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Chairman:	Mr. Tulbure	(Moldova)
later:	Mr. Sandoval (Vice-Chairman)	(Colombia)
later:	Mr. Tulbure (Chairman)	(Moldova)

Contents

07-57023 (E)

The meeting was called to order at 10.05 a.m.

Agenda item 82: Report of the International Law Commission on the work of its fifty-ninth session (*continued*) (A/62/10)

1. **Mr. Joél Hernández** (Mexico) said that the expulsion of aliens was a timely and relevant issue and that a list of the rules governing expulsion under international law was needed. The limits *ratione materiae* and *ratione personae* should be considered jointly in order to properly determine the scope of the draft articles. The sensitive issue of determining which persons could be subject to expulsion was closely linked to the grounds for the expulsion; his delegation therefore looked forward to reading the Special Rapporteur's report on the question of limits *ratione materiae*.

2. He noted the inclusion in the revised text of draft article 1 the mention of "nationals of the expelling State who have lost their nationality or been deprived of it", which suggested that such nationals had acquired the legal status of stateless persons. Similarly, it would appear that persons with two or more nationalities who were deprived of the nationality of one State and were expelled by that State would acquire the legal status of aliens. Thus, the expulsion of nationals would be covered either by the provisions of international law applicable to aliens or by domestic law insofar as States had exclusive competence in matters relating to the treatment of their nationals. In that case, however, international law should establish limits in order to ensure that such expulsions did not constitute arbitrary acts contrary to international human rights law; the question merited further study in order to determine the limits on States' actions in such matters.

3. It would be clearer, and therefore preferable, to use the word "territory" rather than "frontiers" to indicate the area within which the State exercised jurisdiction and in which the draft articles were applicable. As some members of the Commission had pointed out, a proper definition of the concept of "territory" would make it unnecessary to define the term "frontier".

4. He agreed with the members of the Commission who considered that "national security" grounds already covered measures of expulsion on grounds of terrorism and was in favour of the alternative proposal that reference should be made to specific offences, such as those defined in widely accepted multilateral instruments intended to combat terrorism, rather than including a specific reference to that crime. In any event, an explanation of the counter-terrorism activities included in the broader category of national security could be included in the commentary to the draft articles.

5. **Ms. Dascalopoulou-Livada** (Greece) said that, in his fifth report, the Special Rapporteur on responsibility of international organizations had made the best of the material that he had at his disposal, given the paucity of State practice and the reluctance of States to express preferences in view of their own lack of experience and the novelty of the problem concerned. Turning to specific articles, she said, with regard to draft articles 31 to 34, that her delegation agreed with the decision not to depart from the corresponding rules on State responsibility.

6. The text of draft article 35 contained in the report of the International Law Commission (A/62/10) was an improvement on the version originally proposed by the Special Rapporteur. As for the substance, paragraph 1 clearly corresponded to a well-established principle of international law that already appeared in the draft articles on "Responsibility of States for internationally wrongful acts". Her delegation welcomed the exception to the rule, contained in paragraph 2, concerning the responsibility of an international organization towards its own member States. It also welcomed the proposed form of draft articles 36 to 42.

7. As for draft article 43, her delegation commended the thrust of the draft article, since it highlighted a situation that could and did arise in practice. At the same time, it presented problems from the legal point of view, for it seemed to impose an obligation on States towards an international organization of which they were members external to and independent of obligations undertaken in accordance with the organization's rules. That was clearly legally unsound. The article should therefore be reformulated so that the provision was non-mandatory, with the phrase "are required to take" replaced by the phrase "should endeavour to take". If the provision constituted only a recommendation, it could be supported by her delegation.

8. Chapter III, which dealt with serious breaches of obligations under peremptory norms of general

international law, contained important provisions. Particular emphasis should be placed on draft article 45, paragraph 2, which, like article 41, paragraph 2, of the articles on the responsibility of States for internationally wrongful acts, on which it was based, reflected a rule of general international law, namely the duty of non-recognition of an illegal act or situation. The most prevalent of such acts was, as provided for in Article 2, paragraph 4, of the Charter of the United Nations, the threat or use of force, the prohibition of which was the clearest illustration of norms of a *jus cogens* nature. Her delegation fully endorsed the commentary on the draft article, particularly paragraph (2).

9. Turning to the jurisprudence of the issue, she noted that a significant contribution to the question of attribution of responsibility to international organizations had been made by the decision of the European Court of Human Rights in the case of *Agim Behrami and Bekir Behrami v. France*, of May 2007, which had concerned the presence of the Kosovo Force of the North Atlantic Treaty Organization (NATO) and the responsibility arising out of its acts and omissions. The Court had referred to article 5 of the draft articles on responsibility of international organizations in defining the conditions under which an organization had "effective" control over the organ of a State and had found that the Security Council had retained ultimate authority and control, even if effective command of the relevant operational matters had been retained by NATO. Thus, according to the Court, "effective control" belonged with the organization where the "ultimate authority" lay.

10. Furthermore, by attributing a wrongful act to an international organization under draft article 5, the Court had indicated that in some cases, such as the *Behrami* case, a State that was bound by the decision of an international organization would not be considered responsible, even if it acted on a voluntary basis, as the troop-contributing nations in the Kosovo Force had done. Such cases included operations under Chapter VII of the Charter. Her delegation was thus reinforced in its view that draft article 15 should be amended so as to provide that States would not be held internationally responsible when acting as "executing agents" in accordance with binding decisions by international organizations. The same would apply a fortiori where States acted in accordance with decisions under Chapter VII.

11. **Ms. Rodríguez-Pineda** (Guatemala) said that in the coming year the Commission would be celebrating 60 years of fruitful work that had left the international community an important legacy. It would be a useful occasion for stock-taking and looking to the future.

12. Her delegation welcomed the appointment of Special Rapporteurs for the Commission's new topics, protection of persons in the event of disasters and immunity of State officials from foreign criminal jurisdiction. It also welcomed the establishment of the Working Group to examine the possibility of including the topic of most-favoured-nation clause in the Commission's programme of work and believed that it would be useful for the Commission to study it in the light of its earlier work on the topic.

13. Her delegation took note of the new Guidelines on the Publication of Commission Documents. It recognized the particular relevance and significant value of the legal publications prepared by the Secretariat. In particular it welcomed the latest edition of *The Work of the International Law Commission* and looked forward to its publication in all the official languages.

14. The topic of expulsion of aliens was a highly sensitive one for Guatemala, in view of its position as a community of origin, transit and destination for migrants. In a globalized world, the movement of persons had intensified and the complexity of the current situation must be borne in mind. The crux of the problem was to reconcile respect for the human rights of aliens subject to expulsion with the right of States, inherent in their national sovereignty, to expel an alien. Article 13 of the International Covenant on Civil and Political Rights was a suitable, though not the only, basis for treatment of the topic. The issue was multidimensional and required guarantees of minimum protection for all persons, regardless of their documented or undocumented status in the State seeking to expel them.

15. Since a draft article on scope was indispensable, her delegation did not support the idea of combining draft articles 1 and 2. It favoured the second option in the revised version of draft article 1 proposed by the Special Rapporteur, which defined the scope and spelled out the categories of aliens covered. It was essential to include that list of categories if the intention was to formulate general guiding principles.

16. Her delegation welcomed the improvements in the revised version of draft article 2, but thought that the definition of "conduct" should incorporate the minimum guarantees that any legal act by the authorities of the expelling State would have to allow for, since what was involved were cases in which an alien had no remedy and was left with no choice but to leave the territory of that State. In addition, once the categories of persons to be covered by the draft articles were determined, they should each be defined.

17. In general, her delegation found that the proposed draft articles constituted a solid basis for guiding principles on the expulsion of aliens. However, no right was absolute; with regard to draft article 3, her delegation saw the need to include more guarantees of protection for the expelled alien and to set limits and provide clarification not only in that draft article but in subsequent articles as well. Since expulsion of aliens was primarily governed by national legal systems, the Commission's effort should be directed at harmonizing domestic laws with the fundamental rights of every person under international law. It would be valuable to link the general rule on the right of expulsion to the further principles elaborated by the Special Rapporteur, which her delegation saw as setting limits on the right of expulsion. It would be necessary to distinguish between the relation of the expelling State with the expelled alien and the relation of that State with other States. For example, to allow the expelled person to choose where he or she wished to go would depend on the existence of diplomatic relations between the expelling State and the chosen State of destination, in addition to other political considerations, as well as the consent of the latter State.

18. In elaborating rules on refugees and stateless persons, care should be taken not to weaken or contradict the 1951 Convention relating to the Status of Refugees and the 1954 Convention relating to the Status of Stateless Persons. Instead, the draft articles should strengthen existing rules and fill any gaps. Terrorism could be considered to be covered by national security and need not be specifically mentioned in the draft articles. Her delegation supported the concluding remarks of the Special Rapporteur.

19. In general, it seemed appropriate to use the articles on responsibility of States as a model for the draft articles on the responsibility of international organizations. Although much of the practical basis for the topic was to be found in the expanding activities of international organizations, in particular the United Nations, the draft articles would have to maintain a certain level of generality to ensure their applicability to any type of international organizations, which were highly diverse.

20. In general, the 14 new draft articles appeared to be based on customary law in the matter of reparation, and her delegation could generally support them. However, it needed more time to study them. Despite their similarity to the articles on State responsibility, they needed to be considered on their own merits. Her delegation was satisfied with the wording of draft article 43 and particularly welcomed the reference to the "rules of the organization". In the case of the United Nations, the limits derived not only from the constituent instruments but also from the mandates conferred by the General Assembly.

21. **Mr. Witschel** (Germany), commenting on the issues mentioned in chapter III ("Reservations to treaties"), section (A), of the report of the Commission (A/62/10) and, specifically, on the question raised in paragraph 23 (a), said that his delegation shared the view that it was not clear to what extent a reservation that was invalid under article 19 of the 1969 Vienna Convention on the Law of Treaties, or under article 19 of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, had legal effects. As a rule, it could not be assumed that the State making such a reservation was fully bound by the treaty. Such an interpretation would not do justice to the State's evident intention; moreover, ignoring reservations in practice would tend to make States less ready to accede to major treaties.

22. The compromise solution put forward by the Special Rapporteur was largely in line with State practice: if all of the contracting parties accepted the reservation, the treaty would come into existence with the amendment effected by the reservation; if not all of the contracting parties accepted the reservation, it had legal effects only for those which accepted it; and if a State formulated an objection to the reservation, the rules regarding the legal effects of reservations and objections applied. In that regard, he noted that article 20 (4) (b) of the 1969 Vienna Convention provided that an objection by another contracting State to a reservation did not preclude the entry into force of the treaty as between the objecting and reserving States

unless the contrary intention was definitely expressed by the objecting State.

23. Turning to the question raised in paragraph 23 (b) of the Commission's report, he said that Germany's treatment of invalid reservations was based on a position of principle in line with the precepts of self-determination and the sovereign equality of States. However, States needed to be able to react to reservations in a flexible manner, as provided for by the 1969 Vienna Convention; that approach influenced his delegation's assessment of the legal effects of invalid reservations.

24. With respect to the questions raised in paragraph 23 (c), his delegation's comments on the two previous points were not based solely on the type of treaty concerned; the wording and scope of the reservation, the importance of the part of the treaty to which it related and the reaction of other contracting parties were also relevant. The political interests of those parties, which might be legitimate, were also likely to influence their actions.

25. Reservations to human rights treaties were particularly worrisome; the *erga omnes* character of human rights treaty obligations clearly conflicted with the bilateral approach taken in articles 20 and 21 of the 1969 Vienna Convention. The Human Rights Committee had rightly stated, in its General Comment No. 24 on issues relating to reservations made upon ratification or accession to the International Covenant on Civil and Political Rights or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, that the operation of the classic rules on reservations was inadequate in that context; since the Covenant's objective was to endow individuals with rights, the principle of inter-State reciprocity had no place.

26. During the past year, a number of States had formulated objections to invalid reservations to the Convention on the Elimination of All Forms of Discrimination against Women and the aforementioned Covenant. His delegation found it remarkable that, in so doing, some of them had expressed the conviction that the reserving State was fully bound by the Convention; previously, such an interpretation had been prevalent only among groups of States with a homogeneous legal tradition, such as the parties to the European Convention on Human Rights. That new approach should be studied in greater detail in States' written replies to the Commission's questions and in a future Commission report.

27. Turning to the question raised in paragraph 23 (d) of the report, he said that as one of the relatively small number of States that formulated objections to reservations, Germany considered that a State should not assume that its objection could fully bind the reserving State to a universal treaty, although a different situation might prevail in the case of human rights instruments. A systematic classification that disregarded individual cases did not seem expedient.

28. Turning to chapter X of the report ("Other decisions and conclusions of the Commission"), he recalled that during the sixty-first session of the General Assembly his delegation had proposed the inclusion of a new topic for consideration in the Commission's long-term programme of work, namely, "Adapting international treaties to changing circumstances: What constitutes subsequent agreement and subsequent practice, and in which way do they affect the implementation and interpretation of treaties?" He therefore welcomed the statement in paragraph 374 of the report that the Working Group on the Long-term Programme of Work had considered including a topic entitled "Subsequent agreement and practice with respect to treaties".

29. Treaties were interpreted and applied in an evolving context. Although international law provided various formal procedures for the adaptation of such instruments, in most cases changes in circumstances led to more informal adjustments. Articles 31 (3) (a) and (b) of the Vienna Convention of 1969 recognized the role of subsequent agreement and practice in the interpretation of a treaty, taking a flexible approach that was also rational and predictable. Particularly in the case of the important treaties adopted since 1945, the passage of time made it likely that some of their provisions would be the subject of reinterpretation and informal modification. International courts had shown an increasing tendency to interpret treaties in a purpose-oriented manner that sometimes went beyond the intent of the contracting parties, and national courts often referred to international instruments in order to assess their implications for domestic law.

30. With regard to chapter VIII of the report ("Responsibility of international organizations"), his delegation welcomed the new draft articles 31 to 45, and particularly draft article 35, on the irrelevance of

the rules of the organization. The fact that an international organization, unlike a State, might be entitled to rely on its internal rules as a justification for not providing reparation to its members in no way affected the legal consequences entailed by an internationally wrongful act towards a non-member State or organization.

31. Concerning draft article 43, on the obligation of reparation while acknowledging the general desirability of international organizations being able to fulfil their obligations — including secondary obligations in connection with reparation for injury — his delegation did not recognize any rule of general international law under which members of an international organization were required to take all appropriate measures in order to provide the organization with the means for effectively fulfilling such obligations. The draft article correctly referred to the rules of the international organization as the only legal basis for defining the extent of any such requirement, since such organizations had a separate international legal personality and were, in principle, the only subjects affected by the legal consequences of their internationally wrongful acts.

32. At the level of primary obligations under international law, exceptions to that general rule were dealt with in draft articles 28 and 29. During the sixty-first session of the General Assembly, his delegation had proposed the introduction of an additional element, namely, international misuse of an international organization by a State in order to circumvent its international obligations. He urged the Commission to give further consideration to that proposal; in that connection, he agreed with the representative of Greece that draft article 15 should remain under discussion.

33. At the level of secondary obligations, the existence and extent of any obligation of reparation on the part of an international organization should be based on the constituent instrument of that organization. In some cases, the relevant treaty law might be interpreted as requiring a financial contribution from its members, but it would be excessive to postulate that such a duty existed under general international law with respect to every international organization; moreover, such an interpretation would unnecessarily limit a State's options in establishing new organizations.

34. **Mr. Astraldi** (Italy) said his delegation agreed with the Special Rapporteur on the expulsion of aliens that the draft articles on that topic should include a prohibition of the expulsion of nationals; indeed, that prohibition should be stated even more categorically since the examples of possible exceptions given in the second report of the Special Rapporteur (A/CN.4/565) were not very convincing. Dual nationals with Italian nationality enjoyed the same protection from expulsion as all other Italian nationals. The draft articles should also address the issue of deprivation of nationality with a view to expulsion. The inclusion of issues such as the expulsion of nationals or former nationals suggested that the title of the draft articles and the definition of their scope should be expanded to cover the general topic of expulsion.

35. While it might be appropriate to consider some aspects of the situation of stateless persons and refugees, the Commission should not restate the rules contained in existing international conventions; it would be preferable to encourage even wider ratification of those instruments and to consider proposing certain amendments to them. In order to provide those two categories of persons with protection beyond that established in the existing instruments, it might be sufficient to state in the draft articles that the general rules concerning expulsion also applied to stateless persons and refugees insofar as those rules offered aliens guarantees against expulsion.

36. The definition of expulsion should be refined in order to distinguish it from situations that the Commission did not plan to cover in the draft articles. It would be too ambitious to draft rules that appeared to be designed to set uniform standards in areas where national or regional systems differed; the Commission should focus instead on issues for which international law provided certain standards.

37. The third report of the Special Rapporteur on the effects of armed conflicts on treaties (A/CN.4/578) and the conclusions of the Working Group had led to decisive progress in consideration of that topic. Since the Working Group's proposals were not accompanied by any commentary, it would seem premature to make observations on them. Generally speaking, his delegation welcomed the fact that the Working Group had not endorsed the idea that the intent of the parties at the time of conclusion of the treaty was paramount in ascertaining whether the application of the treaty continued or was suspended or terminated because of

the conflict. It also welcomed what seemed to be a more flexible approach to the possibility that a treaty might be suspended.

38. While the Working Group's view that "the draft articles should apply to all treaties between States where at least one of them is a party to an armed conflict" seemed reasonable, it was important not to underrate the distinction between conflicts that involved two parties to a treaty and conflicts, whether or not they were internal, that affected only one party; the latter case was arguably covered by the general rules on the termination and suspension of treaties as established in the 1969 Vienna Convention. Furthermore, it seemed that the Commission had not thoroughly analysed the diplomatic practice and judicial decisions of States. It would be preferable to base the draft articles on existing practice, whether or not the Commission decided to resort to the progressive development of the law.

39. As for the topic of the responsibility of international organizations, he noted that the Commission had asked States to comment on draft article 43. Although his delegation did not object to the content of the draft article, it would seem questionable to include it since the intent was not to state a general rule; the draft article suggested that the question of whether the members of a responsible international organization were required to provide the organization with the means for effectively fulfilling its obligations depended on the rules of the organization itself.

40. Finding an answer to the question of whether an organization was entitled to make a claim in respect of an obligation towards the international community as a whole that had been breached by another organization might require drawing a distinction between different types of organizations; the entitlement might be limited to organizations entrusted with the protection of certain interests of the international community.

41. While, in principle, international organizations might resort to countermeasures, in practice organizations tended simply to refrain from meeting a treaty obligation towards a party that had breached an obligation under that treaty; the Commission might therefore wish to consider whether the use of countermeasures should be limited.

42. **Mr. Bethlehem** (United Kingdom), said that his country paid close attention to the work of the Commission, and that of its special rapporteurs, drafting committees and working groups and contributed responses to requests for comments on State practice. The conduct of States was the pivot around which the Commission operated. It was important for the Commission to seek States' views and address them in its work. It was not always clear, however, that the Commission addressed the comments of States on every topic. Despite the understandable desire to make progress with its work, the Commission should proceed in step with the community to which it was speaking. The United Kingdom noted as very appropriate the new topics included in the Commission's current programme of work, dealing with the protection of persons in the event of disasters and the immunity of State officials from foreign criminal jurisdiction. Both promised to be of great practical value.

43. With regard to the effects of armed conflicts on treaties, his delegation welcomed the decision to restrict the current study to the effects of armed conflicts on treaties between States, since expanding the scope of the study to encompass international organizations would not take into account the differences between States and international organizations and the widely disparate functions of international organizations. The question whether "armed conflicts" should include non-international conflicts was difficult. His country agreed with the view of the Special Rapporteur that it would be inappropriate to attempt a definition of "armed conflicts" applicable to all areas of public international law, and concurred with the expression "for the purpose of the present draft articles" used in the current definition, and with the Special Rapporteur's observation that article 73 of the Vienna Convention on the Law of Treaties, the starting-point for the current study, referred to the "outbreak of hostilities between States". His country had concerns about the indicative list of categories of treaties in draft article 7. While noting the explanation offered by the Special Rapporteur in his third report (A/CN.4/578), he considered that clarification was needed in the draft articles of the role of international humanitarian law in forming the *lex specialis*. He looked forward to seeing the revision of draft article 6 bis in due course.

44. With regard to the topic of responsibility of international organizations, his delegation again cautioned against the wholesale application of the Commission's articles on State responsibility to the

draft articles in respect of international organizations without giving due consideration to the differences between States and international organizations or allowing for the diverse types and functions of international organizations. The Commission should explore the practice of international organizations and give further thought to the issues raised by extending principles of State responsibility to them. While noting the Special Rapporteur's explanation that the Commission's draft articles were expressed at a level of generality and should not be tailored to suit certain entities, his delegation remained uncertain as to how some of the draft articles might ever apply to an international organization. He therefore welcomed the Special Rapporteur's suggestion to consider including a draft article incorporating the *lex specialis* rule and his proposal to revisit some of the issues raised in the comments of States and international organizations before the end of the first reading.

45. With regard to the topic of expulsion of aliens, he said that it was becoming increasingly clear that the topic was currently a problematic one for the Commission to address, and not suitable for codification. Expulsion of aliens was mainly governed by national laws, and different States had different international obligations concerning the topic. It could therefore not be consolidated or codified, in light of the numerous political and legal sensitivities surrounding the issues, and was better suited to political negotiation than to codification by an expert body.

46. The issue of expulsion of aliens was also being discussed in various regional forums, and the discussions pointed to legal and political difficulties. It remained to be seen whether a solution to those difficulties could form the basis of wider international work. His delegation doubted whether the time had come for an effort at codification. One way to proceed would be for the Commission to engage in a study of State practice without attempting to codify that practice.

47. *Mr. Sandoval (Colombia), Vice-Chairman, took the Chair.*

48. **Ms. Villalta Vizcarra** (El Salvador) said that the issue of the expulsion of aliens was sensitive and complex. Her delegation agreed with the Special Rapporteur that there was a need to reconcile the right of a State to expel aliens with the relevant rules of international law, including those relating to the protection of human rights and to the minimum standards for the treatment of aliens; that the draft articles should apply only to natural persons; and that denial of admission should be excluded since an alien who had not been admitted could not be expelled.

49. While it was true that existing treaty rules already covered refugees and stateless persons, those instruments might have gaps or shortcomings. Her delegation would therefore prefer to include a "without prejudice" clause in respect of the rules relating to such persons. Similar considerations applied to the case of migrant workers and their families; she noted that the Inter-American Court of Human Rights, in its Advisory Opinion OC-18/03, had stated that "States may not subordinate or condition observance of the principle of equality before the law and non-discrimination to achieving their public policy goals, whatever these may be, including those of a migratory character".

50. **Mr. Ehrenkrona** (Sweden), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Sweden and Norway), recalled that on the topic of the expulsion of aliens, the Nordic countries had expressed a preference for the development of a set of main principles whereas the Commission appeared to favour the development of draft articles with a view to future codification. As the seven draft articles prepared to date demonstrated, that process might lead to an unfortunate convergence of different areas of law, some of which might not be ripe for codification while others pertained to areas, such as labour migration, where no apparent need existed. He agreed with the Commission that the issue of denial of admission lay outside the scope of the topic, since persons who were thus denied should simply return to the country from which they had come. The transfer of criminals, an issue with a sound basis in international criminal law, should also be excluded. The Special Rapporteur's analysis of the situation of refugees and stateless persons was, however, useful.

51. It was unfortunate that the core topic — the expulsion of aliens from a State — had been allowed to expand into other areas of law where the only common denominator was an individual's crossing of an international border; he feared that that expansion of scope would make it more difficult for the resulting draft to achieve its potential for constructive impact.

52. There was no doubt that the right to expel aliens was inherent in State sovereignty and that it must

nonetheless be exercised in accordance with international law, including the principle of non-refoulement and human rights treaties such as the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. That balance must also take into account current challenges to international peace and security; expulsion might be warranted as a counter-terrorism measure, but only when conducted in accordance with international legal norms. The right to expel aliens entailed the corresponding obligation of States to permit and facilitate the return of their own nationals; the problem of States which did not cooperate fully in that regard merited the Commission's attention. He looked forward to a discussion of the possible legal implications of dual nationality for the expulsion of aliens and of the issue of measures for avoiding statelessness. The Nordic countries urged the Commission to address those issues in its future work and to narrow the scope of its treatment of the topic rather than attempting to draft additional articles on which it might be difficult to reach agreement.

53. **Ms. Williams** (Canada), after expressing her delegation's interest in the Commission's work on reservations to treaties, responsibility of international organizations and such new topics as the most-favoured-nation clause, said that Canada endorsed the view that the topic of effects of armed conflicts on treaties should probably avoid dealing with the role of international organizations. It would, however, make no further comments, pending further deliberations within the Working Group on the topic.

54. With regard to the topic of responsibility of international organizations, the difficulty was the vast array of such organizations and the specificity of their particular constitutive arrangements. Though her delegation could see merit in considering and developing a set of principles that applied to all international organizations, there might also be a need, in more problematic areas, to make the solution dependent on the specific rules of each organization. That would be a pragmatic approach that did not detract from the utility of the Commission's work in tracking the articles on responsibility of States or its examination of those articles for their relevance to the responsibility of international organizations, including questions of attribution and consequence.

55. **Mr. Azeez** (Sri Lanka) welcomed the Commission's efforts to enhance its dialogue with the Sixth Committee in accordance with recommendations contained in General Assembly resolutions. With regard to the inclusion of new topics in the Commission's programme of work, his delegation welcomed the decision to include the topics of protection of persons in the event of natural disasters and immunity of State officials from foreign criminal jurisdiction; both topics were of considerable relevance in the current environment. His delegation also welcomed the establishment of the open-ended Working Group on the Most-favoured-Nation clause, which had concluded that the Commission could play a useful role in providing clarification of the meaning and effect of the clause in the field of investment agreements. Such a study would indeed be of considerable practical benefit to Member States.

56. Turning to the topic of expulsion of aliens, he said that his delegation supported the general approach underlying draft articles 3 to 7, which successfully struck a balance between a State's sovereign right of expulsion and the relevant rules of international law, including human rights law and minimum standards for the treatment of aliens. In that context, he noted that draft articles 4 to 7 related to the limits *ratione personae* of the right of expulsion. With regard to the principle of non-expulsion by a State of its own nationals, which was dealt with in draft article 4, it was important that the principle should be shown to be categorical and absolute. No greater guarantee of protection could be afforded to a person than that of his own State, and there should be no exceptions to the rule. In his delegation's view, therefore, subparagraphs 2 and 3 of article 4 should be deleted. If they were retained, the term "exceptional reasons" would need to be clarified, so that there was no element of ambiguity that might be used to justify the expulsion of nationals.

57. The issue of the expulsion of persons having two or more nationalities was also worthy of exploration. Dual nationality was becoming increasingly common and could give rise to questions of some complexity. The issue should be addressed either within the parameters of draft article 4 or in a separate article. In that connection, and in response to the specific issues on which the Commission requested information, he said that Sri Lankan immigration law contained no provisions relating to the expulsion of nationals or of persons holding dual nationality, who were generally considered to be nationals if of Sri Lankan origin.

58. Draft articles 5 and 6 established the general principle that refugees and stateless persons could not, as a rule, be expelled. That was consistent with the protection afforded by the 1951 Convention relating to the Status of Refugees and the 1954 Convention relating to the Status of Stateless Persons. Those Conventions recognized only two specific grounds for exceptions to the rule, namely, national security or public order considerations. The validity of those considerations was reflected in State practice and remained vital at a time when there were serious threats to national security and public order. The Special Rapporteur's third report (A/CN.4/581) referred to the possibility of including a reference to terrorism as an exception to the prohibition of the expulsion of refugees, in response to a clear trend towards refugee status being abused for terrorist purposes. His delegation supported the Special Rapporteur's view that the commentary should specify that terrorism could constitute a justification for expulsion on the grounds of national security or public order.

59. Draft article 7, paragraph 1, made a welcome reference to the non-expulsion of migrant workers and members of their families. Given the particular vulnerability of such persons, it would be desirable, in his delegation's view, to devote a separate article to the question of the prohibition of a collective expulsion of migrant workers and their families, based on article 22 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

60. It was also necessary to make it clear that draft article 7, paragraph 3, applied only to individuals who were nationals of a State engaged in armed conflict with the expelling State. The wording could also be improved to make it clear that the right of collective expulsion was restricted to situations in which alien nationals were, collectively, clearly engaged in activities hostile to the expelling State.

61. With regard to the topic "Effects of armed conflicts on treaties", his delegation welcomed the presentation of an entire set of draft articles and the memorandum prepared by the Secretariat on "The effects of armed conflict on treaties: an examination of practice and doctrine" (A/CN.4/550 and Corr.1). On the question of the possible extension of the topic to treaties involving international organizations, his delegation concurred with the view that the issue should be set aside until it was possible to make a better assessment of the overall scope and content of the topic.

62. As for the term "armed conflict", the Working Group had recommended that the definition should apply also to internal armed conflicts, with the proviso that States should be able to invoke the existence of internal armed conflict in order to suspend or terminate treaties only when the conflict concerned had reached a certain level of intensity. The Special Rapporteur's response had been that the issue of the intensity of the armed conflict was covered by the phrase "nature or extent". His delegation tended to agree with the Special Rapporteur that armed conflict should not be defined in its quantitative terms and that everything depended on the nature not only of the conflict but also of the treaty provision concerned.

63. His delegation recognized that draft article 3, which set out the doctrine of continuity — namely, that the outbreak of an armed conflict did not, as such, terminate or suspend the operation of a treaty — was central to the entire scheme of the draft articles.

64. Draft article 4, which set out the criterion of intention as predominant in determining the susceptibility to termination of a treaty, had given rise to considerable divergence of opinion. The difficulty would be to ascertain the parties' intention at the time that the treaty was concluded as to what the fate of the treaty should be, should an armed conflict arise between them.

65. His delegation recognized the usefulness of the inclusion in draft article 7 of the indicative, non-exhaustive list of categories of treaties the object and purpose of which involved the implication that they would continue in operation during an armed conflict. With regard to draft articles 10 and 11, relating to the effect of the exercise of the right to individual or collective self-defence on treaties and on decisions by the Security Council, his delegation agreed with the Working Group's recommendations that the Drafting Committee should proceed along the lines of articles 7, 8 and 9 of the resolution of the Institute of International Law adopted in 1985, which contained parallel provisions.

66. On the topic on responsibility of international organizations, his delegation's view was that the duty set out in draft article 43 did not extend to a requirement for members of an international

organization, under general international law, to take measures in order to provide the organization with the means to fulfil its obligation to make reparations. The question of requests for contributions by member States to meet such obligations must be governed by the internal rules of the organization. Nor should any subsidiary obligation towards third States arise under international law. That position would be consistent with international practice.

67. **Mr. Jaafar** (Malaysia) said, with regard to the topic on Expulsion of aliens, that Malaysian law made no distinction between refugees, asylum-seekers and illegal immigrants. Non-citizens who entered Malaysia in violation of the country's immigration laws were regarded as illegal immigrants and were subject to deportation. His delegation therefore found difficulty in accepting the revised draft article 1, paragraph 2. With regard to draft article 2, paragraph 1, it could not accept the term "*ressortissant*", which could be interpreted very widely and cover persons other than citizens. Since the Banishment Act 1959 (Revised 1972) related to the expulsion from Malaysia of persons other than citizens, his delegation believed that the term "*ressortissant*" should be replaced by the word "citizen" or "national".

68. Draft articles 5 and 6 were not acceptable to his delegation in their current form, mainly because the concept of a refugee did not exist under Malaysian law and the country was currently not a party to any international conventions relating to refugees or stateless persons. It was therefore under no legal obligation to accord the status of refugee or stateless person to illegal immigrants or to provide the protection and rights available under international conventions.

69. With regard to draft article 7, his delegation was concerned that collective expulsions might impede the due identification of people entitled to special protection, such as victims of trafficking. In his delegation's view, there was currently no universal rule prohibiting the collective expulsion of aliens. The Commission should give the draft article further consideration.

70. With regard to the topic on effects of armed conflicts on treaties, his delegation noted the Working Group's recommendation, in relation to draft article 1, that, in principle, the consideration of treaties involving international intergovernmental organizations should be left in abeyance until a later stage and that meanwhile the Secretariat would circulate a note to international organizations requesting information about their practice with regard to the effect of armed conflicts on treaties involving them. With regard to the definition of the term "armed conflict", he reiterated his delegation's support for the reformulation of the definition in line with the definition in the *Tadić* case and the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention of 1954), which would address Malaysia's concern that the term "armed conflict" should include internal armed conflicts and military occupation. Such an approach would obviate the need for an additional compromise provision, such as article 3 of the Vienna Convention on the Law of Treaties.

71. As for the proposal that an alternative should be found to the phrase "state of war", on the grounds that it was outmoded, his delegation noted that the phrase was traditionally used about situations in which declarations of war had been made. Another possibility might be to retain the phrase but also to use the phrase "state of belligerency", at the same time deleting the words "regardless of a formal declaration of war or other declaration by any or all of the parties to the armed conflict". His delegation also concurred with the view that the definition should not explicitly or implicitly apply to police enforcement activity undertaken for national security purposes.

72. With regard to draft article 3, he reiterated his delegation's concern at the replacement of the term "*ipso facto*" by the word "necessarily", since the two were not synonymous. Moreover, although the draft article should not rule out the possible automatic suspension or termination of a treaty in certain cases, the use of the criterion of the lawfulness of the use of force was a matter for some concern, because the question then arose who would decide on the lawfulness or otherwise of the use of force. The draft article also failed to provide sufficient clarity on whether suspension or termination was preferable.

73. The Secretariat should facilitate the participation of Governments in the development of the draft articles by circulating focused questionnaires on the topic.

74. With regard to the topic on Responsibility of international organizations, he said that further examples of assurances and guarantees of non-repetition should be obtained in order to gain a better

understanding of the obligation under draft article 33. As to draft article 34, most States shared a concern about the imposition on member States of the duty to provide for reparation by an international organization that caused an injury by an internationally wrongful act. In that connection, due consideration must be given to ensuring an appropriate and reasonable reparation scheme under the draft articles, particularly in instances where member States were not held responsible for a wrongful act attributed solely to an international organization. The Commission should consider the issue carefully. On draft article 45, his delegation shared the view that international organizations should be responsible — as States were responsible — for cooperating in bringing to an end a serious breach committed by an organization.

75. With regard to the Commission's question in paragraph 30 (a) of the report about whether organizations were entitled to claim reparation from another international organization that breached an obligation owed to the international community as a whole, in the same way was required of States under article 48 of the articles on responsibility of States for internationally wrongful acts, his delegation wondered what the rationale was of extending to international organizations the principle in that draft article. The right to invoke responsibility could, however, be considered, since the principles contained in the articles on responsibility of States also applied to international organizations. As for the question in paragraph 30 (b), not only should the restrictions on countermeasures listed in articles 49 to 53 of the articles on responsibility of States be imposed on an injured international organization that intended to resort to such countermeasures, but the Commission should consider whether additional restrictions should be imposed, taking into account the nature and legal capacity of international organizations.

76. With regard to new topics in the Commission's programme of work, his delegation supported the Working Group's recommendation that the Commission should include the topic of the most-favoured-nation clause; it could play a useful role in providing clarification on the meaning and effect of such clauses in the field of investment agreements. Model guidelines and commentaries would be a useful guide to all countries. It was also timely for the Commission to renew consideration of the topic on immunity of State officials from foreign criminal jurisdiction. Moreover, although the issues of jurisdiction and immunity were separate, the principles of criminal jurisdiction — and in particular the applicability of the principle of universal jurisdiction — should also be studied in the context of the topic, in view of the fact that the national prosecutor and court concerned would need to establish the requisite jurisdiction prior to initiating a case. As for the topic on protection of persons in the event of disasters, his delegation believed that, given the fact that the study of the topic was at a preliminary stage, no decision on the final form of the outcome of the study should be taken for the time being.

77. **Mr. Serradas Tavares** (Portugal) said that Portugal expected that by the end of the quinquennium the Commission would be able to complete work on some of the ongoing topics, including reservations to treaties. He welcomed the inclusion on the work programme of the topic on immunity of State officials from foreign criminal jurisdiction. Portugal continued to have doubts as to whether the topics concerning protection of persons in the event of disasters and the most-favoured-nation clause were appropriate for the codification or progressive development of international law. Other topics of great importance for the consolidation of international law were the fragmentation of international law and the subject of *jus cogens*.

78. In order to further enhance its interaction with Government, the Commission should seek to take better into account the observations expressed in the Sixth Committee. It was also essential to improve the availability of Commission documents to Governments and the general public and to make the Commission's report more user-friendly.

79. Turning to the topic of expulsion of aliens, Portugal agreed that the specific situation of refugees, asylum-seekers and stateless persons should be discussed in connection with draft article 1. However, the approach should be careful not to overlook existing legal frameworks to protect those persons. Conflict between regimes should be avoided and the focus should be on clarifying and solidifying existing regimes. Migrant workers should be treated as "regular" rather than "special" aliens. Non-admission, even in reference to illegal immigrants, had no place within the scope of the topic of expulsion, which dealt with aliens already within the territory of a State. Aliens protected by privileges and immunities were

clearly outside the scope of the topic and benefited from a completely different, well-established regime. The reference to "enemy State" in article 1 was of concern, as the report gave no clue as to what should be considered an enemy State in the current state of affairs in international law. Regarding "lost nationality", well-established principles of international law, particularly article 15 of the Universal Declaration of Human Rights, provided that a person had the right to a nationality and could not be arbitrarily deprived of it. Thus, any case of loss of nationality should be guided by domestic law and should not contradict those principles.

80. Regarding draft article 2, his delegation agreed with the deletion of the term "*ressortissant*" and had doubts about the need for including the definitions of "frontier" and "territory", which were well-established under customary international law.

81. His delegation agreed that paragraphs 1 and 2 of draft article 3 should be combined and simplified, and a reference added to the limits imposed by international law on the right of expulsion, including those stemming from the international protection of human rights.

82. His delegation was convinced that expulsion by a State of its nationals, dealt with in draft article 4, was an absolute rule which should not be subject to exceptions, and it did not understand the rationale underlying paragraphs 2 and 3. Portugal had reservations regarding the use of the words "exceptional reasons" in paragraph 2; the current wording should be clarified, as it gave a State too much room for discretionary decisions but gave individuals insufficient guarantees. Portugal was of the view that the draft article should explicitly preclude a State from using deprivation of nationality as a means to contravene the prohibition of expulsion by a State of its own nationals.

83. His delegation disagreed with the bracketed reference to terrorism appearing in paragraph 1 of draft article 5. National security or public order were grounds sufficient to cover all situations, including cases of terrorism or of persons convicted of a particularly serious crime or offence and constituting a danger to the community of the State.

84. He expressed concern about collective expulsion in times of armed conflict, referred to in draft article 7, given the risk that the need to protect nationals of an enemy state from a revenge-seeking local population or to protect nationals of the State itself from nationals of the enemy State might be used to justify such an expulsion. Being a national of an enemy State was not grounds for expulsion, and a receiving State should have the means to protect both its nationals and the aliens present in its territory.

85. Portugal reiterated its concern as to the appropriateness of autonomous treatment of the topic of expulsion under international law, given the predominance of domestic and human rights law, as well as the lack of practice on the subject. As the debate in the Commission had revealed, some viewed the topic as one more suited to political negotiation and mainly governed by national and customary law.

86. Turning to the topic of the effects of armed conflicts on treaties, he said that progress had been made, but some important matters needed to be settled. Concerning draft article 1, his delegation agreed with the Special Rapporteur's reluctance to include international organizations within the scope of the topic because international organizations were increasingly becoming parties to treaties that could be affected by an armed conflict but were not themselves susceptible of being parties to an armed conflict, giving rise to questions too difficult to be dealt with in the context of the topic. Concerning third States, for the reasons stated in paragraph 282 of the report, his delegation agreed that the special regime should apply only to the specific situation between two States involved in an armed conflict.

87. Concerning the definition of "armed conflict" in draft article 2, his delegation had doubts about the inclusion of internal conflicts, since such conflicts by definition did not involve more than one State party to a treaty and did not affect directly relations between that State and other States parties to the treaty. Thus, an internal armed conflict would only put into play the provisions of the Vienna Convention on the Law of Treaties concerning suspension or termination of treaties. His delegation did not, however, share the views expressed in paragraph 290 of the report concerning justified armed conflict under international law and compatibility of such armed conflict with the object and purpose of the treaty or with the Charter of the United Nations. Termination or suspension of treaties should not be linked to the legality or illegality of the use of force. His delegation reiterated its firm view that the topic must remain within the framework

of the law of treaties and avoid dealing with aspects related to the law on the use of force.

88. His delegation agreed with the Working Group's recommendation to delete draft article 6 bis. Draft article 7 was important in clarifying what kind of treaties could not be terminated or suspended, helping to render draft article 4 operative. Portugal supported the chosen categorization of treaties and the recommendation of the Working Group to replace "object and purpose" with "subject matter." However, it would be useful to merge into draft article 4 a non-exhaustive list of categories of treaties which were, in principle, not susceptible to termination or suspension in case of armed conflict. His delegation reiterated that the list should include an express reference to treaties codifying rules of *jus cogens*.

89. More thought had to be given to draft article 8 on the mode of suspension or termination of treaties. The simple reference to articles 42 to 45 of the Vienna Convention on the Law of Treaties was probably not the most accurate solution in reference to suspension or termination of a treaty in case of an armed conflict; however, the inherent procedures laid down in articles 65 and following of that Convention were not adequate either.

90. Regarding draft article 9, he pointed out that the intention of the parties at the time the treaty was concluded had been abandoned as a criterion for suspension and therefore was not an appropriate criterion for resumption. It would be very difficult to guess the parties' intention at the time of the conclusion of a treaty in the case of outbreak of hostilities. Paragraphs 1 and 2 should be redrafted accordingly and in line with the new drafting of article 4.

91. Draft article 10 should be developed in light of the law of treaties and not the law on the use of force; thus, the question of self-defence should not be addressed. As stated in paragraph 308 of the Report, "... illegality of a use of force did not affect the question whether an armed conflict had an automatic or necessary outcome of suspension or termination ...". Moreover, the provision was confusing and the question of illegality was irrelevant to the subject. In an armed conflict there was always an aggressor and a victim who could resort to self-defence, but it was often problematic to determine which was which and it was pointless to make that distinction as to a subject that fell under the law of treaties. His delegation considered draft articles 11 to 14 unnecessary and redundant.

92. The important consideration was to know to what extent the mutual confidence between the parties with regard to fulfilment of the obligations in a treaty was jeopardized in the case of an armed conflict. The rules framed in the draft articles should apply only to relations between States parties to the armed conflict, whereas with regard to relations with third States not involved in the conflict the provisions of the Vienna Convention on the Law of Treaties concerning suspension and termination were sufficient. Thus, the key was to strike a balance between the confidence of the parties as a prerequisite for compliance with treaties and the need for legal certainty.

93. Turning to the topic of responsibility of international organizations, his delegation reiterated its concern that the draft articles followed those on State responsibility too closely. Unlike in the case of States, the competences and powers of international organizations, as well as relations between the organizations and their members, varied considerably. Since the principles of State responsibility were applicable mutatis mutandis to international organizations, it was preferable to concentrate on a set of draft articles dealing with the specific problems entailed by the topic of responsibility of international organizations, trying to find general rules that fit the "average" or "typical" international organization.

94. Concerning draft article 43, on ensuring the effective performance of the obligation of reparation, he said that there were no grounds in international law for a subsidiary obligation of members towards the injured party when the responsible international organization lacked the means to make full reparation. However, there was an obligation of the members to contribute to the international organization's budget to cover its expenses, and expenses of reparation were among those. Thus, draft article 43 could not be read as imposing on members an immediate obligation to make an extraordinary contribution in order to cover an expense that might arise from an internationally wrongful act by the international organization, as that would be inconsistent with the organization's autonomy. Rather, the organization's budget should make provision for such expenses, and it was up to the members to ensure that was done.

95. *Mr. Tulbure (Moldova) resumed the Chair.*

96. **Mr. Aoyama** (Japan) said that in the Commission's study of the topic of expulsion of aliens it must strike a delicate balance between the right to grant or refuse admission to enter, a right inherent in State sovereignty, and fundamental human rights. It was essential to study State practice in that regard, and Japan was ready to assist in that effort.

97. On the topic of the effects of armed conflicts on treaties, his delegation generally supported the main recommendations of the Working Group: inclusion of internal armed conflicts in the scope of the draft articles; inclusion of criteria other than the intention of the parties at the time the treaty was concluded in order to ascertain whether a treaty was susceptible to termination; deletion of the list of treaties in draft article 7, paragraph 2, and inclusion of the list in an appendix.

98. His delegation was concerned that the provision in draft article 6 bis according to which "the application of standard-setting treaties ... is determined by reference to the applicable *lex specialis*, namely, the law applicable in armed conflict" could be interpreted to mean that the application of standard-setting treaties might be excluded. That idea would seem to be contrary to the International Court of Justice advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, and it might lead to a weakening of obligations under standard-setting treaties. The relation between the law applicable in armed conflict and other treaties was complex, and further discussion on the draft article at the Commission's next session was advisable.

99. On the topic of responsibility of international organizations, his delegation shared the Commission's view that member States were in principle not responsible for the internationally wrongful act of an international organization. Draft article 29, setting forth the conditions for determining the responsibility of a State member of an international organization for the internationally wrongful act of that organization, had been carefully drafted. A State should not incur international responsibility merely based on its membership in the international organization in question. The new draft article 43 appeared to be attempting to reintroduce the idea of member States' responsibility in the new context of reparation, and its implications should be carefully considered. The proposed alternative version given in paragraph (4) of the commentary might be more consistent with the discussion on draft article 29 during the previous session of the Committee.

100. In using articles 48 to 53 on the responsibility of States for internationally wrongful acts as a guide, it would, of course, be necessary to take fully into account the differences between international organizations and States. International organizations should be entitled to make a claim, including in the case of a breach against the international community as a whole committed by an international organization, as long as such a claim fell within its mandate. With regard to taking countermeasures, his delegation had not so far identified further restrictions that would apply to international organizations as opposed to States, but would wish to revisit the questions once again after the Special Rapporteur had submitted his sixth report.

101. **Mr. Krishnaswamy** (India) said that the topic of expulsion of aliens was particularly urgent in view of the global upsurge in migration, including irregular migration. His delegation supported the general approach taken by the Special Rapporteur. It was essential that the right of a State to expel aliens should be exercised in accordance with the relevant rules of international law, including those relating to the protection of human rights and minimum standards for the treatment of aliens.

102. Indian law did not provide for deprivation of nationality or for expulsion of nationals. A person who voluntarily acquired another nationality was deemed to have surrendered Indian nationality; however, the law recognized dual citizenship through a registration process and granted dual citizens the right of free entry and residence.

103. His delegation wished to reiterate its view that the scope of the topic of the effects of armed conflicts on treaties should be limited to treaties concluded between States and exclude those concluded by international organizations. The definition of "armed conflict" should be considered independently of its effects on treaties; it should be limited to conflicts between States and not include internal conflicts, as treaties were entered into by States, and internal conflicts did not directly affect treaty relations. The frequency or intensity of internal conflicts did not justify their inclusion in the draft articles, since their

effects could be dealt with under the Vienna Convention on the Law of Treaties. Although the International Tribunal for the Former Yugoslavia in the case of *The Prosecutor v. Duško Tadić a/k/a "DULE"* had referred to the possibility that an internal armed conflict might become international in character, that possibility did not justify extending the scope of the draft articles to all internal armed conflicts.

104. In determining whether a treaty or some of its provisions could continue in force, all relevant circumstances, including the object and purpose of the treaty, the nature and intensity of the conflict or the situation arising therefrom, the nature of the treaty obligation itself and the subsequent actions of the parties in relation to the treaty should be taken into account. The principle of non-automatic termination or suspension contained in draft article 3 was useful in that it encouraged the stability and continuity of treaty relations.

105. Although draft article 7 provided a list of the types of treaties the object and purpose of which involved the necessary implication that they continued in operation during an armed conflict, it was necessary to identify some general criteria for determining which types of treaties would continue to apply. Treaties that expressly applied in case of armed conflict should be considered separately from other categories.

106. Of the 14 new draft articles on the responsibility of international organizations, draft articles 31 to 34 and 36 dealing with general principles relating to the content of the international responsibility of an international organization rightly followed closely the wording of the corresponding articles on responsibility of States for internationally wrongful acts. Draft article 35 correctly emphasized the special relationship between an international organization and its members, whereby, unlike a State, which could not rely on the provisions of its internal law as justification for failure to comply with its obligations, an international organization might be entitled to rely on its internal rules as justification for not making reparation to its members. Draft article 43 dealt essentially with the obligations of States, so that its inclusion in draft articles on responsibility of international organizations was not appropriate.

107. His delegation welcomed the Commission's decision to include in its programme of work the topics of protection of persons in the event of disasters and immunity of State officials from foreign criminal jurisdiction. It also welcomed the decision to examine the possibility of including the topic of most-favoured-nation clause in its long-term programme of work. The conclusion in recent years of a large number of bilateral agreements on investment protection and on preferential trading and free trade agreements containing such a clause had resulted in a substantial body of State practice, and the Commission could play a useful role in providing clarification on the meaning and effect of the clause.

108. **Ms. Blum** (Colombia) said that the profound impact of expulsion on the individuals concerned, the need for States to temper the exercise of their right to expel with strict observance of the rules and principles of international law, especially human rights law, and the existence of a substantial body of customary norms, treaty rules and jurisprudence amply justified codification of the topic of expulsion of aliens. Although it was a recognized right of a State to expel from its territory aliens presenting a threat to public order or national security, in the exercise of that prerogative there must be safeguards for the human rights of the individuals subject to expulsion.

109. While her delegation shared the general thrust of the draft articles on expulsion of aliens, it wished to stress that the rules formulated must be consistent with international law and the instruments already in force. The rules on refugees, for example, should not depart from the spirit or the letter of the 1951 Convention relating to the Status of Refugees or weaken the principle of non-refoulement.

110. With regard to draft article 1 on scope, her delegation thought that it should be retained and preferred the second option in the revised version proposed by the Special Rapporteur.

111. Draft article 2 on definitions was useful. Her delegation concurred with others that the term "*ressortissant*" was too broad, in addition to being difficult to translate into other languages, and should be replaced by the term "national"; it was satisfied with the modification in that regard in the revised version proposed by the Special Rapporteur. It would be useful to combine subparagraphs (a) and (c) so that in the definition of "expulsion" there would be an explanation of what was meant by "the conduct by which a State compels an alien to leave its territory". The definition of "alien" should expressly limit the

concept to natural persons. The Special Rapporteur's proposed definition of "territory" was comprehensive and in accordance with international law. Her delegation agreed that it was necessary to have a definition of "frontier" and that it should be conceived as a zone.

112. The right to expel aliens was limited by *jus cogens* norms and international human rights law. Hence, the reference to fundamental principles of international law in draft article 3 was too general. Colombia also was of the view that any expulsion by a State of its nationals was contrary to human rights law and constituted a revival of the onerous penalty of ostracism or "banning"; paragraphs 2 and 3 of draft article 4 should therefore be deleted.

113. Draft article 5 on non-expulsion of refugees should be brought into line with article 33 of the 1951 Convention relating to the Status of Refugees by including a reference to non-refoulement. The first paragraph would then begin as follows: "In accordance with the principle of *non-refoulement*, a State may not expel a refugee lawfully in its territory ...". The permissible grounds for expulsion of refugees should be limited to reasons of national security and conviction of a particularly serious crime if the person constituted a danger to the community. In addition, paragraph 2 of the draft article should include mutatis mutandis a provision like that in draft article 6, paragraph 2, concerning a reasonable period of time within which to seek legal admission into another country.

114. Her delegation agreed with the thrust of paragraph 1 of draft article 7 on prohibition of collective expulsion, but had doubts about the wisdom of permitting exceptions like that set forth in paragraph 3, which could allow room for arbitrary decisions.

The meeting rose at 1 p.m.