

Statement by Algeria

Item 82: Report of the International Law Commission on the work of its Seventieth Session

(Cluster III): On the protection of the environment in relation to armed conflicts, the Succession of States in respect of State responsibility, and the Immunity of State officials from foreign criminal jurisdiction

New York, October 31st, 2018

Mr. Chairman,

Since this is the first time my delegation is taking the floor under agenda item 82, we seize this opportunity to congratulate the International Law Commission on its Seventieth anniversary. We wish also to reiterate our support to the work of the Commission and for its outstanding contribution to the codification and progressive development of international law.

Mr. Chairman,

My delegation appreciates the opportunity to comment on the topics that are currently before the Sixth Committee under Cluster III, namely in regard to the protection of the environment in relation to armed conflicts and the Immunity of State officials from foreign criminal jurisdiction.

With respect to the topic of the “*Protection of the environment in relation to armed conflicts*”, Algeria would like to commend the Special Rapporteur, Ms Marja Lehto for her excellent work. We also noted that the Commission provisionally adopted a number of draft principles, which had been provisionally adopted by the Drafting Committee in 2016, as well as commentaries thereto. We welcome the fact that the Drafting Committee provisionally adopted draft principles 19, 20 and 21.

We note with appreciation the focus placed by the Special Rapporteur in her first report, on the issue of the protection of the environment in situations of occupation, addressing the complementarity between the law of occupation,

international human rights law and international environmental law. In this regard, it will be also important for the Commission to consider examining the protection of environment under the Law of the Sea.

We support the proposal of the inclusion of the proposed three draft principles in a separate Part four dealing exclusively with protection of the environment in situations of occupation. We also see merit in the Special Rapporteur's decision to review the applicability of the draft principles contained in the Commission's third report to situations of occupation.

We concur with the Special Rapporteur that in addition to the right to health, other human rights remain relevant in the context of environmental protection. It is therefore important that the commentaries address such rights.

Mr. Chairman,

Despite the fact that not all Members of the Commission had the opportunity to examine the commentaries to draft principles 19, 20, and 21, my delegation would like to make the following comments in this regard.

With respect to Draft Principle 19, we consider that the commentaries should determine whether the jurisdiction of the occupying power, includes: "... *adjacent maritime areas over which the territorial State is entitled to exercise sovereign rights*". In this regard, there is a need to specify what is meant by "entitled to exercise sovereign rights", and if this includes instances where the occupied State has the possibility to conclude agreements for exclusive economic zone delimitation.

Regarding Draft principle 20, it could be useful for the Commission to elaborate on what is meant by "sustainable use" of resources

We share the views expressed by some members of the Commission who stressed that occupying States ought to consider sustainability in the administration and exploitation of natural resources. In this regard, a number of members emphasized the importance of the principles of permanent sovereignty over natural resources and of the self-determination of peoples for the draft principles.

As many natural resources are non-renewable, it is important to clarify the meaning of “sustainable use” in order to avoid resource exploitation without transparent, environmental impact assessments and management plans meant to prevent and reduce environmental harm. The issue of liability for unsustainable practices or environmental harm needs to be addressed in the final set of draft principles.

We welcome the principle that natural resources should be sustainably managed “*for the benefit of the occupied population*”. It is however important to specify the role of the occupied population in the decision-making over the use of their natural resources.

We support the inclusion of the no-harm or due diligence principle in draft principle 21. We think that it important to specify the need for occupiers to exercise due diligence in refraining from acts on their own territory that may cause environmental harm to an occupied territory, where it is adjacent to their territory. In this regard, domestic decisions taken by the occupying power can have implications for environmental protection in the occupied territory, and this should be reflected in the principles.

Turning to the topic of “*Immunity of State officials from foreign criminal jurisdiction*”, my delegation would like to thank the Special Rapporteur, Ms. Concepcion Escobar Hernandez for her sixth report dealing with procedural aspects of the immunity from foreign criminal jurisdiction.

My delegation is of the view that this topic ought to be dealt with extreme caution due to its complexity and political sensitivity.

My delegation regrets that due to the Commission’s busy schedule, the debate on the sixth report commenced late, although such debate is due to be continued and completed next year.

The issue of exceptions to immunity *ratione materiae* in the context of draft article 7 remains a matter that needs a thorough consideration by the Commission. The unusual practice of adopting of this article demonstrated the deep controversy even among the ILC members themselves on this issue.

We look forward to the future work of the Commission mainly on the new draft articles for the procedural aspects in the Special Rapporteur's seventh report.

I thank you