United Nations A/C.6/74/SR.30

General Assembly
Seventy-fourth session

Official Records

Distr.: General
9 December 2019

Original: English

Sixth Committee

Summary record of the 30th meeting
Held at Headquarters, New York, on Tuesday, 5 November 2019, at 10 a.m.

Chair: Mr. Mlynár . . . . . (Slovakia)
later: Ms. Anderberg . . . . . (Sweden)

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19-19073 (E)

The meeting was called to order at 10.05 a.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. Sebbar** (Morocco), referring to the draft articles on prevention and punishment of crimes against humanity, said that her Government would provide detailed comments in writing after conducting in-depth consultations regarding certain key issues with all national institutions that would be involved in implementing a convention based on the draft articles.

3. Turning to the topic "Protection of the environment in relation to armed conflicts", she noted that the Commission's work contributed to the codification and progressive development of the international legal framework relating to the topic. However, the Global Pact for the Environment, in particular its article 19, which addressed the protection of the environment in relation to armed conflicts, could have been included among the instruments that served as the basis for the study of the topic. From a methodological standpoint, although the connections drawn in the draft principles between international human rights law and the law of armed conflict were a priori a justified necessity, they should not be confused with the substantive issues pertaining to each of those areas.

4. Referring to the draft principles contained in the Special Rapporteur's second report (A/CN.4/728), she said her delegation was of the view that the meaning of the term "natural environment" in draft principle 10 [II-2] (Application of the law of armed conflict to the natural environment) was unclear. There was no legal definition of the environment in international law and the collocation "natural environment" was semantically redundant. The qualifier "natural" did not appear to serve any practical purpose. In all instruments where an attempt had been made to define the environment, the natural elements of the environment had been included by default. From a terminological standpoint, it would have been preferable to use of the term "environment" throughout the text.

5. According to draft principle 1 (Scope), the draft principles applied to all three phases of armed conflict. However, compliance with certain principles of international environment law, such as the principle of prevention, would be more challenging during a conflict, than before or after it. In peacetime, protecting the environment was made predictable by the availability of a national legal framework and dedicated material and logistical resources. Nonetheless, given the urgent nature of armed conflict, it was rarely feasible to include provisions on environmental protection measures in agreements concerning the presence of military forces. Even if such provisions were made, such measures would be difficult to carry out, given the often uncertain, urgent and even unpredictable situations on the ground.

6. Draft principle 4 (Measures to enhance the protection of the environment), paragraph 2, according to which States should take further measures, as appropriate, to enhance the protection of the environment in relation to armed conflict, complemented draft principle 5 [I-(x)] (Designation of protected zones), in accordance with which States should designate areas of major environmental and cultural importance as protected zones. In addressing that issue, emphasis should be placed on treaty practice, which was individualized and adapted to the specific needs of Member States. An innovative alternative for integrating the protection of the environment into a specific category of agreements was provided in draft principle 7 (Agreements concerning the presence of military forces in relation to armed conflict). Explicit provisions providing for such protection were not systematically included in treaty practice, however, in the context of status of forces and status of mission agreements.

7. In draft principle 8, which concerned measures to be taken by States and international organizations to prevent and mitigate the negative environmental consequences of peace operations, it was unclear which legal instrument would be used as a reference to determine the terms of compensation for environmental damages and how a State or an international organization would go about determining its share of the reparations due. Given the heterogenous and multilateral nature of peacekeeping operations, more thought should be given to the criteria that might be used to assign potential responsibility to international organizations and each of the States participating in such operations.

8. Morocco commended the spirit of international solidarity reflected in draft principle 13 quater, paragraph 2, and supported the establishment of special compensation funds, provided the means of implementation corresponded to each country's level of economic development and took into account the different situations and specific needs of developing

countries, in particular the least developed countries and the most vulnerable with respect to the environment.

9. Lastly, she expressed her Government's long-standing concern with the way the Commission engaged with Member States. The Commission was well-regarded in academic circles, which was a reflection of the high quality, density, richness and complexity of its output. Unfortunately, some Member States faced constraints, whether in terms of human resources or in terms of expertise in the field of international law, that limited their ability to engage fully with the Commission. As a result, the progressive development of international law could not possibly stem from an instrument that was supposed to be as participatory, as inclusive and as representative as possible of all existing legal systems. Her delegation therefore urged the Commission to seriously consider the points raised, with a view to limiting the number of topics included in its programme of work, in order to enable high-quality and more frequent input from Member States and a more regular and sustained dialogue between the Commission and the Committee.

10. **Ms. Boucher** (Canada) said that her delegation welcomed the Commission's decision to include the topic "Sea-level rise in relation to international law" in its programme of work, and to establish an open-ended Study Group on the topic. Canada recognized the need to study and address sea-level rise and shared the concerns of vulnerable low-lying coastal States and small island developing States with respect to the impact of that phenomenon on various aspects of life, including the potential for humanitarian and economic disasters. As portions of its northern coastline were especially vulnerable to the phenomenon, Canada saw high value in the Commission's study of the topic.

11. Some law of the sea issues related to sea-level rise might trigger broader debates, unnecessarily complicating the Commission's task. Her delegation therefore advised the Commission to maintain a focused approach throughout. For example, when considering the potential legal effects of sea-level rise on the status of islands and rocks, it should not enter into the complex debate over the specific characteristics that might give rise to the status of "rock" or "island". Similarly, when considering the measurement of baselines, together with the outer limits of maritime zones, it should bear in mind States' views on whether it should be possible to move baselines as a consequence of sea-level rise; however, it should take a cautious approach that favoured certainty and stability for the delimitation of maritime boundaries.

12. **Mr. Haxton** (United Kingdom), speaking on the topic "Protection of the environment in relation to armed conflicts", said that, as his delegation would be providing detailed written comments by the deadline of December 2020, its comments at the current juncture were preliminary in nature. The draft principles on the topic considered so far were very broad in scope, covering the whole conflict cycle and encompassing the law of armed conflict, international human rights law and international environmental law. Not all sources cited by the Commission in the commentaries to the draft principles were authoritative and many did not constitute State practice. There was no need to include new treaty provisions relating to the law of armed conflict or the law of occupation, even though his delegation welcomed the fact that the Commission was not seeking to modify those areas of law in its work on the topic. The Special Rapporteur should also not broaden the scope of the topic to examine how it interrelated with other legal fields, such as human rights. In particular, references to human health, which did not fall within the parameters of a study on the protection of the environment, should not be included in the draft principles.

13. With regard to the draft principles adopted by the Commission on first reading, his delegation was concerned that common article 1 of the Geneva Conventions of 12 August 1949 was interpreted in the commentary to draft principle 3 as requiring States to exert influence in conflicts to which they were not a party. Common article 1 contained no such obligation. The blanket prohibition against reprisals in draft principle 16 was also unacceptable, as it did not reflect the current state of customary international law and reservations by States to article 55, paragraph 2, of Additional Protocol I to the Geneva Conventions.

14. Turning to the topic "Immunity of State officials from foreign criminal jurisdiction", he noted that his delegation was still of the view that the topic was of vital importance and practical significance, and was grateful for the inclusion of nine draft articles on procedural aspects in the seventh report of the Special Rapporteur (A/CN.4/729). Despite that welcome progress, the Commission was still very far from being able to submit a clear and acceptable proposal for the full set of draft articles, owing to the persistent and significant differences within the Commission on the subject of exceptions or limitations to immunity *ratione materiae*, set out in draft article 7 (Crimes under international law in respect of which immunity *ratione materiae* shall not apply), which had been provisionally adopted by the Commission. His Government continued to strongly object to the inclusion of the draft article,

notwithstanding the Commission's work to develop procedural safeguards. Although his Government welcomed the acknowledgment by the Commission that procedural safeguards were needed to guard against potential politicization and abuse, the draft articles proposed by the Special Rapporteur in her seventh report did not address that key concern. Instead, the procedures set out in the draft articles appeared to complicate the legal position on immunity and to grant greater protection to the forum State in its exercise of criminal jurisdiction. The Commission should consider potential safeguards specific to draft article 7, such as requiring that decisions in relation to prosecution be taken at the highest level of the relevant authority.

15. His delegation encouraged the Commission to clearly indicate which draft articles reflected existing international law and which did not. In that respect, the Special Rapporteur herself had appeared to acknowledge, during the Commission's plenary discussions in 2017, that draft article 7 did not necessarily reflect customary international law. The Commission should also adopt a clear position on the anticipated outcome for its work on the topic. His Government assumed that the draft articles would form the basis for a convention open to ratification by States.

16. With regard to future work on the topic, his delegation noted that the Special Rapporteur had proposed to address the relationship between national criminal courts and international criminal courts for the purpose of immunity treatment, without considering the decision 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 of Omar Al Bashir)*. His Government did not agree with the Court's finding that, as a matter of customary international law, there was no immunity from prosecution before international criminal tribunals. His delegation therefore agreed that the Commission should not debate or be influenced by such a highly contentious decision and also believed that the subject was irrelevant to the topic at hand. His Government was also of the view that, in view of the slow progress on the topic, the Special Rapporteur should not proceed with her idea to propose a set of recommended good practices in her next report. The Commission should instead focus on producing a full set of draft articles, spending as much time as was needed in order to reach a generally acceptable agreement on the text. All the same, his delegation hoped that the Commission would complete its first reading of the draft articles in 2020.

17. Turning to the topic "Sea-level rise in relation to international law", he said his delegation welcomed the Commission's decision to include it in the current programme of work and to establish an open-ended Study Group on the topic. The best available science on the wide-ranging impact of climate change and potential measures for building resilience to that impact had been presented by the Intergovernmental Panel on Climate Change in a recent special report on the ocean and cryosphere in a changing climate. The Commission's work on the topic was among the urgent actions that the international community needed to take to address the impact of climate change.

18. **Mr. Sarufa** (Papua New Guinea), referring to the topic "Sea-level rise in relation to international law", said that all activities in the oceans and seas must be carried out in accordance with the international legal framework established under the United Nations Convention on the Law of the Sea. Steadily rising sea levels in his country's coastal zones were causing islands to be inundated and coastlines to recede, seriously threatening the way of life and existence of coastal communities. The international community needed to urgently address the issue of sea-level rise. The Commission's decision to include the topic in its current programme of work and to establish an open-ended Study Group on the topic was therefore a step in the right direction. His delegation was pleased that the Commission had planned to examine the potential consequences facing persons displaced from communities affected by sea-level rise in relation to international law. His Government would contribute to the Commission's consideration of the questions of statehood and protection of persons affected by sea-level rise.

19. Earlier in 2019, Papua New Guinea, an archipelagic State, had submitted its revised maritime boundaries delimitation charts and coordinates to the Secretary-General, the result of a lengthy and highly technical process. It had also enacted the National Maritime Zones Act of 2015, which provided the legal basis for the regulation of all maritime activity in the country, had ratified its maritime boundary treaty with Australia, and was in the process of concluding the ratification of similar treaties with the Federated States of Micronesia, Indonesia and the Solomon Islands. The potential loss, owing to sea-level rise, of small islands and other features that served as basepoints could affect existing maritime zone entitlements and could compromise the ability of an archipelagic State to maintain that status. In order to foster legal certainty and stability, facilitate orderly relations between States and avoid conflict, affected States should be able to maintain

existing entitlements to maritime zones in accordance with the United Nations Convention on the Law of the Sea. They should also be able to maintain their maritime boundaries as delimited by agreement between States or by decisions of international courts or arbitral tribunals.

20. As the Committee on International Law and Sea-Level Rise of the International Law Association had highlighted in its resolution 5/2018 and related report, there was evidence of existing and emerging State practice, particularly in the Pacific region, indicating that small island States intended to maintain existing entitlements to maritime zones established in accordance with United Nations Convention on the Law of the Sea, notwithstanding sea-level rise. Members of the Pacific Islands Forum were expected to submit additional evidence of State practice later in 2019.

21. Papua New Guinea relied heavily on fishing and other economic activities in its exclusive economic zone for food and income. Its economic resources would diminish if the outer limits of its exclusive economic zone or its continental shelf were shifted inland owing to sea-level rise. Thus, despite having the least responsibility for greenhouse gas emissions, countries like Papua New Guinea would be severely affected in both physical and economic terms by climate change. Climate justice and equity were therefore additional reasons why affected States should have the ability to maintain existing entitlements to maritime zones, notwithstanding sea-level rise.

22. **Mr. Abdelaziz** (Egypt), referring to the topic "Protection of the environment in relation to armed conflicts", said that his delegation saw merit in the development of draft principles, in view of the international trend towards improving the protection of the environment and the existence of many gaps in international law in the area. His delegation took note of the draft principles adopted by the Commission on first reading, but believed that they could be improved by addressing some of the shortcomings of the current international system, for example in the area of demining, and by paying more attention to the responsibility of non-State actors in relation to environmental damage in armed conflict, since they were becoming key parties to many such conflicts. Egypt would provide the Commission with detailed observations on the draft principles by the specified date.

23. Turning to the topic "Immunity of State officials from foreign criminal jurisdiction", he said that the topic should be addressed cautiously, in such a way as to reflect *lex lata* and customary international law, without introducing new legal rules that were incompatible with customary international law.

24. His delegation maintained its strong reservation regarding draft article 7 (Crimes under international law in respect of which immunity *ratione materiae* shall not apply), which had been provisionally adopted by the Commission and with which the majority of States did not agree. Although States had different views regarding the optimal formulation of the draft article, most of them agreed that the current wording was not based on consensus among the members of the Commission and did not reflect State practice and *opinio juris*. The draft article, as currently worded, did not amount to codification of international law on immunity, but was a completely new proposal under which States would be able to prosecute one another's officials for international crimes, as the Commission should have explained clearly when it first put forward the draft article. It must therefore be radically reformulated. Even if it were accepted, for the sake of argument, that the purpose of the draft article was to combat impunity for grave international crimes – a most laudable aim, with which no one could disagree – the current wording did not serve that purpose, but in fact opened the door to the politicization of the issue of immunity and granted States unprecedented powers with no basis in customary international law. That would only lead to unnecessary tensions between States, without a tangible positive impact on the fight against impunity.

25. Referring to the draft articles proposed by the Special Rapporteur in her seventh report (A/CN.4/729), he said his delegation agreed that the procedural safeguards contained in draft articles 8 to 16 did not cure the flaws concerning draft article 7. Overall, the distinction between immunity *ratione personae* and immunity *ratione materiae* was not reflected in the draft articles. However, legal logic, international custom and diplomatic considerations required that such a distinction be made and that different rules be applied to those two types of immunity. The approach taken regarding the procedural safeguards in draft articles 8 to 16 was appropriate for the application of immunity *ratione materiae*, but not of immunity *ratione personae*, which required its own set of safeguards.

26. Paragraph 2 of draft article 8 (Consideration of immunity by the forum State) should be reformulated to make it absolutely clear that immunity should be considered before any action, including investigations, was taken against the foreign official. The reference to an "early stage" of the proceeding was insufficient.

27. The wording of draft article 9, whereby it was for the courts of the forum State to determine the immunity

of a foreign official, should be reconsidered, because the powers granted to those courts were excessive and could result in diplomatic crises. Immunity, however, could be more easily determined through consideration of the type of entry visa held by the foreign official, a procedure performed by ministries of foreign affairs without prolonged and unnecessary judicial proceedings.

28. No distinction should be made between immunity *ratione personae* and immunity *ratione materiae* in paragraph 6 of draft article 10 (Invocation of immunity), the assumption being that the State of the official should be able to invoke immunity in both cases. That would increase legal certainty, given that draft article 11 (Waiver of immunity) was sufficient to achieve the desired aim of deciding whether or not the official would be subject to foreign criminal jurisdiction.

29. His delegation supported draft article 13 (Exchange of information), but the current wording gave the impression that the process of determining whether the foreign official enjoyed immunity could continue for a long period without any clarity as to the official's legal status. The matter should be addressed taking into consideration his delegation's view that no traditional precautionary or temporary measures should be taken against the official during that period. On that basis, his delegation did not support the wording of paragraph 3 of draft article 16 (Fair and impartial treatment of the official), which implied that the official could be detained during the period of determination of immunity. In order to remove the possibility of officials escaping during that period, whether or not the criminal act that they had committed fell within the framework of immunity *ratione materiae*, the matter should be further considered to find solutions that did not restrict freedom and could subsequently prove to be unjustified or unnecessary to the establishment of immunity.

30. Lastly, Egypt welcomed the inclusion of the topic "Sea-level rise in relation to international law" in the Commission's current programme of work. Sea-level rise was a contemporary issue in relation to which specific rules of international law should be codified and developed. His delegation took note of the preparatory steps taken by the Commission, including the establishment of an open-ended Study Group and the identification of three subtopics, to be examined over the next two years. Although it was important to study issues related to the law of the sea and the protection of persons affected by sea-level rise, the matter of statehood required further clarification in the context of the current study.

31. **Ms. Takagi** (Japan), welcoming the Commission's adoption on first reading of the draft principles on protection of the environment in relation to armed conflicts, said that the Commission should focus its work on the protection of the environment during armed conflict, as opposed to before or after armed conflict, in order to avoid overcomplicating its task.

32. Turning to the topic "Immunity of State officials from foreign criminal jurisdiction", she said her delegation acknowledged that progress on the topic had been slow because the Commission had reopened the debate on draft article 7 (Crimes under international law in respect of which immunity *ratione materiae* shall not apply), which it had provisionally adopted. The Commission could decide to reconsider the draft article or to close the debate on it. Either way, it was important for it to consider the topic carefully and soundly. While her delegation considered that the draft article represented *lex ferenda*, it expected that the Commission would be able to build consensus around it with the necessary modifications.

33. The procedural aspects of immunity required further careful examination, given that they related to criminal procedures unique to each State. State practice should therefore be collected from a variety of regions and be analysed comprehensively. In particular, careful consideration must be given to both the trial and the investigation phases. In light of the distinction made in the Vienna Convention on Diplomatic Relations between the inviolability of the person of a diplomatic agent and the immunity of a diplomatic agent from the criminal jurisdiction of the receiving State, her delegation was of the view that a determination as to the inviolability of State officials must be made at the investigation stage. With regard to draft article 8 ante provisionally adopted by the Drafting Committee at the seventy-first session (A/CN.4/L.940), her delegation understood it as stating that the procedural safeguards provided in Part Four of the draft articles were equally applicable to any article contained in Part Two and Part Three, including draft article 7.

34. With regard to the topic "Sea-level rise in relation to international law", her delegation appreciated the Commission's responsiveness to the requests of Member States. Sea-level rise affected baselines and other legal points related to the law of the sea and raised issues pertaining to statehood and the protection of persons. Japan was confident that the Commission would produce an outcome in close cooperation with Member States.

35. **Ms. Pham** Thu Huong (Viet Nam), referring to the topic "Protection of the environment in relation to

armed conflicts", said that her country had made immense efforts to overcome the consequences of armed conflicts, including damage to the environment. Armed conflicts, regardless of the intentions of the belligerents, had tremendous and lasting impact on the civilian population living in the affected area and on fauna, flora, soil, air and water. Although the war in Viet Nam had ended many decades ago, its effects were still clearly visible. The same was true of all armed conflicts that had occurred around the world. Viet Nam therefore supported the Commission's continued work on the topic in order to establish State responsibility for the remnants of war, particularly those that caused damage to the environment.

36. The Commission's research should complement existing international law on the protection of the environment and laws governing armed conflicts, particularly the Geneva Conventions of 12 August 1949 and their Additional Protocols. Her delegation also supported the Special Rapporteur's effort to integrate the law of occupation, international humanitarian law and international environment law in her report. In particular, it welcomed the inclusion of a provision on corporate liability in the draft principles adopted by the Commission on first reading, which clearly indicated that non-State actors also bore responsibility for environmental damage during armed conflicts.

37. With respect to draft principle 5 [6] (Protection of the environment of indigenous peoples), her delegation agreed that minority groups inhabiting a conflict zone were under serious risk from the negative impact of the conflict on the environment; however, there was no broad consensus on the concept of "indigenous people" in the context of the law of armed conflict. The concept of "ethnic minorities" enjoyed a larger consensus. Also, the implication of paragraph 2 of that draft principle, regarding consultations and cooperation between States and the indigenous peoples concerned, was that parties to a conflict and minority groups were on an equal footing when engaging in consultations and cooperation relating to remedial measures. Her delegation could not concur with that view. Given that States had the primary responsibility for promoting and protecting human rights, they should undertake such consultations and cooperation among themselves to ensure the protection of the environment of ethnic minorities in armed conflict.

38. Turning to the topic "Immunity of State officials from foreign criminal jurisdiction", she said her delegation noted that such immunity originated from customary international law. The codification of the relevant rules thus needed to be undertaken with due regard for the principles of sovereign equality and non-intervention in the domestic affairs of States and the need to maintain international peace and security. The benefits of granting immunity to State officials needed to be balanced against the need to address impunity and to protect State officials from politically motivated or abusive exercise of criminal jurisdiction. It was therefore regrettable that the Commission had been unable to agree on specific proposals regarding exceptions to immunity or procedural aspects, including procedural guarantees. However, her delegation concurred with the views of several members of the Commission, as described in paragraphs 150 to 152 of the Commission's report (A/74/10).

39. The Commission and Member States had expressed divergent views relating to the procedural safeguards that would address concerns with the application of draft article 7 (Crimes under international law in respect of which immunity *ratione materiae* shall not apply), which the Commission had provisionally adopted. In that connection, her Government maintained its position that the criminality of an act did not affect or determine whether an act was performed in an official capacity. It drew attention to the joint separate opinion of Judges Higgins, Kooijmans and Buergenthal in the International Court of Justice case concerning *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, where they only pronounced on the international crime exception to immunity *rationae personae*, leaving open the question of an exception with respect to immunity *rationae materiae*. Her delegation was of the view that all acts performed in the exercise of State authority, State functions and sovereignty should attract immunity *rationae materiae*. It was therefore owing to the paramount importance of designing procedural safeguards to address concerns regarding the application of draft article 7 that exceptions to criminal jurisdiction needed to be discussed further.

40. Her delegation commended the Commission's decision to include the topic "Sea-level rise in relation to international law" in its programme of work and supported the establishment of an open-ended Study Group that would first address aspects of sea-level rise relating to the law of the sea. Rising sea levels affected coastlines and low-lying offshore areas in Viet Nam, affecting the livelihoods, health, culture and well-being of its people, in particular those living in those areas. Viet Nam therefore promoted international cooperation to address the challenges posed by sea-level rise to small island developing States and coastal States, and would closely follow the Commission's work on the topic.

41. **Ms. Heusgen** (Germany), referring to the topic "Immunity of State officials from foreign criminal

jurisdiction", said that procedural provisions and safeguards in the context of immunity of State officials, addressed in the sixth and seventh reports of the Special Rapporteur (A/CN.4/722 and A/CN.4/729), would enable the smooth application of the law on immunity and greatly facilitate the handling of relevant cases by the forum State and the State of the official. They would also help to ensure that the interest of the forum State in prosecuting criminal offenses committed by a foreign State official was balanced against the need to respect the sovereign equality of States. Her delegation agreed with the Special Rapporteur that procedural safeguards could help to build trust and prevent instability in international relations among States.

42. Furthermore, basic common procedural standards at the international level, which would provide guidance inter alia on the determination, invocation or waiver of immunity and exchange of information with the State of the official, might help domestic courts in one State to apply the law on immunity more uniformly and arrive at decisions that were more in harmony with the decisions in comparable cases by domestic courts elsewhere. That would enhance the efficacy, credibility and legitimacy of the international rules on the immunity of State officials and reduce the risk of fragmentation in that area of international law. International procedural provisions regarding the immunity of State officials must nonetheless allow for the specificities of domestic legal systems. Her delegation viewed the procedural safeguards proposed by the Special Rapporteur as a useful point of departure.

43. With regard to methodology, her delegation reiterated its view that it was essential for the Commission to indicate which provisions related to *lex lata* and which represented the progressive development of international law. Any substantial change of international law would need to be agreed on by States in the context of a treaty. The draft articles on procedural provisions and safeguards in their entirety did not reflect existing customary international law and contained many propositions *de lege ferenda*. In view of the controversy surrounding draft article 7 (Crimes under international law in respect of which immunity *ratione materiae* shall not apply), provisionally adopted by the Commission, it was important to examine the linkage between that draft article and the procedural rules and safeguards governing its application. In view of the political sensitivity and potential for controversy of cases to which the draft article might be applicable, and in view of the potential for misuse of the draft article, it was key for there to be adequate procedural safeguards in place. That issue had been only partially addressed in the Special Rapporteur's seventh report.

44. First, there should be no ambiguity with regard to the application of procedural provisions and safeguards to situations in which draft article 7 applied. The draft article contained a sweeping statement according to which immunity *ratione materiae* "shall not apply" to certain crimes. That could lead domestic authorities and courts to conclude that the procedural rules they considered ancillary to immunity might not be applicable in such cases either. Many of the procedural rules set out in draft articles 8 to 16 proposed by the Special Rapporteur in her seventh report were based on an assumption that the application of immunity was at least possible, whereas that assumption could be questioned from the outset in cases to which draft article 7 applied. In that regard, the provisional adoption by the Drafting Committee of draft article 8 ante was a positive development, in that it brought clarity and added to the quality, coherence and predictability of the draft articles as a whole, which should be self-explanatory as far as possible.

45. Second, the procedural provisions contained in draft article 12 (Notification of the State of the official) and draft article 14 (Transfer of proceedings to the State of the official) should be more specific regarding draft article 7 cases. Early notification and transparency vis-à-vis the State of the official would build much-needed trust in such cases. The instrument set out in draft article 14 for transferring proceedings to the State of the official could be especially useful in the context of draft article 7 cases, and so the Commission should consider whether draft article 14 should be specifically tailored to such cases.

46. Third, and most importantly, the Special Rapporteur should consider adding procedural provisions and safeguards that specifically addressed the difficulties underlying draft article 7 cases, and her delegation noted with appreciation the Special Rapporteur's general openness towards additional procedural safeguards. For example, the application of draft article 7 would raise difficult questions regarding the applicable standard of proof in determining whether the requirements of the draft article were met. So far, sufficient guidance in that respect had not been provided either in the report or in the draft articles as initially proposed by the Special Rapporteur. However, her delegation welcomed the debate and the proposals made during the Commission's seventy-first session regarding such a standard. In view of the political tensions between the forum State and the State of the official, which might be particularly high in draft article 7 cases, the decision to pursue criminal proceedings should be made by a domestic authority experienced in matters of international law. Often, only a high-level authority was

capable of assessing the far-reaching implications of such cases. Also, the fact that the decision was taken by a high-level authority might signal to the State of the official that the forum State was aware of the ramifications of the case for the sovereignty of the State of the official and would therefore serve as a confidence-building measure.

47. In short, Germany doubted that the procedural provisions and safeguards as proposed in the seventh report were sufficient to guarantee a smooth operation of draft article 7. It continued to believe that the draft article in its current form did not strike a proper balance between stability in international relations and the interests of the international community in preventing and punishing the most serious crimes under international law.

48. Her delegation welcomed the Special Rapporteur's openness to changing the order of the draft articles comprising Part Four (Procedural provisions and safeguards) so as to make the sequence of their application more transparent. Her delegation also agreed with the Special Rapporteur regarding the need to distinguish, in general terms, between the duty of the forum State to consider immunity at an early stage or without delay, in accordance with draft article 8 (Consideration of immunity by the forum State), and the rules on determination of immunity, as set out in draft article 9. The use of different terminology for the two aspects and their treatment in different provisions should be upheld.

49. The rules on dialogue and exchange of information set out in draft article 13 (Exchange of information) were valuable propositions for how general rules on cooperation among States in that context might be substantiated. With regard to draft article 14 (Transfer of criminal proceedings), her delegation shared the view that the procedural instrument for the transfer of proceedings could be very helpful for avoiding disputes over immunity. However, the draft articles should reflect the fact that such a transfer should only occur if the State of the official was willing and able to properly prosecute the official. Lastly, her delegation agreed with the view expressed by members of the Commission that the draft articles could be further streamlined. In particular, draft article 16, paragraph 2, which stated that "these safeguards shall be applicable […] [also] during the process of determining the application of immunity from jurisdiction", could be deemed to repeat parts of draft article 16, paragraph 1. She urged the Commission to carefully consider the foregoing in its work on the topic at its next session.

50. Turning to the topic "Protection of the environment in relation to armed conflicts", she said her delegation commended the Commission on the preparatory work it had done to identify norms for the protection of the environment in different legal regimes and interpret them in order to develop a comprehensive approach for the formulation of general rules and principles. The two Special Rapporteurs had addressed the particular challenges and complexities of contemporary armed conflicts and their impact on and threat to the environment. The division of the draft principles into temporal phases would enable the Commission to consider how different legal regimes, such as international humanitarian law, came into play during different phases of a conflict.

51. The international community should promote development in that area of law, in order to prevent environmental disasters resulting from armed conflicts in the future. The draft principles adopted by the Commission on first reading were, to a large extent, not a codification of existing law, but were aimed at the progressive development of the law. Her delegation therefore appreciated the Commission's transparent communication about its intention in that regard as well as its effort to make a distinction between draft principles that reflected established international law and those that represented *lex ferenda*. Although the commentaries to the draft principles were useful in that regard, the draft principles themselves should be unambiguous in their formulation.

52. With reference to draft principle 12 (Martens Clause with respect to the protection of the environment in relation to armed conflict), it was necessary to confirm the existence of rules on the protection of the environment in times of armed conflict that transcended explicit treaty provisions. However, the inclusion of the term "principles of humanity" blurred the line between the concepts of humanity and nature. It should therefore be clarified, in the commentary, for example, that the inclusion of the principle of humanity would not lead to a humanization of the concept of "nature", but could cover cases where the destruction of the environment endangered vital human needs.

53. Her delegation appreciated that the Commission had implied in draft principle 13 [II-1, 9] (General protection of the natural environment during armed conflict) and draft principle 16 [II-4, 12] (Prohibition of reprisals) that the natural environment had an intrinsic value in and of itself. The draft principles also contained a recognition that attacks against the natural environment were prohibited unless it had become a military objective, as were reprisals against the natural environment. However, article 55, paragraph 2, of

Additional Protocol I to the Geneva Conventions of 12 August 1949 could not serve as the basis for that prohibition, because it provided for the protection of the environment in order to protect the health and survival of the civilian population. Nonetheless, article 35, paragraph 3, of the Additional Protocol did support the view that environmental protection in international humanitarian law had an intrinsic value. The intrinsic value of the natural environment or nature was also recognized in legal regimes other than international humanitarian law.

54. Germany welcomed the call to establish protected areas expressed in draft principle 4 [I-(x), 5] (Designation of protected zones) and draft principle 17 [II-5, 13] (Protected zones) and agreed with the Commission that a multilateral treaty on the designation of such areas would need to be concluded for there to be a binding effect on all parties under international law. Such a treaty should be modelled on the Convention for the Protection of Cultural Property in the Event of Armed Conflict.

55. Germany supported the intention conveyed in draft principle 27 (Remnants of war) and draft principle 28 (Remnants of war at sea) to eliminate remnants of war that could have harmful effects on the environment. However, draft principle 27, paragraph 1, could be read as entailing an obligation to act wherever remnants of war were identified, including in the territorial sea and even outside territorial waters, which would place an inappropriate burden on many States. The draft principle should therefore be reworded to make it clear that an obligation to act only arose after an environmental impact assessment had concluded that action was viable, necessary and appropriate in order to minimize environmental harm.

56. **Ms. Mägi** (Estonia), referring to the topic "Protection of the environment in relation to armed conflicts", said that her delegation agreed with the proposal contained in paragraph 193 of the second report of the Special Rapporteur (A/CN.4/728) that no definition of the term "the environment" be included in the set of draft principles. However, it would be wise to specify whether under the draft principles the environment also included the human-made environment or certain parts of it, such as parks and beaches.

57. Turning to the draft principles adopted by the Commission on first reading, she noted that draft principle 8 (Human displacement) contained the reference to "other relevant actors", besides States and international organizations, which should take measures to prevent and mitigate environmental degradation in areas where persons displaced by armed conflict were located. Although a list of such actors had been provided in paragraph (7) of the commentary to the draft principle, an explanation should be included in the draft principle itself of what was meant by "other relevant actors" and why they were being addressed in the draft principles, considering that not all of them might be subjects of international law. With regard to draft principle 13 [II-1, 9] (General protection of the natural environment during armed conflict), her delegation noted that the stipulation that no part of the natural environment could be attacked unless it had become a military objective did not cover situations where parts of the natural environment had been attacked during military exercises.

58. Her delegation looked forward to providing written comments on the topic by the December 2020 deadline.

59. Turning to the topic "Immunity of State officials from foreign criminal jurisdiction", she said her delegation reiterated its view that the crime of aggression should be included in the list of crimes provided in draft article 7 (Crimes under international law in respect of which immunity *ratione materiae* shall not apply), which had been provisionally adopted by the Commission. Her delegation welcomed the draft articles proposed by the Special Rapporteur in her seventh report (A/CN.4/729). It read draft article 8 (Consideration of immunity) as reflecting the general understanding that immunity should be considered at an early stage of the proceedings. It was also of the view that the question of immunity should be invoked at an early stage of the proceedings or at the earliest opportunity. Failure to do so could nullify the effect of the immunity rule.

60. Her delegation also supported draft article 9 (Determination of immunity) and its stipulation that it was for the courts of the forum State to determine immunity. It agreed with the Special Rapporteur, however, that other national authorities might also participate in the process. In Estonia, the investigative authorities or the Public Prosecutor's Office could play a role, in particular at the initial stage of criminal proceedings. The court might also ask for information from or the opinion of other competent national authorities, including the Ministry of Foreign Affairs. Her delegation was of the view that draft article 8 ante (Application of Part Four) provisionally adopted by the Drafting Committee at the seventy-first session (A/CN.4/L.940) warranted further discussion, including with regard to its possible impact on other relevant draft articles.

61. On the topic “Sea-level rise in relation to international law”, her delegation was convinced that the Commission’s work would help to codify and develop international law rules in an important field and would be especially valuable to small island States and low-lying coastal States. Rising sea levels could also bring about challenges to the constituent elements of a State, especially its territory, and the well-established rules of maritime delimitation. A comprehensive study by the Commission of the issue of protection of persons affected by sea-level rise was also needed. All issues related to the protection of persons affected by sea-level rise, as listed in paragraph 17 of Annex B to the report of the Commission on the work of its seventieth session (A/73/10), were valid and should be addressed by the Commission in its future reports.

62. Although it was customary for lawyers to base their arguments on precedent and to search for analogies in order to maintain legal certainty, the topic at hand did not necessarily lend itself to suitable analogies and the Commission would need to consider unconventional solutions. Lastly, it needed to consider whether it should only rely upon norms *de lege lata* or whether it should propose norms *de lege ferenda*. The outcome of the Commission’s work on the topic could have great influence on international law, including the law of the sea. More detailed comments reflecting her delegation’s position on the aforementioned topics could be found in her written statement, available on the PaperSmart portal.

63. **Ms. Jang** Ju Yeong (Republic of Korea), referring to the topic “Protection of the environment in relation to armed conflicts”, said that by dividing the draft principles considered on the topic into three temporal phases, the Commission would be able to identify legal issues that might arise at different stages of an armed conflict. Her delegation noted that the phases were not clearly delineated, however, and were sometimes interlinked. As some of the draft principles contained provisions that reflected customary international law and others were of a more recommendatory nature, it was appropriate for the Commission’s work on the topic to take the form of draft principles. The Commission would thereby provide guidance to States and mainly contribute to the progressive development of international law.

64. In her second report on the topic, the Special Rapporteur had dealt with the protection of the environment in non-international armed conflicts and with matters related to the responsibility and liability of non-State actors. That had led to the drawing up of draft principle 10 (Corporate due diligence) and draft principle 11 (Corporate liability). In view of the asymmetric nature of armed conflicts, her delegation recommended that the Commission address the international obligations of organized armed groups and the possibility of holding them accountable for their conduct under international law with a view to progressively developing the law in that regard.

65. Turning to the topic “Immunity of State officials from foreign criminal jurisdiction”, she said her delegation acknowledged that the consideration of immunity by the forum State, the determination of immunity, its invocation or waiver, the procedural safeguards for the State of the official and the official’s procedural rights were all crucial elements when deciding whether to grant immunity. It was therefore important for the Commission to address the concerns of Member States on the topic and to allow sufficient time for discussion, rather than attempt to conclude its work in haste.

66. With regard to draft article 8 (Consideration of immunity) of the draft articles proposed by the Special Rapporteur in her seventh report (A/CN.4/729), her delegation agreed with a number of members of the Commission that procedural provisions and safeguards should be applied to both immunity *ratione personae* and immunity *ratione materiae*, and that immunity should be considered at an early stage of the proceedings. The Commission needed to clarify what was meant by “at an early stage”, however. Her delegation was of the view that the States concerned should have the freedom to choose the means of communication regarding immunity, and looked forward to the Special Rapporteur’s next report, where she would address the relationship between the immunity of State officials from foreign jurisdiction and the obligation to cooperate with criminal courts or tribunals. Her Government also looked forward to the Special Rapporteur’s work concerning the settlement of disputes between the forum State and the State of the official in the draft articles.

67. Her Government saw the topic “Sea-level rise in relation to international law” as an intergenerational issue. In that connection, States should pay more attention to it and ensure that the work of the Study Group on the topic was meaningful. In order to progressively develop international law in that area, the Commission should address the topic from the perspective of *lex ferenda*, rather than limit itself to *lex lata*. It should also take an interdisciplinary approach to each area of law it considered.

68. **Ms. Young** (Belize), referring to the topic “Sea-level rise in relation to international law”, said that her delegation welcomed the Commission’s decision to

establish a Study Group on the topic. The Commission must consider the topic from the perspective of small island developing States and low-lying coastal States like Belize, where rising sea levels could lead to the inundation of significant portions of land, heavily affecting vital infrastructure like airports and roads. All States would soon feel the effect of rising sea levels, however. It was therefore time to address the issue in the context of international law.

69. Small island developing States were deeply reliant on the ocean and made extensive use of the maritime zones allocated to them under the United Nations Convention on the Law of the Sea. Their economies depended on the stability of the baselines from which those maritime zones were measured. If baselines were to be shifted inland, those maritime entitlements would be eroded. Considering that small island developing States had contributed virtually nothing to the climate crisis, those consequences were manifestly unjust.

70. Moving towards the adoption of fixed baselines was consistent with existing international law. A number of small island developing States had defined their baselines, in accordance with article 5 of the Convention, as those "marked on large-scale charts officially recognized by the coastal State". Belize used official maritime charts to determine the exact placement of its baselines. If official maritime charts, and not the actual low-water line, could serve as conclusive evidence of baselines, then legal baselines would shift only when their positions were updated on those charts. That practice gave coastal States greater agency in maintaining their maritime entitlements.

71. The Commission should also re-examine its reliance on State practice in the context of the current topic and look beyond the existing rules and practice, which had developed to address gradually shifting baselines and were not suitable for addressing drastic sea-level rise induced by climate change, including the displacement of millions of people as States lost vast swaths of their territories or disappeared altogether. The continuity of States was a fundamental principle of international law, making it necessary to find new approaches to addressing unprecedented legal challenges in order to ensure the survival of small island developing States. That was the only way to craft a legal solution that responded effectively and fairly to the challenges posed by sea-level rise.

72. **Ms. Abdul Latiff** (Malaysia), referring to the topic "Protection of the environment in relation to armed conflicts" and the draft principles adopted by the Commission on first reading, said that draft principle 8, which stipulated that "States, international organizations and other relevant actors should take appropriate measures to prevent and mitigate environmental degradation in areas where persons displaced by armed conflict are located, while providing relief and assistance for such persons and local communities", was in line with her Government's practice. Although Malaysia was not a party to any treaty relating to refugees or internally displaced persons, it continued to engage constructively with the Office of the United Nations High Commissioner for Refugees and interest groups to address the needs of vulnerable persons seeking refuge, security and opportunities in the country. However, her delegation was concerned that the wording of the draft principle would impose a positive obligation on States such as Malaysia, which otherwise had no direct legal obligation with regard to displaced persons or refugees. States should be able to decide for themselves whether to take measures in that regard.

73. In relation to draft principle 9 (State responsibility), which provided that a State that caused damage to the environment was under an obligation to make full reparation for such damage, including damage to the environment in and of itself, it was often difficult, if not impossible, to restore the environment to the condition it had been in before it was damaged. Compensation, therefore, was a preferable and more logical form of reparation for environmental damage, as the International Court of Justice had observed – although not in the context of armed conflict – in the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*. In addition, reparation for environmental damage during armed conflict had been limited, as had the international community's efforts to hold States responsible for the general consequences of such conflict. The Commission should therefore conduct a study on an enforcement mechanism to ensure that States were held accountable for their wrongful acts, in relation to armed conflicts, that caused damage to the environment.

74. Regarding draft principle 10 (Corporate due diligence), while specific measures should be taken to ensure that corporations and business enterprises exercised due diligence in armed conflicts, legislative measures might not be suitable for that purpose, especially because due diligence was a form of self-regulation intended to promote good corporate governance. Her delegation therefore proposed that non-binding guidelines be developed to help businesses understand their obligations and duties in areas of armed conflict or post-armed conflict situations. That would encourage voluntary due diligence and a culture of self-

regulation in entities operating in such areas with minimal or no enforcement frameworks.

75. With regard to draft principle 11 (Corporate liability), the Commission should address the issue of law enforcement during armed conflicts, particularly when a State's judicial system was virtually non-existent or when the Government itself was an accomplice to the alleged violations. The Commission, in its report (A/74/10), had given the example of the exercise of jurisdiction by a corporation's home State in a situation where the territorial State could not exercise jurisdiction. Nevertheless, jurisdiction was a sensitive, complicated issue in relation to which States needed to exercise caution. The Commission should give thorough consideration to the procedural aspects of the enforcement of extra-territorial jurisdiction in such situations.

76. Pillage of natural resources, which was prohibited in draft principle 18, put enormous strain on the environment as a result of predatory practices that often led to severe damage and ultimately the depletion of resources. That, in turn, could undermine long-term livelihoods, trigger further violence and lock communities in a vicious cycle of destruction. Those circumstances could currently be found in many war-torn States, where the pressure of warfare and the destruction of livelihoods had resulted in mass displacement of populations and continued to cause tensions. The draft principle would therefore be an important addition to the rules on environmental protection in armed conflicts.

77. In relation to draft principle 19 (Environmental modification techniques), it was not clear whether the 1976 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques was applicable in a non-international armed conflict. The underlying principles of the Convention, however, were based on the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts, which was applicable to both international and non-international armed conflicts. Her delegation therefore sought clarification of the applicability of the draft principle to non-international armed conflicts.

78. In draft principle 26, in which States were encouraged to provide relief and assistance, as well as in the commentary thereto, the Commission might wish to make explicit reference to compensation for victims, as it did in draft principle 11, which contained an explicit reference to compensation for victims, and in the commentary thereto, where the Commission noted that the term "victims" referred to persons whose health or livelihood had been harmed by the environmental damage mentioned in the draft principle, and that environmental damage could affect other human rights, such as the right to life and the right to food. In doing so, it established the importance of mitigating the impact of such damage on public health and on those who depended on the environment for their livelihoods. Although draft principle 26 highlighted the collective responsibility of States to provide relief and assistance, that responsibility must be understood as being common but differentiated.

79. Turning to the topic "Immunity of State officials from foreign criminal jurisdiction", she said that Malaysia was committed to the rule of law and, when required by the overriding demands of justice, was prepared to waive the immunity of its officials from foreign criminal jurisdiction. Malaysia would continue to abide by its international obligations under the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations.

80. Diplomatic immunity was one of the foundations of international law, which was developed on the basis of the principle that sovereign equals had no jurisdiction over each other. In that regard, State officials should always be presumed to enjoy immunity until a contrary determination was conclusively made, and the forum State should exercise jurisdiction only when there was clear and definitive proof of the alleged offence. In her delegation's view, international practice had not demonstrated the existence of a custom or a consistent trend toward establishing exceptions to immunity.

81. Referring to the draft articles proposed by the Special Rapporteur in her seventh report (A/CN.4/729), she said that the Special Rapporteur's view that it was not necessary to include in draft article 9 (Determination of immunity) a requirement for the State official to be in the territory of the forum State raised complex issues of primacy and conflict of jurisdictions, which, if not clarified in the draft articles, could lead to ambiguity.

82. In relation to the procedural safeguards in draft articles 12 to 15, Malaysia agreed with some members of the Commission that more discretion should be granted to the State of the official in asserting immunity. With reference to draft article 14, Malaysia also agreed with the Special Rapporteur that the transfer of proceedings to the State of the official was useful in striking a balance between respect for the sovereign equality of States and the need to combat impunity for international crimes. However, to avoid divergent interpretations, the draft article should be amended to indicate clearly whether it was for the forum State or the

State of the official to initiate the transfer of proceedings.

83. The inclusion of the topic "Sea-level rise in relation to international law" in the Commission's programme of work was timely, as rising sea levels were a threat to communities around the world, regardless of whether they were in low-lying coastal areas. The subtopics on which the Study Group would work, namely the law of the sea, statehood and the protection of persons affected by sea-level rise, were paramount concerns, because they affected the lives and livelihoods of those most vulnerable to rising sea levels.

84. **Ms. Durney** (Chile), referring to the topic "Immunity of State officials from foreign criminal jurisdiction", said that her delegation welcomed the presentation of a summary of the debate on the sixth and seventh reports of the Special Rapporteur at the seventy-first session of the Commission contained in the Commission's report (A/74/10), which allowed States to start considering the draft articles proposed by the Special Rapporteur before they were provisionally adopted by the Commission. It also gave States more time to examine each proposed provision and allowed the Drafting Committee to take into account the comments and observations made by States in the Sixth Committee in its consideration of the draft articles.

85. Referring to the draft articles proposed by the Special Rapporteur in her seventh report (A/CN.4/729), she said that the scope of the obligation established in draft article 8 for the competent authorities of the forum State to consider immunity as soon as they were aware that a foreign official might be affected by a criminal proceeding was not clearly expressed. As indicated in paragraph 188 of the Commission's report, the Special Rapporteur had explained that the expression "consideration of immunity" referred to the obligation of the forum authorities to initiate examination of the question of immunity as soon as they established that a foreign official was involved. However, the minimum obligations arising from the duty to "consider" immunity should be indicated in the draft article. The text seemed to show that the possible existence of immunity was only something that the competent authorities had to take into account before they took any of the measures set forth in the draft article, but that it would not prevent them from taking those measures. A solution of that nature would be unsatisfactory, because it would allow the forum State to exercise criminal jurisdiction against a foreign official, including by taking coercive measures, before a determination could be made as to the provenance of the immunity, even when there were prima facie grounds for believing that immunity did in fact apply. That would be particularly unacceptable if the competent authorities of the forum State had sufficient cause to believe that the person against whom they intended to initiate proceedings enjoyed immunity *ratione personae*, since such immunity would be violated by any act of that State involving the exercise of its criminal jurisdiction, regardless of the motivation for that act.

86. In order for the forum State to be able to meet its obligation to consider and respect the immunities of foreign officials, it must act with due diligence to determine the provenance of those immunities and to avoid taking measures that could affect them until it had made a determination on the matter. When a forum State intended to perform any act that involved the exercise of its criminal jurisdiction against a foreign official, and reasonable grounds existed to presume that the official enjoyed immunity in respect of such act, the competent authorities of that State must refrain from initiating proceedings or taking coercive measures against the official until a determination had been made as to whether immunity was applicable in that case. A fourth paragraph should therefore be added to draft article 8 to clarify how the forum State should act while it considered immunity, in particular when there was good reason to believe that immunity was applicable; otherwise, the forum State would appear to be free to exercise its criminal jurisdiction against foreign officials until it arrived at a final determination on the provenance of the immunity.

87. Draft article 8 as currently worded would appear to refer to cases in which a criminal proceeding was initiated against a person who was already an official. It would be appropriate to consider whether cases in which a person became an official during such a proceeding would be relevant to immunity *ratione personae*. In addition, it might be useful to expand the reference to "a criminal proceeding" to include any act that involved the exercise of criminal jurisdiction by the forum State.

88. Her delegation agreed with the inclusion of draft article 9 (Determination of immunity), which set out the elements to be considered to determine whether immunity existed in a given case. However, the timing for such determination should be specified in the draft article; in her delegation's view, immunity should be determined before criminal jurisdiction was exercised or before coercive measures were taken against the official. Paragraphs 1 and 3 should not refer exclusively to the courts of the forum State as the organ competent to determine immunity, because, although they carried out the majority of acts entailing the exercise of criminal jurisdiction, depending on the legal system of each State, other State organs might also have such competence. The inclusion of other organs would make

those paragraphs compatible with paragraph 5 of draft article 10.

89. In paragraph 2, the possibility of contradictions between national law and the draft articles should be stated more clearly, with the paragraph being redrafted as follows: "The immunity of the foreign State shall be determined in accordance with the provisions of the present draft articles, through the procedures established by national law". In the same way, a solution should be analysed and proposed for cases in which specific procedures did not exist in the legal order of the forum State for the review and determination of immunity in relation to foreign nationals against whom the forum State intended to exercise criminal jurisdiction.

90. With regard to draft article 10 (Invocation of immunity), it should be stipulated in paragraph 3 that, when immunity *ratione materiae* was invoked, the State of the official should indicate which acts of the official were performed in an official capacity, in order to determine which of those acts were covered by immunity. That would be in line with draft article 11, paragraph 2, and draft article 1, paragraph 2. With regard to paragraph 6 of draft article 10, the forum State should also consider *proprio motu* the applicability of immunity *ratione materiae* to the acts of the official in question, in particular those that could typically qualify as official functions. Indeed, the fact that immunity was not invoked until after the start of the criminal proceedings would not excuse the forum State for violating that immunity if it had exercised criminal jurisdiction with regard to acts that clearly qualified as official functions. The question of "alleged" acts of the official that might have been ordered by his or her State but whose recognition by that State could imply recognition of responsibility in relation to the forum State might be worth addressing, with a view to encouraging the State of the official not to invoke immunity for such acts or deny that they had occurred.

91. Draft article 11 (Waiver of immunity) was very clear and well structured, but could be supplemented with a paragraph expressly addressing the effects of a waiver and cases in which the waiver could have the retroactive effect of offsetting all acts carried out in exercise of criminal jurisdiction before the waiver. It would also be desirable for the Special Rapporteur to refer expressly to the various possible scopes of a waiver; for example, a State could waive the immunity from jurisdiction of the official per se, but not his or her inviolability. The State of the official could also waive immunity for certain acts of the criminal process and not for others. In *Public Prosecutor v. Orhan Olmez*, a case decided by the Supreme Court of Malaysia in 1987, the Embassy of Turkey had authorized one of its diplomats in Malaysia to attend an extradition proceeding related to a Turkish national, solely to authenticate some documents. The competent court had decided, however, that Turkey had waived immunity, and a warrant of arrest had been issued to compel the diplomat's attendance. The case had been referred to the Supreme Court, which had considered that immunity had not been waived, and had quashed the decision of the lower court.

92. Her delegation agreed with the Special Rapporteur that draft article 12 (Notification of the State of the official) was essential to ensuring that the State of the official could exercise its right to invoke immunity. It also supported the Special Rapporteur's proposal that the draft articles be reordered so that draft article 12 followed draft article 8. To improve draft article 12, it should be stipulated that the State of the official must be notified as soon as the official claimed immunity or as soon as there was any indication that immunity might apply to the official.

93. Draft article 14 (Transfer of proceedings to the State of the official) regulated a possibility that should be explored wherever possible, in order to allow the State of the official to be given priority to exercise jurisdiction over the official, particularly if the crimes were committed in its territory. Her delegation took note of the Special Rapporteur's proposal contained in paragraph 197 of the Commission's report (A/74/10), but considered that the statement that "transfer of proceedings should be subject to the condition that the State of the official was genuinely able and willing to exercise jurisdiction and actually did so" could cause significant problems that should be analysed before such a proposal could be included in the draft article. The implication of the proposal appeared to be that States should evaluate the criminal and judicial system of the State of the official.

94. Clarification was also needed regarding how the State of the official would provide such assurance, what the assurance would involve and, in particular, what consequences would ensue if the State of the official did not exercise jurisdiction. A formulation would need to be found that helped to protect the preferential interest of the State of the official in exercising criminal jurisdiction and to ensure that the transfer was not used as a way of avoiding the prosecution of the official and fostering impunity. The way in which the proceeding could be transferred, and the cases in which the State of the official would need to request the official's extradition from the forum State, should be set forth in the draft article.

95. **Mr. Edbrooke** (Liechtenstein) said that his delegation supported the decision to include the topic

"Sea-level rise in relation to international law" in the Commission's current programme of work and the establishment of a Study Group to address the issue. Sea-level rise posed a grave threat to the lives and livelihoods of tens of millions of people in the vast majority of Member States. Its most severe consequences were being felt in low-lying island States, particularly in the Pacific, where it threatened access to such key natural resources as clean water and whole islands were being inundated. For those States, sea-level rise was not simply a practical issue but could also impede their ability to fully exercise the right of self-determination. Given those human implications, the topic should be addressed with particular attention to the protection of the rights of affected peoples. His delegation looked forward to hearing more from the Co-Chairs of the Study Group, in particular on the subtopic related to statehood, which had been insufficiently addressed in other authoritative forums.

96. **Mr. Chrysostomou** (Cyprus), referring to the topic "Protection of the environment in relation to armed conflicts", said that his delegation welcomed the adoption of the draft principles by the Commission on first reading. It would like the intrinsic links between the topic and the law of armed conflict, international environmental law, the law of the sea and other relevant areas of international law to be emphasized more in the draft principles. It would also like to know whether the draft principles covered all armed conflicts, including hybrid conflicts and non-international conflicts; what was the nature of the relationship between the draft principles and international humanitarian law; whether the International Committee of the Red Cross Guidelines on the Protection of the Environment in Times of Armed Conflict had been taken into account in the draft principles; whether, in situations of partial occupation of the territory of another State, the area of responsibility of the Occupying Power was defined, in particular when it came to maritime areas, bearing in mind the sui generis situation of those areas; and whether any possibility for the Occupying Power making use of the resources of occupied territories should not be excluded outright and the Occupying Power's responsibility confined to environmental protection *stricto sensu*.

97. It would be useful to know whether all the different situations of occupation were sufficiently covered in the draft principles; whether the proposed legal effect of the draft principles was the same for all such situations, despite their differences; whether it had been taken into account that most, if not all, situations of occupation involved extensive movements of people from the occupier's territory into the occupied territory for purposes of settlement, and therefore that an indigenous population might no longer exist in the occupied territory to justify certain actions taken to serve the interests of the local population. The Commission might also wish to indicate how it would ensure the avoidance of practices that legitimized the transfer of such populations, which was contrary to international humanitarian law, and how it would avoid the usurpation of natural resources for the benefit of a population that had been transferred illegally into an occupied territory.

98. More generally, it might be useful for the Commission to indicate how it would ensure that the draft principles merely clarified and codified the responsibility of an Occupying Power vis-à-vis the territory it occupied and did not create rights of any kind over the territory, people, environment and resources under the effective control of a State or non-State armed group, or allow the interpretation that such rights had been created. His delegation would welcome information about how that responsibility would be codified as the taking of all necessary measures to preserve the environment as it had been when the occupation had occurred, without pillaging the resources over which the occupied or partially occupied State temporarily had no control; about how the Commission would ensure that no prejudice to the permanent sovereignty of a State over its natural resources, which had been repeatedly affirmed by the United Nations, arose as a result of such responsibility to protect the environment, and that the exploitation of natural resources to sustain war economies or for personal gain was prohibited; about how reparations would be made for the pillaging of an occupied State's resources or for irreparable damage to its environment; about the Commission's position as to the strain on resources that resulted from armed conflict; and about how the draft principles would help to prevent environmental degradation.

99. Referring to the draft principles adopted by the Commission on first reading, he said that, in draft principle 11 (Corporate liability), affiliate entities should be mentioned in addition to subsidiaries, to the extent that any such affiliate acted under the direction or control of the entity to which it was affiliated; if a corporation was acting under the direction or control of another, its position in the corporation's organizational structure was not important. That was consistent with legal regimes that recognized that the piercing of the corporate veil could extend to affiliate entities as opposed to only parent and subsidiary entities. In addition, an entity could act under the direction of another without necessarily being controlled by that

entity. His delegation proposed that, in the second sentence of draft principle 11, the words "and/or affiliate entity" be inserted after "caused by its subsidiary" and that "*de facto* control" be replaced with "direction or control." That proposed amendment was without prejudice to the rights of the territorial State to pass laws and issue decisions related to acts or omissions of corporations operating in an occupied territory that affected the territorial State.

100. In paragraph 1 of the commentary to Part Four (Principles applicable in situations of occupation), the statement that "a stable occupation shares many characteristics with a post-conflict situation and may with time even come to 'approximating peacetime' conditions" was problematic and could be misconstrued as normalizing belligerent occupation. His delegation did not agree with the Commission's assertion, in paragraph 3 of the commentary, that the temporary authority of an Occupying Power extended to the adjacent maritime areas over which the territorial State was entitled to exercise sovereign rights, namely the continental shelf and the exclusive economic zone. Temporary authority could be transferred in adjacent maritime areas where the territorial State was entitled to exercise sovereignty, namely the territorial sea; such transfer should be assessed on a case-by-case basis, depending on whether the territorial State retained effective control of those areas. His delegation therefore proposed that, in paragraph 3, "extends" be replaced with "may extend", and that "sovereign rights" be replaced with "sovereignty".

101. His delegation agreed with the point made by the Commission in paragraph 2 of the commentary to draft principle 21 that a limitation deriving from the nature of occupation as temporary administration of the territory prevented the Occupying Power from using the resources of the occupied country or territory for its own domestic purposes. His delegation attached great importance to the Commission's position, stated in that paragraph, that draft principle 21 was based on article 55 of the Hague Regulations, under which the Occupying Power was regarded only as the administrator and usufructuary of immovable public property in the occupied territory. That limitation was reinforced by the statement in paragraph 6 of the commentary that, while the right of usufruct had traditionally been regarded as applicable to the exploitation of all natural resources, including non-renewable ones, the limitations in paragraphs 1 to 5 curtailed the Occupying Power's rights to exploit the natural resources of the occupied territory.

102. Turning to the topic "Sea-level rise in relation to international law", he said that, as an island State, Cyprus remained concerned about the adverse consequences of climate change, and recognized the gravity of the issue not only for small island States but for the international community as a whole. His delegation continued to believe that the outcome of any work on the topic should be in accordance with the United Nations Convention on the Law of the Sea. In doing such work, the Commission should bear in mind that it had no mandate for codification, and that State practice was also insufficient. Any attempt to modify the Convention would have adverse consequences. However, Cyprus supported the Study Group's decision to work on the potential effects of rising sea levels on statehood and migration.

103. **Mr. Hitti** (Lebanon) said that his delegation appreciated the inclusion in the Commission's long-term programme of work of new topics, in particular "Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law". Although the long-term programme of work should not be overloaded, in order to maintain the quality of the Commission's work, the number of topics currently included represented an acceptable balance. The inclusion of the topic "Sea-level rise in relation to international law" showed that the Commission was able to react to emerging challenges in international law. His delegation supported the establishment of the Study Group, which was not the first of its kind and reflected the particular and complex nature of the topic. It was therefore important to note, as the Commission did in its report (A/74/10), that the programme of work of the Study Group might require adjustment, particularly as the three subtopics on which the Study Group would be working might overlap.

104. Turning to the topic "Protection of the environment in relation to armed conflicts", he said that Lebanon supported the approach of considering the topic in three temporal phases, namely before, during and after a conflict. Referring to the draft principles adopted by the Commission on first reading, he said that his delegation took note of the Commission's declaration that it would decide at the time of the second reading, whether to use the term "natural environment" or "environment", a decision that would ensure consistency and clarity.

105. The reference to the local population in draft principle 8 (Human displacement) was essential. The draft principle should also apply to areas through which displaced persons had transited. His delegation attached great importance to draft principle 9 (State responsibility). It agreed with the Commission that draft principle 18 (Prohibition of pillage) and draft principle

12 (Martens Clause with respect to the protection of the environment in relation to armed conflict) applied in situations of occupation. In draft principle 26 (Relief and assistance), a paragraph should be added stating that the draft principle was without prejudice to draft principle 9 (State responsibility). The draft principle should be more prescriptive; the words "are encouraged to" should be replaced with "should", as initially proposed by the Special Rapporteur. In addition, the words "may consider" should be replaced with "should consider".

106. A draft principle on the impact of the use of certain types of weapons on the environment and the need to conduct studies on the environmental impact of such weapons should be included. It should be based, inter alia, on article 36 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts. The Martens Clause could be understood to cover the issue of arms, but given the importance of the matter, which related directly to the topic, a separate reference to it was necessary.

107. *Ms. Anderberg (Sweden), Vice-Chair, took the Chair*.

108. **Mr. Cuellar Torres** (Colombia), referring to the topic "Protection of the environment in relation to armed conflicts", said that the environmental effects generated during and after a conflict could pose a serious threat to human beings and ecosystems. The environmental harm caused by an armed conflict had long-term, potentially irreparable consequences, and it might well undermine effective reconstruction of societies and destroy large expanses of wilderness and ecosystems. That was why, in principle 24 of the 1992 Rio Declaration on Environment and Development, it was stressed that warfare was inherently destructive of sustainable development and that States must therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development.

109. To date, laws to prevent, reduce and repair damage to the environment caused by armed conflict had not been effective. International humanitarian law therefore needed to be integrated into other branches of international law, such as environmental law, human rights law, treaty law and even the law of the sea, with a view to protecting the environment as an integral part of society. In that connection, his delegation agreed with the Special Rapporteur that environmental concerns had permeated most areas of international law, as demonstrated by an advisory opinion of the Inter-American Court of Human Rights concerning State obligations in relation to the environment and the right to life and personal integrity. In that opinion, the Court had emphasized the interdependence and indivisibility of human rights, the environment and sustainable development. Although the opinion did not concern the protection of the environment in relation to armed conflicts, it still applied in that context because the obligation to protect human rights and the environment did not cease during armed conflict.

110. The topic was particularly important for Colombia, where armed conflict had damaged large parts of the environment and had adversely affected the health of the population, manifested in many ways, including illegal mining, deforestation, planting of anti-personnel mines, existence of remnants of war and destruction of wells and oil spills. His Government would therefore make every effort to curb the activities of narcoterrorist groups, which threatened peace and the environment. It encouraged reformed terrorists who appeared in court to admit their acts in full and in detail, and to propose a plan for reparation and restoration activities. Such proposals were intended to recognize that natural resources and the environment were essential to peacebuilding.

111. On second reading of the draft principles, the Commission should include a provision emphasizing the responsibilities of non-State armed groups for the protection of the environment, since the history of Colombia, and the increasing number and impact of such groups elsewhere, showed that they should take responsibility for environmental damage.

112. A provision should be included in the draft principles requesting States and non-State armed groups to review the environmental impact of weapons they were considering using, to determine whether such use was prohibited in international law.

113. His delegation welcomed the inclusion of the topic "Sea-level rise in relation to international law" in the Commission's current programme of work and the establishment of an open-ended Study Group on the topic. Because of climate change, sea-level rise was of great importance to the international community. International law was currently based on stable geographical characteristics for the determination of States' rights and maritime areas, but territoriality and other constitutive elements of statehood would be called into question in the near future, and, as a result, environmental law, migration law and human rights would need to be taken into consideration, and some commonly accepted concepts in international law would need to be re-evaluated.

114. In addition, refugee law and law related to stateless persons did not offer the protection required against sea-level rise, and no clear body of law protected persons affected by sea-level rise in the long term. His delegation would be interested to know whether human rights instruments protected the rights of persons and communities whose States lost all or part of their territory; whether such persons had the right to resettle as a community; how far the concept of self-determination extended; and when a State would cease to exist. The implications of those questions went beyond international law and included core aspects of international peace and security, national identity and human dignity. Since those developments would occur in the near future, the topic must be studied in order to propose responses to them.

115. **Mr. Simonoff** (United States of America), referring to the topic "Protection of the environment in relation to armed conflicts", said that, as his delegation hoped to provide full comments by December 2020, his comments at the current juncture were only preliminary in nature. His delegation would appreciate greater clarity from the Commission as to the intended legal status of draft principles, as distinguished from draft articles and draft guidelines. Most of the draft principles adopted by the Commission on first reading were recommendations, phrased in terms of what States "should" do with respect to environmental protection before, during and after armed conflict.

116. His delegation was concerned, however, that several other draft principles were phrased in mandatory terms, purporting to dictate what States "shall" do. Such wording was only appropriate with respect to well-settled rules that constituted *lex lata*. Several of those principles went well beyond existing legal requirements, making binding terms inappropriate: draft principle 8 purported to introduce new substantive legal obligations in respect of peace operations; draft principle 16 purported to expand the obligations under the Convention on Certain Conventional Weapons to mark and clear, remove or destroy explosive remnants of war to include "toxic or hazardous" remnants of war, despite the Commission's recognition in its commentary that the term "toxic remnants of war" did not have a definition under international law; and the draft principles applicable in situations of occupation went beyond what was required by the law of occupation.

117. Two of the draft principles contained recommendations related to corporate due diligence and corporate liability. It was unclear why the Commission had singled out corporations for special attention. The draft principles did not address any other non-State actors, including insurgencies, militias, criminal organizations, and individuals. The effect was to suggest that corporations were the only potential bad non-State actors in the context of the protection of the environment.

118. Turning to the topic "Immunity of State officials from foreign criminal jurisdiction", he said that his delegation continued to have serious concerns. In particular, it did not agree that draft article 7 provisionally adopted by the Commission was supported by consistent State practice and *opinio juris*; as a result, it did not reflect customary international law. In addition, the Commission should aim to achieve consensus on the topic, as that would be the approach most likely to produce draft articles that accurately reflected existing law or sound progressive development that addressed all relevant concerns.

119. The Special Rapporteur's seventh report (A/CN.4/729), which dealt with procedural aspects of immunity, reflected some of the methodological challenges that had affected her previous reports: little information was available on prosecutions not brought because of immunity or for other reasons, and case law in the area was exceedingly sparse. Against that backdrop, the Special Rapporteur expounded in the report on what she believed would be appropriate procedures, without the benefit of significant State practice. The wording of the draft articles she proposed in her report should reflect the fact that most of the provisions were best viewed as suggestions, not law. For example, it would be more appropriate to use the word "should" than "shall".

120. In addition, some of the Special Rapporteur's suggestions, such as the provision concerning notification of the State of the official, overlooked practical consequences; for example, if in the absence of assurances that a foreign official would not be informed, a State notified the State of that official, once it had concluded that the official "could be subject to its criminal jurisdiction", such notification could jeopardize a criminal investigation by allowing the official to destroy evidence, warn partners in crime or flee from the reach of the forum State. As a result, the provision would probably have a severe detrimental effect on the investigation and prosecution of international crimes. The draft articles also reflected a disregard for the fundamental principle and practice in the United States that the immunity of foreign officials was not considered a bar to criminal investigation; United States prosecutors could investigate crimes involving foreign officials without notifying the State of the foreign official of the investigation or of potential immunity issues.

121. In addition, paragraph 3 of draft article 16 should be deleted, as it misstated the applicable customary international law on consular notification reflected in the Vienna Convention on Consular Relations. When applicable, consular notification was required only if requested by the detained individual; no "entitlement" to assistance existed, and his delegation disagreed that fair and impartial treatment could not be provided in the absence of consular notification.

122. Whereas, in more developed areas of immunity law, such as diplomatic immunity law, procedural issues were addressed in a handful of paragraphs, the Special Rapporteur proposed nine articles, divided into 35 paragraphs, on procedure. Even so, she did not address the difficult questions raised by delegations during the deliberations on the topic at the seventy-third session of the General Assembly, including how to address the issue of politically motivated or abusive prosecutions. Based on the draft articles she proposed, that would appear to depend on cooperation and consultation among friendly States; however, she did not answer the question as to how procedural safeguards could prevent abuses and resolve conflicts in situations where politically motivated or abusive prosecutions arose between countries in a state of animosity, for example in the case of accusations of "war crimes" by enemy military officials in a regional armed conflict. Other unanswered questions included whether the procedures applied even to the potential prosecution of an official or former official if it was clear that the act in question had not been carried out in an official capacity.

123. Although the Special Rapporteur stated in paragraph 21 of her report (A/CN.4/729) that "any proceeding by the forum State concerning this type of immunity involves the presence of a foreign official", it was unclear whether such procedures applied even when the foreign official was not in the forum State at the time of indictment. It was also unclear whether, in States where criminal prosecutions could be instituted by a person who claimed to be a victim, the rules allowed the appropriate government ministries to express substantive views, or whether, under draft article 9, they could express such views only if national laws so provided. Article 8 stated that "the competent authorities of the forum State shall consider immunity", but it was unclear whether a court was required to determine immunity with input from those authorities at the initiation of any legal proceeding.

124. Further consideration should also be given to the relationship between the procedural provisions and safeguards in Part Four and the provisions in Parts One to Three. For example, the legal effect of the invocation of immunity by a foreign State was not clearly addressed. In paragraph 2 of draft article 9, the reason for which the Commission referred to the immunity of the foreign State rather than the immunity of foreign State officials was not clear. Paragraph 4 of draft article 11 also merited further consideration, since the concept of a waiver being "deduced" would appear inconsistent with the concept of a waiver having to be express.

125. The Special Rapporteur's suggestion to address the issue of the immunity of State officials from the jurisdiction of such international criminal tribunals as the International Criminal Court exceeded the mandate of the Commission's project on the immunity of State officials from foreign criminal jurisdiction. His delegation also had many concerns about the judgment of the Appeals Chamber of that 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 of Omar Al-Bashir)*; for example, it disagreed with the Appeals Chamber's far-reaching conclusion that no Head of State immunity existed under customary international law before an international court established by two or more States. In any event, such issues would not be appropriate for inclusion in the draft articles.

126. Turning to the topic "Sea-level rise in relation to international law", he said his delegation was concerned it did not meet two of the Commission's criteria for the selection of a new topic. In particular, it questioned whether the issues of statehood and protection of persons as specifically related to sea-level rise were at a sufficiently advanced stage of State practice. As the Commission had moved the topic to its current programme of work, however, his delegation agreed with the decision to establish a Study Group on the topic; it also agreed with the Study Group's decision to work, in 2020, on issues related to the law of the sea. It was appropriate that the Study Group would be open to all members of the Commission and that the issues papers on the topic would be available to Member States.

127. Sea-level rise could increase coastal erosion and inundation, which, in some areas, could lead to a reduction or loss of maritime spaces and natural resources. The United States supported efforts to protect States' maritime entitlements under the international law of the sea, in accordance with the rights and obligations of third States. Such efforts could include coastal reinforcement, for example through the construction of sea walls; coastal protection and restoration; and maritime boundary agreements. His delegation also supported the delineation and publication by States of the limits of their maritime

zones in accordance with the United Nations Convention on the Law of the Sea.

128. **Mr. Hermida Castillo** (Nicaragua), referring to the topic "Immunity of State officials from foreign criminal jurisdiction", said that the comments made by his delegation were designed solely to contribute to a discussion that was already under way and that it reserved its general position on the matter. It was noteworthy that only seven draft articles on the topic had been adopted since 2007, the most controversial being draft article 7, under which immunity *ratione materiae* did not apply in respect of crimes under international law, namely genocide, crimes against humanity, war crimes, apartheid, torture and enforced disappearance. It was regrettable, however, that the crime of aggression had been excluded from the list without any legal justification.

129. With regard to the procedural aspects of immunity, the Commission stated in its report (A/74/10) that the aim was to build mutual trust by striking a balance between the right of the forum State to exercise jurisdiction and the right of the State of the official to have the immunity of its officials respected. Such a balance was impossible if it was assumed from the outset that no immunity existed, since draft article 7 itself addressed the existence of immunity, and the proposed procedural safeguards would appear to be intended to uphold the right to exercise jurisdiction. The draft article should be treated as what it was, namely an exception rather than the rule, because it did not reflect current State practice but rather a proposal *de lege ferenda*. His delegation was of the view that, in order to ensure that the draft articles were balanced and to build the desired mutual trust between the forum State and the State of the official, it was indispensable that the term "criminal jurisdiction", for the purposes of the topic, be defined, and that a mechanism be developed to provide the assurance that any dispute as to the existence or non-existence of an official's immunity would be settled by an impartial international tribunal and not by the domestic legal system of a State that was subject to external political pressure or wished to politicize a situation.

130. His delegation took note of the clarification provided in the Commission's report that the procedural safeguards were designed to apply to all the draft articles, including draft article 7. With regard to the relationship between foreign criminal jurisdiction over State officials and international criminal jurisdiction, the basis of the international legal system was voluntary, and a State therefore could not be subject to the jurisdiction of the International Criminal Court without its consent.

131. Lastly, his delegation welcomed the inclusion of the topic "Sea-level rise in relation to international law" in the programme of work of the Commission and the establishment of a Study Group on the topic. His delegation noted that the Study Group would focus its work in 2020 on issues related to the law of the sea, and that information had been requested on State practice related to baselines, low-tide elevations, islands, artificial islands, coastal areas, especially low-lying coastal areas, and reclamation and fortification measures. However, it called on the Commission to include the international and historical responsibility of States for sea-level rise, an undoubtedly relevant topic, in the Study Group's programme of work.

The meeting rose at 1 p.m.