(Check against delivery)

STATEMENT OF THE CHAIRMAN OF THE INTERNATIONAL LAW COMMISSION, MR. PEDRO COMISSÁRIO AFONSO

The report was discussed by the Commission in the plenary and the nine draft principles proposed therein were referred to the Drafting Committee. A summary of the plenary debate is contained in **paragraphs 147 to 187** of the report. The Drafting Committee provisionally adopted the nine draft principles, taking into account the debate on the third report. The Chairman of the Drafting Committee, Mr. Pavel Šturma, delivered a statement to the Plenary of the Commission on the work of the Drafting Committee on those nine draft principles. That statement, dated

draft principle 5 has a corresponding draft principle, draft principle 13, placed in Part Two of the draft principles concerning the protection of the environment during armed conflict.

Let me now turn to draft principles 9 to 13 that are all placed in Part Two of the draft principles.

Draft principle 9 is entitled **"General protection of the natural environment during armed conflict"** and provides broadly for the protection of the natural environment during armed conflict. It reflects the obligation to respect and protect the natural environment, the duty of care and the prohibition of attacks against any part of the environment, unless it has become a military objective.

Paragraph 1 sets out that the natural environment shall be respected and protected in accordance with applicable international law and, in particular, the law of armed conflict. This paragraph highlights the fact that the draft principles are intended to build on existing references to the protection of the environment in the law of armed conflict together with other rules of international law in order to enhance the protection of the environment in relation to armed conflict overall. Paragraph 2 provides that care shall be taken to protect the natural environment against widespread, long-term and severe damage and is inspired by article 55 of Additional Protocol I of the 1949 Geneva Conventions. It indicates that there is a duty on the parties to an armed conflict to be vigilant as to the potential impact that military activities can have on the natural environment. Paragraph 3 provides that no part of the natural environment may be attacked, unless it has become a military objective. This paragraph is based on the fundamental rule that a distinction must be made between military objectives and civilian objects and seeks to treat the natural environment in the same way as a civilian object during armed conflict.

Let me now turn to **draft principle 10, "Application of the law of armed conflict to the natural environment"**. This draft principle provides that the law of

corresponds to draft principle 5. The conditional protection provided for in the draft principle is an attempt to strike a balance between military, humanitarian, and environmental concerns. This balance mirrors the mechanism for demilitarized zones as established in article 60 of Additional Protocol I to the Geneva Conventions.

Mr. Chairman,

This concludes my introduction of Chapter X of the report.

***Chapter XI*: Immunity of State officials from foreign criminal jurisdiction**

Mr. Chairman,

I shall now turn to **Chapter XI,** relating to the topic **"Immunity of State officials from foreign criminal jurisdiction"**.

The report this year reflects two stages of consideration of the topic. The first aspect deals with the work of the Commission this year, while the second aspect is a continuation of work on this topic done last year.

This year, the Commission had before it the fifth report of the Special Rapporteur, Ms. Concepción Escobar Hernández. The fifth report analysed the question of limitations and exceptions to the immunity of State officials from foreign criminal jurisdiction. It addressed some methodological and conceptual questions relating to limitations and exceptions, and considered instances in which the immunity of State officials from foreign criminal jurisdiction would not apply. It drew the conclusion that it had not been possible to determine, on the basis of practice, the existence of a customary rule that allowed for the application of limitations or exceptions in respect of immunity *ratione personae*, or to identify a trend in favour of such a rule. On the other hand, the report reached

from foreign criminal jurisdiction did apply to State officials in the context of immunity *ratione materiae*. As a consequence of the analysis, the report contained a proposal for draft article 7 concerning “Crimes in respect of which immunity does not apply”. The

subparagraph (f) defining an “act performed in an official capacity” and draft article 6 on the scope of immunity

private capacity are excluded. Unlike immunity *ratione personae*, immunity *ratione materiae* applies to both official and private acts.

The debate in the Commission **focused on questions of methodology**, which, to a large extent, reflected the underlying question whether the legal effects of provisional application were the same as those after the entry into force of the treaty. For example, while some members welcomed the analysis of the relationship with other provisions of the 1969 Vienna Convention and generally supported the conclusions reached, they nonetheless called upon the Special Rapporteur to further substantiate them. Other members were of the view that the direction of the topic depended on whether or not the 1969 Vienna Convention applied to provisional application. In their view, to the extent that the provisions of the 1969 Vienna Convention applied to a treaty in force, they were also applicable to a treaty being applied provisionally, with one qualification — the rights and obligations of a State provisionally applying the treaty depended on the terms of the agreement providing for provisional application. However, the view was also expressed that it could not be simply presumed that the legal effects of the provisional application of a treaty were exactly the same as those deriving from a treaty in force. Several members observed that a comparative analysis of conventional practice regarding provisional application would be required to fully understand the intricacies of the topic and facilitate the Commission's work.

Members generally welcomed the Special Rapporteur's decision to examine the question of the relevance of internal law for provisional application. They observed, however, that further clarifications concerning the different situations involved or the legal consequences that resulted therefrom were necessary. In that regard, the importance of differentiating between three different scenarios was stressed. The first was where an agreement on provisional application itself qualified provisional application by reference