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Chairman: Mr. Yáñez-Barnuevo . . . . . (Spain)
later: Mr. Hmoud (Vice-Chairman) . . . . . (Jordan)

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

Agenda item 80: Report of the International Law Commission on the work of its fifty-seventh session (A/60/10)

1. **The Chairman**, recalling the contribution made by the International Law Commission to the progressive development of international law and its codification in accordance with Article 13 of the Charter of the United Nations, said that he hoped the debates would be substantive and stimulating, as in previous years.

2. **Mr. Momtaz** (Chairman of the International Law Commission) said that the Commission was aware of the importance of international law in the contemporary world and in the age of globalization, and saw an important role for itself in clarifying not only the traditional areas of international law but also its more contemporary and emerging practices and norms. It dealt with several complicated issues at the same time, which required understanding of the developments of the current year but also those of previous years. The Commission relied on the Sixth Committee for advice from Governments and information on State practice, when that information was not readily available. That was particularly the case for newer topics involving emerging practices that were not always accessible. The Commission's success in the codification of international law therefore depended to a large extent on the support it received from the Committee. Turning to Commission's report (A/60/10), he said he would concentrate on chapters VI, VIII and XII.

3. With regard to chapter VI, the Special Rapporteur for the topic "Responsibility of international organizations", had dealt, in his third report, with the existence of a breach of an international obligation on the part of an international organization and the responsibility of an international organization in connection with the act of a State or another international organization, for which he proposed draft articles 8 to 16, contained in chapters III and IV of the draft articles. Together with their commentaries, the draft articles appeared in chapter VI of the report.

4. Draft articles 8 to 11 addressed various aspects of the conduct of an international organization that constituted a breach of one of its international obligations. That was the second condition for an internationally wrongful act of an international organization to arise, as established in draft article 3, paragraph 2 (b). The four draft articles reflected articles 12 to 15 of the articles on the Responsibility of States for Internationally Wrongful Acts. Although available practice with respect to international organizations was limited, the articles on responsibility of States provided general principles that could be applied to the breach of an international obligation by any subject of international law.

5. Draft article 8, paragraph 1, indicated that an international organization breached an international obligation when its conduct, whether action or omission, did not conform to that obligation regardless of its origin as customary law, treaty law or a general principle or its character in terms of various classifications of international obligations. Those obligations might relate to the conduct of the organization or its member States or international organizations, or a combination thereof. The provision covered obligations incumbent on any subject of international law.

6. Although it might seem superfluous, paragraph 2 removed any doubt that the previous paragraph applied to breaches of international obligations established by a rule of the international organization in view of the practical importance of such obligations. Varying views on the legal nature of the rules of an international organization were set out in the commentary. The rules of an international organization designed to address breaches of its obligations, including the question of the existence of a breach, would not necessarily prevail over principles set out in the current draft, a point which might, however, be addressed in a final provision of the draft.

7. Draft article 9, concerning the requirement that the relevant international obligation must be in force for the international organization when the act occurred; draft article 10, concerning the extension in time of the breach of an international obligation; and draft article 11, concerning the breach of a composite act, closely reflected the corresponding articles on responsibility of States, with necessary minor drafting changes. There seemed to be no issues affecting the application of those principles to international organizations.

8. Draft articles 12 to 16 addressed various aspects of the responsibility of an international organization in

connection with the act of a State or another international organization. Those provisions reflected the corresponding articles on responsibility of States. Although available practice relating to international organizations was limited, the inclusion of such provisions was seen to be justified because parallel situations were likely to arise in respect of international organizations, and because there was no reason to distinguish between the responsibility of States and that of international organizations in such situations.

9. Those articles also dealt with the consequences of the unique relationship that might exist between an international organization and its member States, under which the organization was empowered to take decisions binding on its members. That relationship had no equivalent in relations between States and therefore was not covered in the articles on responsibility of States. As noted in the commentary, it was considered preferable not to assume, at the current stage of judicial developments, that a special rule existed to the effect that State authorities acted as organs of the European Community when implementing a binding act thereof.

10. Draft article 12 dealt with the international responsibility of an international organization for aiding or assisting in the commission of an internationally wrongful act by a State or an international organization. That provision corresponded to article 15 on responsibility of States, with minor drafting changes.

11. Draft article 13 dealt with the international responsibility of an international organization for directing and exercising control over the commission of an internationally wrongful act by a State or another international organization. That provision reflected article 17 on responsibility of States, with the relevant drafting changes. As the commentary specified, situations might arise in which two international organizations directed and exercised control over the commission of a wrongful act. Situations might also arise in which an international organization adopted a binding decision that constituted a form of direction and control over the commission of such an act by a State or another international organization. While the commentary noted that there might be an overlap between that provision and draft article 15, it pointed out the consistency of the provisions and the fact that draft article 15 also covered an additional case.

12. Draft article 14 dealt with the international responsibility of an international organization for coercing a State or another international organization to commit an internationally wrongful act. That provision corresponded to article 18 on responsibility of States, with the relevant drafting changes. There might be some overlap between draft articles 14 and 15 in those exceptional circumstances in which an international organization took a binding decision which constituted coercion. In such a case, responsibility could arise under either article without any inconsistency between the provisions.

13. Draft article 15 dealt with the international responsibility of an international organization for decisions, recommendations or authorizations addressed to member States and international organizations under two sets of circumstances. Paragraph 1 discussed situations in which an international organization adopted a decision binding a member State or international organization to commit an act that would be internationally wrongful if committed by the former organization and would circumvent one of its international obligations. That provision arose from the fact that an international organization, as a subject of international law distinct from its members, might try to circumvent its own international obligations indirectly by influencing the conduct of its members. That provision did not require the specific intention of the international organization to circumvent its obligations or the actual commission of the act by a member State or international organization. Accordingly, the third party would be able to seek a remedy even before the act was committed, on the basis of the probability that members would comply with such a binding decision and that the third party would be injured. Advancing the threshold of responsibility also avoided placing members in the difficult position of having to choose between infringing their obligations under the binding decision or causing the international responsibility of the international organization, and perhaps their own. That paragraph assumed that a compliance with the binding decision necessarily entailed the circumvention of an obligation of the organization. Decisions giving a member State or international organization sufficient discretion to pursue an alternative course of action were discussed in paragraph 2.

14. Paragraph 2 addressed situations in which an international organization authorized or recommended

a member State or international organization to commit an act that would be internationally wrongful if committed by the former organization and would circumvent one of its international obligations. The paragraph covered all non-binding acts of an international organization which might influence the conduct of member States or international organizations. In addition, for the international responsibility of the international organization to arise, the authorized or recommended act must be committed, and the act must be committed in reliance on the authorization or recommendation of the international organization. The commentary noted that that provision was intended solely to cover reasonable reliance on the authorization or recommendation. In addition, the international organization would not be responsible for any other breach committed by the member State or international organization to which the authorization or recommendation was addressed.

15. Paragraph 3 indicated that, unlike the situations envisaged in draft articles 12 to 14, the international responsibility of an international organization under draft article 15 was not based on the unlawfulness of the conduct of the member State or international organization to which the decision, authorization or recommendation was addressed. If the conduct was unlawful, draft articles 13 and 14 would perhaps provide alternative bases for holding international organizations responsible, if the other necessary conditions were met.

16. Draft article 16 indicated that chapter IV was without prejudice to the international responsibility of the State or international organization which committed the act or of any other State or international organization. That provision reflected article 19 on responsibility of States.

17. The Special Rapporteur intended to address, in his fourth report, scheduled to appear in 2006, questions related to circumstances precluding wrongfulness and to responsibility of States for the internationally wrongful acts of international organizations. It would therefore be helpful for the Special Rapporteur and for the Commission to have the views of Governments as to whether the draft articles on responsibility of international organizations should include provisions similar to those contained in articles 16 to 18 on responsibility of States, which would concern cases in which a State aided or assisted an international organization in the commission of an internationally wrongful act, directed or exercised control over the commission of such an act, or coerced the commission of an act that would, without such coercion, constitute an internationally wrongful act. It would also be useful to know whether there were other cases in which a State could be held responsible for the internationally wrongful act of an international organization of which it was a member.

18. Chapter VIII of the report dealt with the topic "Expulsion of aliens", which was the second of the two new topics taken up by the Commission in the current year. The Commission had considered the preliminary report of the Special Rapporteur (A/CN.4/554), which had outlined his understanding of the subject and had included a proposed general work plan and a partial bibliography.

19. The Commission had generally agreed with the Special Rapporteur's framing of the basic issue underlying the topic, namely how to reconcile a State's right to expel with the requirements of international law, particularly those relating to the protection of human rights. The Commission had taken the view that the "right" of the State to expel aliens was generally recognized under international law, albeit subject to certain limits, mostly in the context of human rights law, to the violation of which international law attached legal consequences. However, some members had expressed doubts as to the proposed approach of giving a priori status to States' right to expel, while relativizing human rights standards. Paragraphs 247, 261 and 262 of the report contained further discussion of the issue.

20. A key question had concerned the concept of expulsion of aliens to be applied. Different views had been expressed on the scope of the topic, with some members preferring a broader scope while others had suggested some limitations. For example, it had been proposed that issues of refoulement, internally displaced persons, non-admission of asylum-seekers or refusal of admission for regular aliens, movements of population or situations of decolonization or self-determination, and the position of the occupied territories in the Middle East, should not be considered. Support had also been expressed for not covering measures of expulsion taken by a State vis-à-vis its own nationals of an ethnic, racial or religious origin different from that of the majority of the population. While there was a preference in the Commission not to address questions of persons expelled during an armed

conflict, it was maintained that existing rules on armed conflict could not be entirely disregarded because international humanitarian law included precise rules on expulsion of aliens. Paragraphs 253 to 256, 272 and 274 of the report contained a discussion of those and other issues.

21. With regard to terminological questions, while support had been expressed for the Special Rapporteur's preference to retain the term "expulsion", some members had expressed concern that his tentative definition, namely that expulsion constituted "a legal act in which a State compels an individual or group of individuals who are nationals of another State to leave its territory", was too broad. There had been support in the Commission for including in the concept of "aliens" persons residing in the territory of a State of which they did not have the nationality, with a distinction being made between persons in a regular situation and those in an irregular situation. The topic would also include refugees, asylum-seekers, stateless persons and migrant workers. The relevant discussion was contained in paragraphs 254, 257 to 260 and 273 of the Commission's report.

22. The Commission had next considered the question of the grounds for expulsion. It had been recognized that the right of a State to expel was necessary as a means of protecting the rights of the population which existed within the territory of the State. At the same time, while it had been recognized that the State enjoyed wide discretion in exercising its rights to expel aliens, such discretion was not absolute. For example, opposition had been expressed to the existence of a "right" of collective expulsion. Hence, while an expulsion might involve a group of people sharing similar characteristics, the decision to expel should nonetheless be taken at the level of the individual and not that of the group. The relevant discussion was contained in paragraph 267 of the report.

23. Furthermore, the right of the State to expel had to be balanced against existing fundamental human rights protections, as well as other limitations recognized under customary international law. Reference had been made to a number of substantive and procedural safeguards recognized by international law. Examples given of such rights relating to expulsion had included the requirement that expulsion should not be undertaken arbitrarily but pursuant to a decision reached in accordance with the law and that the expulsion should not be carried out in an unreasonable, inhumane, degrading or humiliating manner, or with violence or unnecessary harm to the alien. Other suggestions had included giving particular attention to procedural guarantees, including those remedies capable of preventing expulsion; specifying that such fundamental guarantees applied to the entire expulsion process and not only to the procedure for the examination of individual cases; requiring the expelling State to notify the alien concerned of the decision to expel; and granting the alien the right to appeal such decision, where appropriate. The discussion on those issues was contained in paragraphs 263 to 268 of the report.

24. With regard to the methodological questions mentioned in paragraphs 269 and 270 of the report, the Commission had generally supported the Special Rapporteur's proposal that the focus should be on drafting articles covering all aspects of expulsion, i.e. a complete regime including existing conventional rules. It had been felt that a mere body of general principles would not be particularly useful or effective. It had been understood that the proposed study of the topic would be undertaken on the basis of a thorough consideration of existing customary international law and treaty law, including a comparative study of international case law at both the global and the regional levels and of national laws and practice. At the request of the Special Rapporteur, the Commission had entrusted the secretariat with the task of preparing a compilation of applicable national and international instruments, texts and jurisprudence on the topic. Delegations were referred to paragraph 27 of the report, which stated that the Commission would appreciate receiving any information concerning the practice of States on the subject, including national legislation.

25. Turning to chapter XII of the report ("Other decisions"), he said that, since the Commission intended to complete the second reading on two topics the following year, it had decided to include an additional new topic, "The obligation to extradite or prosecute (*aut dedere aut judicare*)", in its work plan. That topic had been included in the long-term programme of work the previous year. The Commission had appointed Mr. Zdzislaw Galicki Special Rapporteur for the topic.

26. As in the past, the Commission had been cooperating with other bodies, including the Inter-

American Juridical Committee, the Asian-African Legal Consultative Organization and the European Committee on Legal Cooperation, and had had a visit from Judge Jiuyong Shi, President of the International Court of Justice. Members of the Commission had also conducted informal exchanges of views with other bodies and professional associations on some of the topics currently under consideration by the Commission. Those bodies and associations were listed in paragraphs 503 to 509 of the report.

27. The Commission, having considered paragraph 8 of General Assembly resolution 59/41 on cost-saving measures, as well as budgetary constraints and the requirements of the programme of work of the Commission for the current session resulting from unforeseeable circumstances, had reduced the duration of the second part of its fifty-seventh session by one week.

28. The Commission attached great importance to the International Law Seminar, which was held annually in Geneva during the meetings of the Commission and enabled young lawyers, particularly those from developing countries, to familiarize themselves with the Commission's work and the activities of international organizations with headquarters in Geneva. Through its Chairman, it therefore expressed its appreciation to those Governments that had contributed to the Seminar and urged States to provide financial assistance as soon as possible.

29. He alluded to the importance of the Commission's secretariat, the Codification Division of the Office of Legal Affairs. Its competence, efficiency and valuable assistance, in respect of both the substance of the Commission's work and the procedural aspects thereof, were vital to the success of that work. Since the Division also served as the secretariat of the Sixth Committee, it was an invaluable and irreplaceable link between the two bodies and provided a high-quality service which must be preserved. The Commission particularly appreciated the memorandum prepared by the Division entitled "The effect of armed conflict on treaties: an examination of practice and doctrine" (A/CN.4/550 and Corr.1).

30. **Ms. O'Brien** (Ireland), referring to the draft articles on the responsibility of international organizations, said that, given the increasing number and significance of international organizations, both as members of the international community and as subjects of international law, the Commission's attention to the matter of their responsibility was both welcome and timely. Given the paucity of practice upon which to draw in formulating the draft articles, the Commission's previous work on the articles on responsibility of States for internationally wrongful acts provided a good basis for elaborating a corresponding regime for international organizations.

31. The relationship between draft articles 3, 4 and 15 needed to be developed further. While draft article 15 provided for an international organization to be held responsible for the acts of its member States in certain circumstances, draft article 3, which contained the general rule, was silent on the matter. The Commission's commentary of 2003 had stated that "the statement of general principles in article 3 is without prejudice to the existence of cases in which an organization's international responsibility may be established for conduct of a State or of another organization". However, it would be preferable for draft article 3 to provide explicitly for the responsibility of international organizations for the acts of their member States in certain cases.

32. In that connection, regard should also be had to draft article 4, which provided for international organizations to be held responsible for the acts of their agents or organs. The term "agent" potentially covered any legal person, including a member State of an international organization. However, it was unclear whether the references to agents in draft article 4 were intended to include such member States, and draft article 3 was silent on the issue. Article 4 should be reviewed to determine whether the acts of member States should be included or excluded; it might be useful to provide that, in certain circumstances, States were to be regarded as agents of organizations of which they were members.

33. Her delegation particularly welcomed draft article 15, which provided that the responsibility of an international organization was engaged if a member State acted pursuant to a binding decision taken by the international organization. However, the draft article did not cover the situation where the act of the member State would not have incurred international responsibility if committed by the international organization. International organizations might possess legislative powers that were derived from a transfer of competence from their member States. Therefore, it

might fall to those member States to fulfil the international obligations of international organizations.

34. A recent case before the European Court of Human Rights, *Bosphorus Hava Yollari Turizm ve Ticaret AS v. Ireland*, had raised the question of whether and, if so, in what circumstances, a member State of a regional international organization — in the case in question, the European Community — should be held responsible for conduct which it was obliged to carry out by the law of that international organization. The case had arisen in the context of trade sanctions against the former Federal Republic of Yugoslavia during the 1990s. A Security Council resolution requiring United Nations Member States to impound any aircraft found in their territory originating from that country had been implemented in European Community law. In the case in question, Ireland had actually been bound by its obligations under the Charter of the United Nations. However, the Court's judgement had focused on the obligations of High Contracting Parties to the European Convention on Human Rights that were also member States of the European Community. The European Court of Human Rights had no jurisdiction to pronounce on acts of the European Community as the Community was not a party to the Convention. Accordingly, although Ireland had been acting at the behest of the Community, because the Community itself was not bound in international law by the Convention, the Commission's draft article 15 would not have applied.

35. The applicant in the case had alleged that Ireland's compliance with European Community law had constituted a breach of Ireland's obligations under the Convention. However, since Ireland had been legally bound to implement the relevant European Community regulation, the alleged violation had not involved the exercise of any discretion by Ireland. It was not clear whether draft article 4 applied so as to render Ireland an agent of the Community for the purpose of attributing responsibility for the impounding of the aircraft.

36. In the case in question, the European Court of Human Rights had found that, because the European Community, as the relevant international organization, afforded protection of fundamental human rights equivalent to that afforded by the Convention, it was unnecessary for it to review the regulation for compliance with the Convention. Hence, Ireland had not breached its obligations under the Convention. However, the case had highlighted the need for clarification of the position under international law in such matters. Draft article 15 would not have applied to that case: the acts carried out by the member State of the international organization would not have incurred the international responsibility of the organization as that organization was not a party to the European Convention on Human Rights. Article 15 would entail international responsibility only for a breach of an international obligation of the international organization. That left a lacuna where a member State breached an international obligation that was not an obligation of an international organization as a result of its membership of that international organization.

37. As noted in the Commission's report, an international organization should not be allowed to escape responsibility by "outsourcing" its actors. Similarly, States should not be able to escape their responsibilities by seeking refuge behind the protective screen of an international organization. If the draft articles were intended to embrace the possibility of responsibility without attribution of conduct, it would be desirable to achieve that aim in a manner that was explicit and internally coherent. The article should be expanded to include acts which, although entailing international responsibility on the member State, would not have entailed such responsibility if carried out by the international organization.

38. Turning to draft article 8, and in particular the reference to the rules of the international organization in paragraph 2, she said that the status of such rules was of a highly uncertain nature in international law. The International Law Association had devised a substantial set of "recommended rules and practices" covering the internal obligations of international organizations but, in a similar vein to draft article 8, had avoided pronouncing on the legal status of such rules. There did not currently appear to be sufficient agreement in international law to support the view that all breaches of the internal rules of an international organization were also internationally wrongful acts. For that reason, her delegation welcomed the existing wording of draft article 8, paragraph 2.

39. **Mr. Bennouna** (Morocco) said that, at a time of reform in the United Nations, the Commission's standard-setting role was crucial. In that context, he commended the Commission's decision to include in its programme of work the topic "The obligation to extradite or prosecute (*aut dedere aut judicare*)",

which bore on the implementation of a number of conventions on the suppression of international crime and terrorism.

40. Turning to the work on current topics, his delegation commended the approach adopted by the Special Rapporteur on shared natural resources — to present States with a flexible normative framework, which they could then adapt through bilateral or regional agreements — in view of the variety of issues involved in managing transboundary aquifers and aquifer systems. The same approach had proved useful when the Commission had finalized the Convention on the Law of Non-Navigational Uses of International Watercourses. In both cases, international cooperation was essential to the management of shared resources. The draft articles proposed by the Special Rapporteur would provide a framework for such cooperation, making use of legal techniques that had proved their worth in the Convention. His delegation welcomed the fact that the draft articles contained a provision specifically aimed at developing countries. It was important that any new element of international law relating to relations between States should take into account different levels of development.

41. With regard to the effects of armed conflicts on treaties, his delegation considered it appropriate to include treaties concluded by international organizations as well as those concluded by States, even though the former were not, as a rule, parties to conflicts and the United Nations did not have territory of its own. The draft articles should apply to any armed conflict, international or domestic, regardless of whether war had been declared. There remained, however, the question of the point at which a minor armed incident became a conflict. In any case, as soon as an armed conflict broke out, followed by a breakdown of order and security, there were inevitable effects on the implementation of domestic law and international agreements, although the termination or suspension of a treaty would also depend on the parties' explicit or implicit intention at the time the treaty was concluded. In any case, any treaty whose object and purpose necessarily implied that it was applicable in a situation of armed conflict remained so once the conflict had started.

42. The Commission had yet to reach a definite decision on the list of treaties. Drawing up such a list was fraught with difficulties, however, and it might be more worthwhile to emphasize the nature of the treaty and its applicability or otherwise in situations of armed conflicts rather than engage in the delicate process of categorizing treaties. Following the simple suspension of a treaty, it would seem logical, once the conditions that had given rise to such suspension no longer existed, to revert to full implementation of the treaty concerned. In practice, however, the parties might have different views, which would need to be settled by agreement. His delegation welcomed the fact that the Special Rapporteur intended to review the content of draft article 10 and reconsider the legality of the conduct of the parties to a conflict. A State acting in exercise of the right to self-defence or in accordance with a Security Council decision should be able to terminate treaties incompatible with that right or that decision. The Special Rapporteur was correct in saying that the invalidity of a treaty in respect of the rules of the Charter of the United Nations on the use of force did not come within the scope of the topic under consideration by the Commission.

43. With regard to the responsibility of international organizations, it was, again, logical that the Commission was modelling the draft articles closely on the structure of the draft articles on responsibility of States for internationally wrongful acts. Further study of the relationship between the obligations and the responsibility of international organizations was required, however. It was not appropriate to include in the topic the involvement of States in illegal acts committed by such organizations. On the other hand, any involvement by international organizations in the commission of illegal acts by States should certainly be included.

44. Concerning diplomatic protection, he noted that the Special Rapporteur had rightly, in his consideration of the draft articles on second reading, addressed the question, of the "clean hands" theory, which was sometimes viewed in terms of the capability of exercising diplomatic protection. The Special Rapporteur had, however, decided that the theory related, strictly speaking, to inter-State disputes and not to diplomatic protection, which applied in situations in which a State took up the cause of its national who had suffered harm at the hands of another State. Where the national's conduct was illegal, diplomatic protection did not apply. The Special Rapporteur had adopted a classic approach, pursuing the concept of "clean hands" to its logical conclusion so as to maintain the consistency of the draft articles.

At the same time, he had suggested — and the vast majority of the Commission had agreed — that the concept should not be covered by the draft articles.

45. The topic "Expulsion of aliens" was clearly of paramount importance at a time when the Global Commission on International Migration had just reported and the General Assembly had decided to hold a high-level meeting on migration in 2006. The question of the expulsion of aliens, which was linked with that of diplomatic protection, presented the difficulty of reconciling the right to expel with a State's obligation to protect fundamental human rights. The Commission would clearly need to distinguish between foreign nationals who were legally present in a country and immigrants who had entered illegally or whose presence had become illegal. The legal distinction should be carried through into the legal consequences of expulsion. It would also be important to put some limits to the topic, so as not to include questions which related to international humanitarian law. In a State governed by the rule of law, it was clear that a foreign national whose presence in the country was lawful could be expelled only after his case had been considered by a judge, who would take into account the relevant legislation. Where expulsion occurred, it must respect the dignity and fundamental rights of the person concerned. His delegation welcomed the forthcoming study by the Special Rapporteur and the secretariat of national laws on the topic and rulings by supreme courts with a view to identifying major trends and the main directions for the codification and progressive development of the topic.

46. The Commission had not yet managed to determine the limits and scope of the topic "Unilateral acts of States", particularly the question whether unilateral acts should be codified as sources of international law or as components of more classic sources, such as customary law, treaties or general principles. It was not enough to say, as the Working Group had done, that unilateral acts could have legal effects; agreement should be reached on the legal category to which such acts belonged. Much effort had gone into the consideration of the topic, but, to date, little real progress had been made.

47. When the topic of "Reservations to treaties" had first been taken up, in 1993, the Commission had assumed that all that was needed was to fill in a few gaps in the Vienna Convention on the Law of Treaties. The Special Rapporteur had, however, gone into the topic in great detail and enriched it, most recently in his treatment of the questions of the validity of reservations, the definition of the object and purpose of a treaty and reservations to a provision articulating a customary rule. The Commission had accepted his draft guidelines, which clarified some of the key provisions of the Vienna Convention. Those guidelines were already being applied.

48. The Committee should consider whether the Commission should be requested to examine various important topics that had arisen in connection with United Nations reform, such as the responsibility to protect.

49. *Mr. Hmoud (Jordan), Vice-Chairman, took the Chair.*

50. **Mr. Liu** Zhenmin (China) said that the Commission had played a highly significant role in codifying and developing international law over the past 60 years. Of the 26 topics of which it had completed its consideration, 17 had been adopted in the form of conventions, which had played and would continue to play an important role in promoting friendly relations among States. Whether or not it resulted in a convention, the Commission's work invariably served as an important point of reference in the study and practice of international law.

51. With regard to the topic "Responsibility of international organizations", his delegation's view on whether there was a breach of an international obligation by an international organization when its conduct consisted of an omission was that, as a subject of international law, an international organization was different from a State, in the sense that it was controlled by its member States and most cases its authority was optional rather than mandatory. Whether an omission on its part therefore constituted an internationally wrongful act would fundamentally depend on whether it was explicitly obliged under international law to take action. With regard to the question of an act that an international organization requested its member States to commit but which would be internationally wrongful if committed by the international organization itself, his delegation shared the Special Rapporteur's view that the latter should incur international responsibility for such an act. As decisions, recommendations and authorizations made by an international organization with a view to circumventing its international obligations produced

widespread international repercussions they should be rendered wrongful by law. The Special Rapporteur believed that an international organization's recommendations and authorizations were different from its decisions, because responsibility arose only when the former were implemented by member States. Further study should, however, be conducted to ascertain whether such a distinction was justified. Although recommendations and authorizations were not as binding as decisions on member States, the distinction seemed to make better sense when it came to determining the level of responsibility of member States.

52. His delegation believed that a State incurred international responsibility if it aided, or assisted, or directed and controlled an international organization into the commission of an internationally wrongful act or coerced it into committing such an act. Since the issue was not covered by the draft articles on State responsibility, a provision to that effect should be included in the draft articles on the responsibility of international organizations.

53. On the question whether member States incurred international responsibility for an internationally wrongful act committed by an international organization, his delegation believed that, since the decisions and actions of an international organization were, as a rule, under the control, or reliant on the support, of member States, those member States that voted in favour of the decision in question or implemented the relevant decision, recommendation or authorization should incur a corresponding international responsibility.

54. With regard to the expulsion of aliens, his delegation commended the Special Rapporteur's approach. As for the methodology to be used, the priority should be to conduct a comparative study, drawing on the domestic law of all States, the relevant rules of international law and the jurisprudence of international and regional judicial bodies with a view to producing a compendium of rules of international law pertaining to the expulsion of aliens. It was to be hoped that the Commission would pay equal attention to developed and developing countries, so that the results of its study would be representative of practice in a wide variety of countries. As to the scope of the study, refusal of entry was a highly complex issue, for which there was no one solution. When a person had yet to enter the territory of the expelling State, the need for expulsion simply did not arise. On the other hand, refusal of entry to an alien returning to his country of residence, in which he had established social and economic relations, or to an immigrant on board a vessel or plane under the control of the expelling State should be considered as coming under the category of expulsion. Account should also be taken of the treatment of persons who had applied for entry but had yet to enter the territory of the country in question. The large-scale expulsion of a population as the result of a territorial dispute should not be covered under the topic, because it involved sensitive political issues and did not lend itself to treatment from the legal point of view. Collective expulsion was prohibited under international law, since in most cases such action was discriminatory. In practice, however, the question whether expulsion of all persons aboard a vessel or in a vehicle constituted collective expulsion would depend on a combination of complex elements. Lastly, his delegation considered that the right to expel was inherent in the sovereignty of States and was indispensable for the maintenance of order. It was not only a right but a duty. At the same time, States should safeguard the basic human rights and dignity of the aliens expelled and ensure that they received humanitarian treatment.

55. **Mr. González-Campos** (Spain), focusing solely on those aspects of the Commission's work which had actually resulted in the codification and progressive development of international law, said that the large number of subjects examined by the Commission during its fifty-seventh session bore witness to the tremendous efforts its members had made. It also suggested that, although no major changes ought to be made to the programme of work, it might in future be advisable given the limited amount of time available to the Commission, to give priority to specific topics with a view to concluding the first reading of complete sets of draft articles on them, so that the Sixth Committee could comment fully on the whole text.

56. He was pleased that the Commission had decided to embark on a new topic, "The obligation to extradite or prosecute (*aut dedere aut judicare*)" since, it was not only a matter the Committee had long wished to study, but was also of great topical interest because of recent developments in international criminal justice and because of its implications for the universal criminal jurisdiction of States. The Commission's consideration of that question might decisively

strengthen the rule of law in the field of criminal justice.

57. It was also gratifying to note that the preliminary report of the Special Rapporteur for the topic "Expulsion of aliens" had highlighted both the scope of the concept of "expulsion" and the need to reconcile a State's customary right to expel with the limits international law placed on that right for the sake of protecting human rights. That was an important issue and reflection on it would help to determine the weight of some of the legal values States had generally come to share as the international system had taken shape.

58. The presentation of new draft articles on transboundary aquifers and aquifer systems, the responsibility of international organizations and the effects of armed conflicts on treaties would certainly lend impetus to the Commission's deliberations at its next session, when it should likewise achieve more progress on the question of diplomatic protection by producing a complete set of draft articles on that topic.

59. Further headway must also be made with unilateral acts of States, notwithstanding the complexity of the subject matter. The case law of the Permanent Court of International Justice and the International Court of Justice offered a rich source of examples of State practice. It would be advisable to restrict the scope of the topic to core issues, namely the obligation a State could assume through a unilateral declaration, the conditions governing its validity and its effects on third States, including the corresponding rights of those States. That would obviate the need to examine the complex reality of the "conduct" of States with regard to a specific situation. It might prove well nigh impossible to ascertain the legal effects of general conduct and establish appropriate rules because, in order to do so, the precise circumstances of each and every case would have to be determined and that was a matter for an international court or tribunal.

60. **Mr. Trauttmansdorff** (Austria) welcomed the third report of the Special Rapporteur for the topic "Responsibility of international organizations" and the draft articles and commentaries adopted by the Commission at its fifty-seventh session. He observed that article 8, paragraph 2, was obviously designed to make it clear that paragraph 1 also applied to the breach of an obligation under international law established by a rule of the organization. However, since paragraph 1 already covered any international obligation regardless of its origin and character, paragraph 2 was repetitious and should therefore be deleted.

61. Article 15, paragraph 2 (b) ought to be reconsidered, because it was of doubtful value in clarifying the relationship between the responsibility of a member State which had acted wrongfully on the authorization or recommendation of an organization and the responsibility of the latter organization, since the whole concept of a member State's reliance on the authorization or recommendation of an organization was rather vague. A very close connection between the authorization or recommendation and the relevant act of the member State would be required before an internationally wrongful act of a member State could give rise to the responsibility of the organization in question. Such a link could be created through the use of an expression such as "in compliance with" or "in conformity with". Any wrongful act that was not necessary for the implementation of the authorization or recommendation would not, by that token, be grounds for invoking the responsibility of the organization.

62. Another vital question was whether, and to what extent, an international organization should be held responsible for the recommendations and authorizations it issued. Since the articles on State responsibility were silent on the matter of incitement, it was reasonable to ask why international organizations should be held responsible for recommendations, which had the same effect as incitement. While it was not possible to rule out the possibility of such responsibility, the provision of more information in the commentary on the justification for and limits of such responsibility would be helpful, for otherwise problems could well arise if an organization recommended that a State perform an act contrary to the obligations incumbent upon the organization, but not upon the State. The wording of draft article 15, paragraph 2 (b), would entail the responsibility of the organization although no breach of a rule of international law had occurred, since a recommendation alone could not be deemed to constitute a breach.

63. Bearing in mind the content of articles 3 and 4, deeper thought ought to be given to the question whether the responsibility of an international organization for a wrongful act authorized or recommended by it would be exclusive or whether it would overlap with the responsibility of the State

committing the act. In the event of overlapping responsibility, it would be for the relevant court to decide what weighed heaviest: the actual act or the underlying authorization or recommendation.

64. As for the specific issues connected with the responsibility of international organizations on which the Commission would appreciate comments (A/60/10, para. 26), his Government took the view, with regard to question (a), that the Commission should deal with the legal consequences of aid, assistance, direction, control and coercion exercised by a State in respect of an international organization. Wherever appropriate, the draft should closely follow the principles laid down in the articles on State responsibility.

65. Turning to question (b), he noted that the case law of the European Court of Human Rights indicated that, under the European Convention on Human Rights, member States were responsible for the acts of international organizations, even after they had transferred competence to those organizations. Neither the International Court of Justice, in the *Legality of Use of Force* cases, nor the European Court of Human Rights, in the *Banković and others* case, had denied their jurisdiction on the grounds that member States of the North Atlantic Treaty Organization (NATO) were not responsible for the acts of the organization during the Kosovo conflict. Indeed, it could be argued that the responsibility of NATO member States might be incurred owing to their failure to secure rights protected by the European Convention on Human Rights within NATO bodies. Furthermore, the *International Tin Council* case and the *Westland Helicopters* case could be examined from the perspective of the international responsibility incurred by member States for their negligent supervision of organizations.

66. The expulsion of aliens was a highly complex topic and in considering it, it was necessary to bear in mind the broader framework of aliens' rights, which were mostly regulated by national legislation. Any codification work on the topic therefore called for a thorough analysis of that legislation. If the Commission wished to define justifications for expulsion, it would be advisable first to look at the corpus of national laws on the subject before endeavouring to draw any general conclusions.

67. **Mr. McRae** (Canada) said that the Commission was facing two challenges as far as the responsibility of international organizations was concerned. First, international organizations, as creatures of treaties, operated under international law. Internally the relations of the organization with its member States were governed by the rules of the organization, but externally the organization interacted with other organizations, non-member States and member States acting in a non-member State capacity. Were the rules governing the relations of organizations with their members "international obligations" in the same sense as the rules governing their relations with other organizations, non-member States or member States acting in a non-member capacity?

68. The legal nature of the rules of the organization and doubts regarding their place in international law deserved more in-depth consideration than they had been given in the commentary to draft article 8. If article 8, paragraph 1, stood alone, it would imply that whether any responsibility attached to obligations created under the rules of the organization would depend on whether those rules created international obligations. The wording of paragraph 2 seemed to signify, however, that, without paragraph 2, international obligations created by the rules of the organization would not be covered by the draft articles, an inference which would seem to conflict with the plain meaning of paragraph 1. The word "also" was confusing and should therefore be deleted.

69. Furthermore, paragraph 2 suggested that not all rules of an organization could create international obligations. If that were so, he wondered what the criteria were for determining whether an international obligation founded on the rules of the organization existed in any particular case and hence whether an act of that organization attracted international responsibility. By not providing guidance in that respect, the Commission had left much uncertainty on an important issue.

70. The second challenge derived from the fact that the diversity of international organizations made it hard to find a core common to their processes and practices in order that rules applicable to all of them might be formulated. It was equally difficult to decide when it was appropriate to frame rules that would take due account of the differences in international organizations and how to make such rules. The need for special provisions relating to international organizations which assigned responsibility for fulfilling certain treaty obligations to member States

was particularly obvious in the case of the European Community. The draft articles assimilated the European Community to other international organizations. That status had an impact on States in their dealings with the Community, particularly in the context of the World Trade Organization (WTO), where it was not always clear if it was the Community, or individual member States, which should be cited in dispute settlement procedures concerning measures taken by Community members, acting either as de facto Community organs or separately under their own competence. Since the Community claimed responsibility for implementing acts by member States, it had to assert that claim in each case before WTO panels. That was what it had done in the WTO decision mentioned in footnote 119 of the Commission's report. Rather than endorsing a particular view, the panel had simply accepted that the Community had explained its domestic constitutional arrangements in order to spare the panel from having to arrive at separate findings for each member State.

71. The Commission should give further thought to that question, since the nub of the issue was whether the responsibility of the Community could be established despite the fact that Community obligations were fulfilled through the action of member States. That might be one instance where the application of the same rules of responsibility to all international organizations did not pay sufficient heed to their diversity or to the practical requirements of any such rule.

72. The issue of the extent of the responsibility of States for the wrongful acts of international organizations had potentially far-reaching consequences and turned on the ambit of the terms "aids and assists" and "directs and controls". Could it be held that, just by being a member of an organization, a State aided and assisted the commission of an internationally wrongful act by the organization? Would responsibility attach only to those who voted in favour of such an act? Would voting in favour of such an act constitute direction and control? Or would something quite different have to be done to attract responsibility? Until the scope of any such potential State responsibility could be defined more clearly, his Government reserved its opinion on whether such matters should be included in the draft articles.

73. **Mrs. Belliard** (France) noted that the Commission had agreed to include in its very heavy programme of work various topics which, in her delegation's view, should receive special attention during its next session — the last of the current quinquennium. One of those topics was the draft articles relating to diplomatic protection, on which France would soon be submitting written comments. She sincerely hoped that the Commission would not allow timetable considerations to interfere with a thorough examination of the draft articles adopted on first reading the previous year. The current text provided useful clarifications, but it also included provisions which might give rise to controversy or confusion and which should therefore be discussed further. In her view, the reasons given by the Special Rapporteur as to why it was not necessary to deal with the consequences of diplomatic protection were not fully convincing. Even if diplomatic protection constituted an exception with regard to the general law on responsibility, the question whether a State was under an obligation to pay over to an injured individual money that it had received by way of compensation for a claim based on diplomatic protection was fundamental, and she believed that, at least in that regard, the examination of the topic of diplomatic protection remained incomplete.

74. With regard to unilateral acts of States, the deliberations of the Working Group on the subject offered some interesting ideas. However, the suggestion that the law of treaties could generally be transposed to unilateral acts should be considered carefully. It would be preferable to determine whether that was indeed the case with respect to the formulation, effects or revocation of such acts, for example. In addition, the examination of the topic should be limited to unilateral acts *stricto sensu*, saving the study of unilateral conduct for later. The Working Group's preliminary conclusions would undoubtedly provide a basis for substantial progress on the topic during the next quinquennium.

75. Her delegation wished to raise two concerns in relation to the Commission's report. The first had to do with the approach taken to the matter of effects of armed conflict on treaties. There was room to question some of the choices made by the Special Rapporteur, notably his emphasis on the effects that the intention of the parties could have. Certainly, that was one criterion to be borne in mind, but in no circumstances should its application lead to disregard for the cardinal principle of the prohibition of resort to the use of force. A State

which used force in violation of the Charter of the United Nations obviously could not be in the same situation as that of the State which was the victim of its actions. The second concern, which her delegation had expressed several times before, related to the sensitive issue of fragmentation of international law. She noted that the Study Group on the topic intended to propose a condensed set of conclusions, guidelines or principles for adoption by the Commission in 2006. The Commission should, however, proceed with utmost restraint, as the adoption of such a document, when both its status and content remained undetermined, could cause more doubt and confusion than it helped to alleviate.

76. On the question of the responsibility of international organizations, her delegation supported the approach to the topic taken by the Special Rapporteur, namely, following the general pattern of the articles on responsibility of States for internationally wrongful acts adopted in 2001. Before turning to the specific questions posed by the Commission, she wished to comment on some of the draft articles adopted during the fifty-seventh session. Draft article 8 was a perfect example of a sound adaptation of the 2001 articles. Paragraph 1 in effect reproduced article 12 of the text on responsibility of States, while paragraph 2 made it clear that the breach of an obligation set by a rule of an international organization was also considered a breach of an international obligation by the organization. That clarification was useful. Her delegation took the view that the rules established by an international organization constituted a priori rules of international law, and those who infringed them incurred responsibility. In that regard, she had been a little concerned to note in the commentary to draft article 8 that the Commission had preferred not to express a clear-cut view on the question of the legal nature of the rules of the organization, first because it was difficult to deal with the breach of an international obligation without defining clearly what the term meant and, second, because the difficulties indicated by the Commission seemed rather theoretical. In practice, the principle of *lex specialis* should suffice in most cases to deal with the question of responsibility for breach of the rules of the organization. Draft article 8, paragraph 2, was therefore in the nature of an explication and, as such, was not a source of major difficulty.

77. Chapter IV of the draft articles, concerning the responsibility of an international organization in connection with the act of a State or another international organization, was an important chapter inasmuch as it envisaged an inherent responsibility of international organizations. As subjects of international law, international organizations could incur responsibility and were not therefore “transparent” in the sense that it would be appropriate to examine first the responsibility of other subjects, in particular that of member States, for the acts of the organization.

78. From that standpoint, draft articles 13 and 14 were not problematic. The commentary to those articles raised the interesting question whether a binding decision by an international organization could be regarded as a form of direction, control or coercion. If such were the case, the organization could incur responsibility either directly, by taking the decision, or indirectly, by means of the direction, control or coercion implied by the decision. It should be more clearly established that the concepts of direction, control and coercion, as used in draft articles 13 and 14, did not refer to the question of the legal effects of the decisions taken by an international organization. That was particularly important in the case of article 14 in order to avoid any needless confusion over the difference between the necessary respect for binding decisions of an international organization and the idea of coercion.

79. With regard to draft article 15, while recognizing the importance of the principle put forth therein, her delegation had some questions as to the conditions under which an international organization could incur international responsibility. The Commission made a clear distinction between draft article 15, paragraph 1, relating to binding decisions taken by the organization, and paragraph 2, concerning cases in which an international organization might authorize or recommend that a member State commit an internationally wrongful act. In the first case, the Commission did not make actual commission of the act a condition for the incurrence of responsibility by the organization. That omission could create the impression that responsibility could be incurred by reason of a wrongful act that might not, in fact, have been committed. The distinction did not, therefore, seem desirable and the reasons for which it would be necessary were not evident.

80. With regard to the specific issues on which the Commission had requested comments from States, while it was true that the question of responsibility of States for the internationally wrongful acts of international organizations had not been dealt with directly in the articles on responsibility of States for internationally wrongful acts, it would nevertheless be useless to draft detailed rules on the matter, as there seemed to be little difference between the situation of international organizations and that of States in that regard. A saving clause accompanied by a commentary should be sufficient.

81. **Mr. Panahiazar** (Islamic Republic of Iran), referring to chapters II, III and XII of the report (A/60/10), welcomed the Commission's decision to include in its programme of work the important topic "The obligation to extradite or prosecute" and looked forward to seeing the first report of the Special Rapporteur for that topic. He was, however, concerned that the budgetary constraints and cost-saving measures mentioned in paragraph 497 of the report would adversely affect the function and productivity of the Commission, particularly with such a heavy workload. Appropriate time and resources should be allotted to allow for a thorough discussion and exchange of views on the nine substantial, delicate and controversial topics currently in the programme. In that connection, his delegation shared the concerns expressed by the Commission in paragraph 498 with regard to timely submission of reports by Special Rapporteurs and in paragraph 501 on the question of honoraria for Special Rapporteurs.

82. With regard to chapter III of the report, he expressed appreciation for the Commission's identification of issues and articulation of questions to be addressed by Governments, which undoubtedly had contributed to a more structured and focused debate within the Sixth Committee. His delegation encouraged the Commission to continue that useful practice. It agreed that written comments by Governments on drafts prepared and questions raised by the Commission were very useful. Ideally, a majority of States would provide such written replies to specific questions by the Commission or questionnaires prepared by Special Rapporteurs. Experience indicated, however, that a considerable number of States, for various reasons, were not in a position to do so. Accordingly, to reach truly common ground, the Commission should pay due attention to the statements of delegations in the Sixth Committee and to other forms of communication by States.

83. His delegation wished to underline the usefulness of the International Law Seminar held every year in conjunction with the annual session of the Commission in Geneva. The Seminar provided a truly unique opportunity for young lawyers and Government officials pursuing an academic or diplomatic career to advance their civil service to both their respective countries and to the international community, and made an invaluable contribution to the study and dissemination of international law. It was to be hoped that the Seminar would continue in the future, taking into account the special needs and priority of the developing countries.

84. With regard to the expulsion of aliens, while it was, as the Special Rapporteur had observed, an old question closely linked to the organization of human societies in the form of States, it remained of current interest and raised important questions of international law. Making the decision to expel aliens was a sovereign right of the State. However, the State should exercise that right in accordance with established rules and principles of international law, particularly fundamental principles of human rights. In other words, a distinction should be made between the right and the way in which it might be exercised. Any expulsion should be based on legitimate grounds, as defined in domestic law, taking into account issues such as public order and security or other essential national interests. Nevertheless, the grounds should not be contrary to international law. The Islamic Republic of Iran agreed fully with the Special Rapporteur that collective expulsion was contrary to human rights and prohibited by international law, and that it therefore should not be practised.

85. His delegation appreciated the efforts of the Special Rapporteur to formulate a clear-cut definition of the concepts of "expulsion" and "aliens". It should be noted, in that regard, that most of the seemingly similar or interwoven concepts and terms, such as "refugees", "asylum-seekers" and "migrant workers", had their own international legal regime. The issue of expulsion from occupied territories by the occupying Power fell within the realm of international humanitarian law and thus was clearly outside the scope of the topic of expulsion of aliens. The decision by a Government to expel an alien, as a unilateral act of that State, should not be regarded as imposing any

obligation or commitment whatsoever on any other State, including the State of nationality, to receive the alien. That did not mean, however, that the matter could not be settled or managed by mutual agreement. His delegation supported the idea that a thorough examination was needed of the status of aliens who had been residing in the territory of the expelling State for a long time and/or had lost all or most of their interests in their State of origin or had acquired special interests in the expelling State. The status of transit States was also highly significant. It was his understanding that in such cases a transit State had no obligation to readmit expelled aliens or to undertake similar commitments.

86. **Mr. Park** Hee-kwon (Republic of Korea), responding to the two questions posed by the Commission concerning the draft articles on the responsibility of international organizations, said that the answer to both questions was "yes". Article 57 of the articles on responsibility of States for internationally wrongful acts, adopted in 2001, stipulated that the articles were without prejudice to any question of the responsibility under international law of an international organization, or of any State for the conduct of an international organization. The commentary to that article then explained that article 57 was a saving clause which reserved two related issues from the scope of the article. Those issues pertained to any question concerning the responsibility of any State for the conduct of an international organization. Article 57 also excluded from the scope of the articles issues of the responsibility of a State for the acts of an international organization, i.e., those cases in which the international organization was the actor and the State was said to be responsible by virtue of its involvement in the conduct of the organization or by virtue of its membership of the organization. Even though cases of aid, assistance, direction, control and coercion were not explicitly mentioned in the commentary, those acts entailed the responsibility of States by virtue of the involvement of the latter in the conduct of the organization. Consequently, an additional provision on such acts of the State would be necessary.

87. As to the Commission's second question — i.e. whether a State could be held responsible for the internationally wrongful act of an international organization of which it was a member — it remained controversial. The domestic judicial decisions rendered in the *Westland Helicopters* case and in the *International Tin Council* cases did not reveal a unified attitude under international law on the question of member States' responsibility towards injured third parties for the wrongdoing of an international organization. Those decisions focused on the responsibility of member States for contractual obligations of the international organizations, which fell not under international law, but under the corresponding domestic law. Moreover, the legal nature of member States' responsibility was not clear. Should a member State's responsibility be residual and arise only in the event of default by the wrongdoing international organization, or should it arise concurrently with the responsibility of the organization? Those questions seemed to remain in the realm of *lex ferenda*. However, a unified legal solution should be developed because, otherwise, injured third parties were likely to go "forum shopping", seeking the domestic law that would provide the most favourable legal environment for the claimant. That, in turn, would lead inevitably to inconsistent national judgements. To fill that legal lacuna, his delegation would propose two types of measures: (1) *ex poste ante* measures, such as informing potential injured third parties of the scope of responsibility of member States regarding specific acts of concerned international organizations, and (2) *ex post facto* measures, such as establishing an international fund to address unforeseen situations.

88. With regard to the expulsion of aliens, while he understood why the Special Rapporteur had said that the history of mankind had been characterized by mistrust of strangers and the temptation to withdraw from contact with them, he took a more optimistic view. Mistrust had resulted primarily from the natural human fear of the unfamiliar, and it was his firm belief that such ignorance and fear could be overcome by contact and communication with people different from oneself. He agreed entirely with the Special Rapporteur, however, when he said that in the current era of globalization barriers hindering the movement of persons seemed somewhat outdated and even contradictory. That was, he believed, an inherent limitation deeply rooted in the prevailing nation-State system, which was based on the principle of territorial sovereignty. While the time might come when such barriers would vanish and humankind would live in a genuine world community, for the time being it remained important to discuss how such barriers were working. He therefore submitted his views on the

subject and on the work of the Commission, bearing in mind the twin principles of territorial sovereignty and the ideal of a world community.

89. Before entering into a detailed discussion of the topic, it was important to clarify the concept of expulsion and to distinguish it from non-admission. The traditional view was that expulsion concerned aliens whose entry or residence had initially been permitted, while non-admission concerned those whose entry into the State had been prevented, but that categorization left in legal limbo the status of those who had entered a territory without authorization. In such instances, the action of a State that removed an alien might be classified as non-admission. However, that perspective would not only unduly limit the scope of the Commission's work; it would also leave unaddressed the interests and concerns of many illegal residents around the world. As an alternative, he would suggest that the term "expulsion" should apply to aliens who were physically in the territory of the State, whether lawfully or not. That was the case with the Immigration Control Act of the Republic of Korea: the provisions on the expulsion of aliens applied to all aliens, regardless of the legality of their initial entry into the country. Non-admission, on the other hand, should concern those whose entry had been denied and who therefore had, in fact, not entered the territory at all. In accordance with that understanding, non-admission could be excluded from consideration, although it might still be necessary to differentiate clearly between non-admission and expulsion in order to complete the work.

90. The next issue was coming to an understanding regarding the term "alien". He preferred the use of that term to "foreign nationals" because the former was wider, including stateless persons as well as citizens of foreign States. While refugees and migrant workers were also covered under the term "aliens", their status with regard to expulsion, if any, should not be dealt with in the study of the topic. If any sub-categorization was needed with regard to the concept of aliens, it related to permanent residents, to whom international law seemed to extend a degree of special treatment. Clarification was needed as to whether long-term residents could claim any additional rights beyond those of non-residents in cases of expulsion. Under the laws of the Republic of Korea, permanent residents were treated more favourably than non-residents. Grounds for their expulsion were stricter and were limited to cases in which a permanent resident had committed a serious crime. For historical reasons, millions of Korean citizens were currently resident in foreign countries. His delegation therefore had a particular interest in the issue and hoped that it would receive the attention it deserved.

91. In conclusion, he wished to remind the Committee that there was a case on the docket of the International Court of Justice directly related to the issue of expulsion of aliens. The case of Ahmadou Sadio Diallo, between Guinea and the Democratic Republic of the Congo, concerned the expulsion of a long-term resident in the latter State. It was to be hoped that the Court's decision in that matter would help to clarify some of the issues related to the topic.

The meeting rose at 1.10 p.m.