft principles adopted by the Commission on first reading. It was pleased that some of the views it had expressed in the past, including on the need to account for the protection of the environment during the pre-conflict and post-conflict phases to the fullest extent necessary, the need for post-conflict environmental assessments and remedial measures, the protection of the environment of indigenous peoples, remnants of war at sea, and the recognition of close links between human rights and the protection of the natural environment from armed conflict and other harms, were reflected to a certain extent in a number of the draft principles.

94. Micronesia had long been the theatre of armed conflicts waged by foreign powers. The effects of such conflicts on its rich but fragile natural environments had been extensive, and some of them had persisted long after the cessation of hostilities. The Commission's work underscored the obligation of belligerents under international law, in close cooperation with other relevant actors in the international community, to take all necessary steps to prevent such harmful effects and remediate them when they could not be prevented. That obligation persisted for as long as the harmful effects persisted. His delegation looked forward to contributing further to the Commission's consideration of the topic, including by providing written comments by 1 December 2020.

95. **Mr. Singto** (Thailand), referring to the topic "Protection of the environment in relation to armed conflicts", said that Thailand wished to commend the

Commission on the provisional adoption, on first reading, of the draft principles and commentaries thereto. His delegation supported the call, in draft principle 25, for cooperation among relevant actors, including such international organisations as the United Nations Environment Programme, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Committee of the Red Cross, with respect to post-armed-conflict environmental assessments and remedial measures. Interaction and engagement with those actors, given their vast experience and expertise in different areas, would help States understand the environmental consequences of armed conflicts and determine the most appropriate preventive and remedial measures that they must take – for instance, the inclusion of environmental recovery programmes in the national development plans of the concerned State.

96. The dependence of people on the environment for their survival, livelihood and health, in times of both peace and conflict, was also reflected in the draft principles. In particular, the obligation of humankind to be accountable for actions that had a detrimental impact on the environment was reflected in draft principle 9, under which an internationally wrongful act of a State that caused damage to the environment entailed the responsibility of that State to make full reparation for such damage. That was the most important element of accountability. Thailand would continue to follow the work of the Commission in the area closely, with the hope that the draft articles would be further refined to address the gaps in the existing bodies of law on the topic.

97. Turning to the topic "Immunity of State officials from foreign criminal jurisdiction", he said that the right balance must be struck between according State officials immunity from foreign criminal jurisdiction and ending impunity. Referring to the draft articles proposed by the Special Rapporteur in her seventh report (A/CN.4/729), he said that his delegation saw value in draft articles 8 to 11, which provided further clarification of the procedural safeguards relating to immunity of a State official, and clear distinctions between the elements of those safeguards, including consideration, determination, invocation and waiver of immunity. Those elements were also useful to support the application of immunity, with a view to maintaining friendly relations between the forum State and the State of the official and protecting those States' interests by encouraging communication and cooperation between them, to ensure transparency and due process.

98. With regard to the determination of immunity, the principle of the sovereign equality of States should be given due consideration; in that connection, while the courts of the forum State would be competent to exercise jurisdiction to determine whether immunity could be invoked or not, they should also consider whether the State of the official had invoked or waived immunity.

99. Turning to the topic "Sea-level rise in relation to international law", he said that his delegation fully supported the Study Group's proposed programme of work. The topic, which had life-changing implications for small island and low-lying States, must be taken up urgently.

100. As sea-level rise would affect territories, maritime jurisdiction, baselines and existing maritime boundary agreements, the question could be asked whether States could, in certain cases, invoke a fundamental change of circumstances, in accordance with the 1969 Vienna Convention on the Law of Treaties, as a ground for terminating or withdrawing from such agreements. In principle, and in accordance with the Convention, existing entitlements should be upheld to maintain peace, stability and friendly relations among nations, and, therefore, a fundamental change of circumstances should not be invoked in relation to maritime boundaries. The rights of Member States in relation to maritime zones and boundaries established pursuant to the United Nations Convention on the Law of the Sea must be protected. The Commission should also take into consideration the work of other forums relevant to the law of the sea to ensure consistency and complementarity.

101. **Ms. Vaz Patto** (Portugal), referring to the topic "Protection of the environment in relation to armed conflicts", said that Portugal would submit written comments and observations in due course, as requested by the Commission. On a preliminary basis, her delegation welcomed the balance struck in the draft principles adopted by the Commission on first reading between the codification and progressive development of international law. The discussions on the topic reflected a progressive perspective in relation to armed conflicts and their impact, and confirmed that armed conflict was not exclusively governed by international humanitarian law. The incorporation in the draft principles of rules and recommendations relating to international human rights law, the law of the sea, international criminal law and international environmental law was particularly encouraging. By including non-State actors in the scope of the draft principles, the Commission recognized their importance to humanitarian assistance and the protection of the environment.

102. Her delegation welcomed the scope *ratione temporis* of the draft principles, which was the basis for the Commission's decision to address the protection of the environment before, during and after an armed conflict, through preventive and remedial measures. That approach was similar to the approach that characterized the international legal framework for the protection of cultural heritage in relation to armed conflicts. In fact, the Commission brought together the concepts of environmental importance and cultural importance in draft principles 4 [I-(x), 5] and 17 [II-5, 13].

103. Even though the majority of the codified law of armed conflict referred to international armed conflicts, most current armed conflicts were of a non-international nature. In addition, according to the United Nations Environment Programme, in the previous 60 years, at least 40 per cent of internal conflicts had been linked to the exploitation of natural resources. Regarding the scope *ratione materiae* of the draft principles, therefore, Portugal welcomed the fact that the Commission made no general distinction between international armed conflict and non-international armed conflict, such that the draft principles covered both types of armed conflict.

104. Absolute protection of the environment was not viable. Indeed, conditional protection of the environment was necessary to ensure that a balance was struck between military, humanitarian and environmental concerns. In general, the draft principles as currently drafted reflected that balance.

105. Turning to the topic "Immunity of State officials from foreign criminal jurisdiction", she said that her delegation supported the approach to the procedural aspects of immunity suggested by the Special Rapporteur. Those aspects were essential to making the immunity framework operational and balancing the need to protect the rights of victims with the need to prevent politically motivated proceedings and the abuse of jurisdiction. Many of the Special Rapporteur's proposals constituted progressive development of international law. Her delegation would nevertheless recommend a further review of State practice from more diverse regions.

106. Her delegation would welcome a streamlining of the draft articles proposed by the Special Rapporteur in her seventh report (A/CN.4/729). It agreed, in general, with draft article 8 (Consideration of immunity) and welcomed the flexible approach taken. With regard to draft article 9 (Determination of immunity), the participation of different organs in the determination of immunity of State officials depended on the national law of each State. In Portugal, because of the strict separation of powers enshrined in the Constitution, only the courts had the power to determine immunity and the Government was strictly prohibited from intervening in the matter in any way.

107. Regarding draft article11 (Waiver of immunity), the diplomatic channel was the preferred means of communicating a waiver of immunity, and not a secondary means, as seemed to be implied in the draft article. In fact, a waiver was in principle a decision taken by the State organ responsible for foreign policy. The draft article should therefore reflect the international practice of communicating a waiver through the diplomatic channel. That channel should also be the preferred means of communication for the purposes referred to in draft articles 12 to 15. Her delegation supported the wording of draft article 11 regarding the irrevocability of the waiver as a general rule. The waiver should be revoked only and exceptionally by agreement between the State of the official and the forum State. Portugal encouraged the Commission to continue its deliberations on the topic and to complete its work on first reading at its session in 2020. It should take a clear position on the final form of the draft articles in its next report, which was already an important element for consideration by Member States.

108. Turning to the topic "Sea-level rise in relation to international law", she said that her delegation commended the Commission on including the topic in its programme of work. The seas were rising and the international community must address that complex issue, which was already a major threat to low-lying island nations. Portugal fully supported the Commission's decision to establish a Study Group to identify and analyse the legal questions related to the topic; it also supported the proposed programme of work, procedures and working methods of the Study Group, and looked forward to the work of the Study Group on the three proposed subtopics, namely the law of the sea, statehood and the protection of persons affected by sea-level rise. Her delegation had taken note of the requests for information regarding the topic and intended to reply in due course.

109. **Mr. Arrocha Olabuenaga** (Mexico), referring to the topic "Protection of the environment in relation to armed conflicts", said that its importance and urgency had been regrettably demonstrated in recent times. The work on the topic was an opportunity for States to assume positive obligations in that regard. As mentioned in the draft principles, States were primarily responsible for taking effective legislative, administrative and judicial measures to protect the environment in conflict situations. However, his delegation deemed the

consideration of the obligations of non-State actors in the Special Rapporteur's second report (A/CN.4/728) to be highly relevant, in particular, employing as a starting point the working definition of such actors used by the International Law Association, under which illegal and illegitimate organized bodies were excluded from the category.

110. Since the topic was of interest to the international community as a whole, the Commission should continue to consider the obligations of States, together with the forms and standards of attribution of conduct, using the articles on responsibility of States for internationally wrongful acts as a starting point. In that connection, the mechanisms through which the reparation referred to in draft principle 9 might ultimately be made was also worth considering.

111. Mexico took note of the designation of areas of major environmental and cultural importance as protected zones, and agreed that appropriate measures should be taken to protect areas inhabited by indigenous people, through cooperation with the parties concerned, and vulnerable groups, and with full regard for the habits, customs and institutions of the indigenous communities involved, as indicated in the commentary to draft principle 5.

112. In principle, his delegation welcomed the draft principles proposed by the Special Rapporteur in her second report (A/CN.4/728), particularly draft principles 8 bis ((Martens Clause), 13 bis (Environmental modification techniques), 13 ter (Pillage), and 14 bis (Human displacement). The relationship between armed conflict and the environment should continue to be considered, on the understanding that armed conflict was a major threat to the conservation of the environment. States must be actively involved in the development of clear rules on the matter and must make provision for effective reparation mechanisms. As was well established in humanitarian law, all attacks conducted during a conflict must be intended to cause the smallest possible impact in relation to the military advantage anticipated. That principle should also be extended to the protection of the environment.

113. Turning to the topic "Immunity of State officials from foreign criminal jurisdiction", he said that the judicial activity of national and international courts, including recent decisions of the International Criminal Court, confirmed the importance of the topic. Since States currently interpreted immunity from criminal jurisdiction in various ways, the Commission's work would be essential to clarifying the relevant rules. His delegation took note of draft articles 8 to 16, which had been proposed by the Special Rapporteur for the consideration of the Commission at its seventy-first session. It would consider them carefully and, as appropriate, submit comments to the Commission in due course. All the same, immunity from criminal jurisdiction was closely related to the way in which the legal systems of each State were organized. Criminal justice institutions were not the same in all countries, which, in exercise of their sovereignty, had the prerogative to establish rules on immunity. Respect for sovereignty must be balanced with the fight against impunity and the fundamental rules of bilateral diplomacy, which were essential to peaceful relations between nations.

114. The topic "Sea-level rise in relation to international law" was essential to the very existence of States and the Commission's work in that area was not a mere theoretical exercise but would help define the course of progress in an urgent matter that could be the great legal challenge of the day. It would therefore be important for the Commission to achieve results in the short term to inform States' current debates. His delegation welcomed the Study Group's decision to address issues related to the law of the sea, statehood and the protection of persons affected by sea-level rise, which were crucial to the topic. The examination of those issues must be based on considerations of international environmental law and equality. His delegation took note of the specific issues on which comments would be of particular interest to the Commission and would provide the relevant information in due course.

115. **Ms. Pino Rivero** (Cuba), referring to the topic "Protection of the environment in relation to armed conflicts", said that her delegation welcomed the study and future codification of the topic. It was important for international law that the principles developed on the topic be considered as whole, without being weighed against each other. That would ensure that the study was well-structured.

116. A study of the effects of all types of weapons on the environment would be useful; her delegation was particularly interested in the effects of the use, development and storage of nuclear weapons. The incompatibility of such weapons with international humanitarian law from an environmental perspective must be internationally recognized. Under the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), it was prohibited to employ methods or means of warfare that were intended, or might be expected, to cause widespread, long-term and severe damage to the natural

environment. The Special Rapporteur should consider the possibility of developing a regime of responsibility that would address reparation of the harm, reconstruction and responsibility for the illegal act on the part of those subjects of international law that used force and, in particular, participated in an armed conflict that harmed the environment; such a regime should be presented as a principle.

117. Cuba supported any initiative intended to clarify the content of the topic and protect the environment, particularly with a view to achieving sustainable development at the global level. Cuba considered that it was for the relevant State institutions to establish policies and norms for protecting the environment in the event of an armed conflict. In Cuba, the quality of environmental care in both conflict situations and exceptional situations was sustainably protected, restored and enhanced through strategies designed by State institutions and through legal norms. Examples of laws in the area could be found in her written statement, available on the PaperSmart portal.

118. The implementation of a sustainable development model was ensured under Cuban law, which reflected the country's unshakeable will to prevent and mitigate the adverse effects of environmental phenomena. For example, her Government had implemented the Tarea Vida (life task) plan to mitigate the impact of climate change. Peace and respect for international law, however, were the best ways of avoiding damage to the environment through armed conflicts.

119. In identifying and examining principles related to the topic from among the many rules in existing international law related to the environment, the Commission should take into account not only State practice and *opinio juris sive necessitatis*, but also the regulations of international institutions and the main treaties on the environment.

120. The topic "Immunity of State officials from foreign criminal jurisdiction" was of the utmost importance to the gradual codification of international law and her delegation acknowledged the work done by the Commission in elaborating the draft articles on the topic. Cuba agreed with other States that it would be desirable to maintain consistency with the work of the Commission on other related topics, such as crimes against humanity and peremptory norms of general international law (*jus cogens*), as well as with the topic of universal criminal jurisdiction, which was included in the long-term programme of work.

121. With regard to the procedural aspects of the topic, her delegation drew attention to the importance of balancing important legal interests, including respect for the sovereign equality of States, the need to combat impunity for international crimes, and the protection of State officials from the politically motivated or abusive exercise of criminal jurisdiction. To determine which officials enjoyed immunity, consideration should be given to which officials were granted immunity in the domestic law of States.

122. Referring to draft articles 8 to 16 proposed by the Special Rapporteur in her seventh report (A/CN.4/729), she said that, as currently drafted, they did not sufficiently establish a link between the proposed procedural guarantees and safeguards and the application of draft article 7, which had been provisionally adopted by the Commission, nor address fully the procedures and guarantees necessary to avoid politically motivated prosecutions. The substantive criminal law of Cuba was applicable to Cubans who committed an offence abroad and were handed over to Cuba to be tried by Cuban courts, in accordance with treaties signed by Cuba. In the Cuban Criminal Code, the only form of immunity *ratione personae* was the provision that foreign citizens should not be extradited when they were being prosecuted for fighting imperialism, colonialism, neocolonialism, fascism or racism, or for defending democratic principles or workers' rights. No immunity *ratione materiae* of State officials was contemplated in the Criminal Procedure Act, because the principle that all citizens were equal before the law was enshrined in the Constitution. Procedural requirements for taking action against certain State and government officials were, however, laid down in the Act. Under Cuban domestic law, impunity did not exist for those responsible for violations of international law and crimes against humanity.

123. With regard to draft article 12, Cuba agreed that the establishment of the duty to notify the State of the official of any attempt to exercise jurisdiction over the official was an essential guarantee of respect for the immunity of foreign officials. The duty to notify was the first guarantee for a State to safeguard its interests by invoking or waiving such immunity.

124. Cuba was particularly attentive to the inclusion in the draft articles of exceptions to immunity that did not reflect current international law and would result in impunity for serious crimes against humanity. The principle of universal jurisdiction and the obligation to extradite or prosecute officials who enjoyed immunity were not applicable. The immunity regime established in international conventions, including the Vienna Convention on Diplomatic Relations, the Convention on Special Missions and the Vienna Convention on Consular Relations, as well as the Code of Private

International Law (Bustamante Code) and the principles of international law, should not be modified. It should be possible to elaborate a text on the immunity of State officials from foreign criminal jurisdiction with substantive and procedural provisions that reinforced the legal framework established in the Charter and the principles of international law.

125. Her delegation shared the legitimate concern of many members of the Commission that the arbitrary and selective application of the immunity of State officials could result in impunity. It therefore supported the strengthening of the system of procedural safeguards, especially in the current international context, in which some States were substantively and irresponsibly violating the principles and purposes of the Charter and international law. Achieving a just and necessary balance between respect for international law and procedural safeguards was a challenge for States, and Cuba would therefore contribute to efforts to provide the international community with effective rules under which the immunity of State officials from foreign criminal jurisdiction was ensured and the use of such immunity to leave serious international crimes unpunished was prevented.

126. **Ms. Escobar Pacas** (El Salvador), referring to the topic "Protection of the environment in relation to armed conflicts" and the draft principles provisionally approved on first reading by the Commission, said that, in its commentary to draft principle 9 (State responsibility), the Commission should adopt a contemporary approach in explaining the conditions in which an act or omission attributable to a State was wrongful. It should consider that, in the area of the protection of the environment, verification of environmental harm was not the sole criterion, given that, in accordance with the general principles of international environmental law, responsibility could be established even when the acts in question were not prohibited, if those acts could potentially cause harm to third parties. The sense of prevention should be maintained in the draft principle.

127. With regard to the use of the term "military objective" in paragraph 3 of draft principle 13 (General protection of the natural environment during armed conflict), the fact that the environment was public, transnational and universal in nature must be reflected in the scope of environmental protection. The acceptance that the natural environment could be attacked if it was a military objective was a continued source of concern: the wording of the paragraph should be changed, because it appeared to echo automatically the terminology of civilian and military property.

128. In relation to Part Four (Principles applicable in situations of occupation), a definition of the term "occupation" should be included in the draft principles, together with clarification of the term "belligerent occupation", to provide greater legal certainty in the interpretation of the draft principles. The definitions and characteristics could be based on those established in the existing legal framework on the topic, including the Regulations respecting the Laws and Customs of War on Land and the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention). Regardless of the form of the occupation or the circumstances in which it originated, the obligation related to the protection of the environment was an imperative that must be maintained and in the various temporal phases of conflict, since it was part of the substantive content of human rights.

129. Her delegation welcomed the clear reflection, in paragraph 2 of draft principle 20 (General obligations of an Occupying Power), of the relationship between the draft principles and other branches of law, including international environmental law and human rights. In addition to the close link between human rights and the protection of natural resources, the protection of the environment was a human right in itself, as recognized in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights and the Charter of Fundamental Rights of the European Union.

130. With regard to the terminology used in draft principles 19, 20 and 21, although the term "Occupying Power", as used in such instruments as the Fourth Geneva Convention, could refer to both States and international organizations, the word "Power" was a remnant of classical international law and should be replaced with terms such as "occupier" or "belligerent occupier", to adopt the progressive connotations of contemporary international law.

131. El Salvador supported further consideration of the topic, as it was a party to international conventions under which measures necessary to protect human health and protect and conserve the environment must be adopted. It would therefore follow the Commission's work on the topic with particular interest.

132. Turning to the topic "Immunity of State officials from foreign criminal jurisdiction", she said that, with regard to the procedural implications arising from the concept of jurisdiction, in particular the identification of the point of the proceedings at which immunity should begin to operate and the acts of the authorities of the forum State, a consensual legal definition of the term "jurisdiction" was needed; a harmonized interpretation

of the appropriate timing of the invocation of immunity depended on such a definition.

133. In the legal practice of El Salvador, in particular the case law of the Constitutional Chamber of the Supreme Court of Justice, jurisdiction was a constitutional concept that consisted in the irrevocable application of the law in relation to the protection of subjective rights, the imposition of penalties, and the review of legality and constitutionality through objectively sustainable and legally substantiated parameters by judges who were, under the Constitution, independent and impartial. The judicial function, therefore, must be performed in an independent manner, and only by organs that were subject to the law and had no links to specific interests.

134. On that basis, if immunity meant that the forum State suspended the application of its jurisdiction or issued specific rules to allow particular foreign officials to perform their functions effectively, it could be said that, from a procedural standpoint, the determination of immunity would be undertaken if there was sufficient evidence that the foreign official could have committed the crimes imputed to him or her. Hence, any individual involved in the interpretation and application of the law must therefore be instructed and trained to give it the appropriate procedural treatment in the event of its invocation and subsequent determination, on the basis of objective criteria.

135. In Salvadoran law, the procedural aspects of immunity from foreign criminal jurisdiction were not laid down in a single instrument, although certain provisions were contained in particular normative instruments. In accordance with the second paragraph of article 17 of the Criminal Code, for example, Salvadoran criminal law did not apply to persons who enjoyed privileges under the Constitution and international law, or who enjoyed inviolability in particular areas under the Constitution.

136. With regard to the need mentioned by members of the Commission to balance respect for the sovereign equality of States with the fight against impunity, crimes against humanity must be considered among the exceptions to immunity. In Salvadoran legal practice, the criminal penalties imposed on perpetrators of such crimes reaffirmed the importance attached by society to violations of laws related to fundamental rights and represented the rejection, and desire to avoid the repetition, of grave acts of violence committed with no regard for human dignity.

137. Referring to the draft articles proposed by the Special Rapporteur in her seventh report (A/CN.4/729), she said that her delegation welcomed the inclusion, in paragraph 4 of draft article 10 (Invocation of immunity), of the provision that immunity might also be invoked through the diplomatic channel, as it would allow States whose practice was not governed by harmonized cooperation and mutual legal assistance agreements to invoke immunity. The practice of El Salvador in the area was regulated by a wide range of bilateral and multilateral treaties. If none of those treaties was applicable or contained regulations relevant to a particular case, the principle of reciprocity was followed, as so often in international relations.

138. Her delegation welcomed the clear indication in paragraph 2 of draft article 11 that a waiver of immunity should be express and clear, since that rule was compatible with such international instruments as the Vienna Convention on Diplomatic Relations, on which a high degree of consensus existed in the international community.

139. With regard to the final form of the project, her delegation agreed with the Special Rapporteur that it was premature to decide on whether or not a treaty or convention on the topic was being elaborated, particularly given that consensus still needed to be reached on important questions. Because the topic was legally and politically complex, detailed consideration of its procedural aspects and of related State practice was essential to its codification. Her delegation stood ready to continue monitoring work on the topic.

140. **Mr. Mahnič** (Slovenia), referring to the topic "Protection of the environment in relation to armed conflicts", said that the draft principles adopted by the Commission on first reading were a valuable instrument and his delegation hoped they would be adopted on second reading in 2021. He was pleased that the draft principles made no distinction between international and non-international armed conflicts, as environmental protection rules should apply to both types of conflict. The current legal framework for the protection of the environment in non-international armed conflicts was inadequate and needed to be updated.

141. His delegation welcomed draft principle 7 [8], which indicated that States and international organizations must take appropriate measures to prevent, mitigate and remediate the negative environmental consequences of peace operations. Such measures were of the utmost importance during the planning and operational phases. The revised guidelines of the International Committee of the Red Cross for military manuals and instructions on the protection of the environment in times of armed conflict could serve as a useful guide.

142. Slovenia was pleased that draft principle 11 indicated that States must take measures aimed at ensuring that corporations and other business enterprises could be held liable for harm to the environment. Given that environmental degradation had direct and indirect effects on human health, actions that harmed the environment must be properly sanctioned at the national level. His delegation also welcomed draft principle 18, on the prohibition of pillage, as disputes over the control of natural resources were at the root of many armed conflicts. That prohibition should also apply in post-armed conflict situations, which was a time when democratic institutions were just being established and corruption was more likely. His delegation was pleased that the Commission indicated in its commentary to draft principle 23 [14] that some modern peace agreements contained environmental provisions. The intensity of modern-day armed conflict caused significant damage to the environment.

143. Slovenia welcomed draft principle 27 [16], both because remnants of war had a considerable environmental footprint, affecting water and soil quality, and because removing or rendering harmless such remnants was crucial to ensuring the safety of the public and promoting reconstruction. The disposal of explosive devices could cause additional damage to areas already affected by armed conflict and have a lasting impact on human health and poverty, which was why ITF Enhancing Human Security, a non-governmental organization established by the Government of Slovenia, promoted the safe and environmentally responsible disposal of explosive ordnance in accordance with international standards.

144. His delegation paid close attention to the protection of the natural environment in armed conflicts, an area of international humanitarian law that was frequently ignored in practice.

145. His delegation was pleased that the Commission had decided to include the topic “Sea-level rise in relation to international law” in its programme of work. There was no doubt that sea-level rise was accelerating as a result of climate change. Coastal erosion, caused by rising seas, storm surges and natural disasters, required the adoption of highly adaptable defence mechanisms. The coastline of the Adriatic Sea was already experiencing flooding and erosion.

146. Sea-level rise posed serious challenges in terms of human rights, migration, territorial sovereignty, statehood and the protection of States and persons directly affected by the phenomenon. Sea-level rise also raised pressing questions of international law, such as the issue of baselines and maritime zones. The Commission’s response to those questions should be well-informed, prompt and comprehensive. He trusted that the findings of the Study Group would offer considerable guidance ion actions to be taken.

147. More detailed comments on the abovementioned topics could be found in his written statement, available on the PaperSmart portal.

148. **Ms. Ozgul Bilman** (Turkey), referring to the topic “Immunity of State officials from foreign criminal jurisdiction”, said that some of the expressions used in the draft articles proposed by the Special Rapporteur in her seventh report (A/CN.4/729) were unclear. Draft articles 11, 12 and 13 indicated that the primary methods of communication between States should be, respectively, “procedures set out in cooperation and mutual judicial assistance agreements”, “any means of communication accepted by both States” and “procedures set out in international cooperation and mutual legal assistance treaties”. International agreements were seen as secondary and the diplomatic channel as a last resort. However, her delegation believed that the diplomatic channel should be the primary means of communication. Waivers, notifications and information should be conveyed through the diplomatic channel, unless otherwise stated in the procedures set out in bilateral or multilateral agreements.

149. Turning to the topic “Protection of the environment in relation to armed conflicts”, she said that although the Special Rapporteur made reference to the protection and usage of water sources in her second report (A/CN.4/728), she did not draw attention to water supply installations. The International Law Association’s 1976 resolution on the protection of water resources and water installations in times of armed conflict, in particular its articles II and IV, might be of relevance to the Special Rapporteur in her work. Turkey therefore suggested adding the following sentences to the draft principles: “Water supply installations which are indispensable for the minimum conditions of survival of the civilian population should not be cut off or destroyed. The destruction of water installations containing dangerous forces, such as dams and dykes, should be prohibited when such destruction may involve grave dangers to the civilian population or substantial damage to the basic ecological balance”.

150. In addition, in paragraph (2) of the commentary to draft principle 22, her delegation would prefer the term “transboundary natural resources” instead of “shared natural resources”, and “transboundary waters and aquifers” instead of “international watercourses and transboundary aquifers”.

151. Lastly, her delegation welcomed the inclusion of the topic of sea-level rise in relation to international law in the Commission's programme of work, as sea-level rise was a pressing issue that would affect many States, particularly small island States and States with low-lying coastal areas. Turkey would continue to support the Commission's work on that topic.

The meeting rose at 6 p.m.