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Protection of the environment in relation to armed conflicts
Immunity of State officials from foreign criminal jurisdiction
Sea-level rise in relation to international law

Statement by

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Mr. Chairman

The Czech Republic acknowledges the completion of the first reading of the draft articles on "**Protection of the environment in relation to armed conflicts**" and appreciates efforts of the Special Rapporteur, Ms. Marja Lehto, in this respect. As per the Commission's request, my country will provide written comments on the draft principles by December 2020.

The Czech Republic is aware of the fundamental importance of environmental protection in any context. It is indisputable that armed conflicts always have negative impact on the environment not only in the places where they take place, but also in other areas. The topic chosen by the Commission is, therefore, very relevant. The key problem of today's armed conflicts is, however, how to enforce the basic principles of international humanitarian law, especially by non-state actors. In this context, the Czech Republic expects that the outcome of this topic will be a summary of the rules of international humanitarian law in relation to the use and the protection of environment and natural resources during an armed conflict. Instead, the Commission proposes an ambitious and innovative list of recommendations, which are very often based on general concepts (e.g. corporate due diligence, responsible business practices, and sustainable use) imported from other areas of international law.

We wish to stress that legal obligations concerning protection of the environment in relation to armed conflicts cannot be properly interpreted and understood in an abstract manner, in isolation from other rules applicable in armed conflicts. Obviously, the same goes for all rules applicable in armed conflicts – they must be interpreted in the overall legal context, including the rules concerning the protection of the environment.

Mr. Chairman,

Let me now turn to the topic „**Immunity of State officials from foreign criminal jurisdiction**". The Czech Republic would like to express its appreciation to the Special Rapporteur, Ms. Concepción Escobar Hernández, for her seventh report completing the examination of the procedural aspects of this topic. Since the Commission referred the eight new draft articles to the Drafting Committee, but did not adopt any draft articles at this stage, we will limit our statement to some general comments.

My delegation is of the opinion that the debates of the Commission on the procedural aspects of immunity of state officials from foreign criminal jurisdiction should be more focused on the application of these procedural aspects in judicial decisions and practice of national authorities in concrete cases involving immunity *ratione materiae* and *personae*. Since the procedural aspects are discussed mainly with respect to the application of immunity *ratione materiae*, the practice of states – that should be taken into account – should cover all

situations in which this immunity applies, namely (a) cases when states apply general procedural rules contained in international conventions, such as the UN Convention against Torture, (b) cases when states prosecute perpetrators of crimes under international law without any treaty basis, (c) procedural steps with respect to crimes covered by immunity *ratione materiae* provided for in treaties, such as in article 39 para. 2 of the Vienna Convention on Diplomatic Relations, and (d) cases of „official crimes" committed on the territory of the forum state, such as Rainbow Warrior case. In all these instances, states apply the rules of criminal procedure contained in their national laws and treaties binding upon them. Accordingly, the Commission could analyze and possibly identify common elements in the practice of states in this regard. However, we do not expect and would not consider it appropriate for the Commission to formulate new, additional procedural obligations, much less as an exercise of progressive development of international law. Similarly, my delegation does not support the suggestion to include in the draft articles a mechanism for the settlement of disputes between the forum state and the State of the official.

In our view, the invocation by a State of the immunity of its official is one of procedural aspects that deserve further consideration. On one hand, we agree that, as mentioned by some members of the Commission, both types of immunity, *ratione personae* and *ratione materiae*, exist as a matter of international law and competent national authorities involved in criminal proceedings should, *ex officio*, take into consideration any applicable immunity, including immunity *ratione materiae*, on the basis of available evidence. On the other hand, as the International Court of Justice found in the France v. Djibouti (Questions of Mutual Assistance) case, „the State notifying a foreign court that judicial process should not proceed, for reasons of immunity, against its State organs, is assuming responsibility for any international wrongful act in issue committed by such organs". Therefore, the invocation or application of immunity *ratione materiae* may have consequences not only for the concrete criminal proceedings, but also for the international responsibility of the State invoking such immunity, as well as for this state's civil liability, if the crime was committed on the territory of the forum State.

Several questions might arise, such as: what would be the content of such international responsibility if, at the same time, the immunity ratione materiae should hinder the forum State from exercising its criminal jurisdiction?

Finally, as regards the waiver of immunity, namely immunity *ratione materiae*, my delegation is of the opinion that more attention should be given to the application of the immunity *ratione materiae* in relation to the treaties which provide for the exercise of extraterritorial criminal jurisdiction over crimes committed in an official capacity. Pertinent examples of such treaties are the United Nations Convention against Torture or the International Convention for the Protection of All Persons from Enforced Disappearance. In our opinion, the jurisdictional regimes established under these conventions imply that immunity *ratione materiae* is not applicable in relation to such crimes in criminal proceedings before foreign courts. We regard this conclusion *not* as a result of an implied waiver, but as a consequence of normative incompatibility, namely incompatibility of immunity *ratione materiae* with express definitions and obligations provided for in these treaties.

Mr. Chairman,

As regards the topic „**Sea-level rise in relation to international law**", the General Assembly, while noting the inclusion of this topic in the long-term programme of work of the Commission, also called upon the Commission to take into consideration the comments, concerns and observations expressed by Governments during the debate in the Sixth Committee. The Report does not indicate how the Commission responded in this respect to the General Assembly's call before it decided to include the topic on its current program of work.

My delegation is fully aware of the global dangers of climate change, including the sea-level rise and its consequences for low-lying coastal States and small islands States and their populations. Nevertheless, we are still of the opinion that this topic has predominantly scientific and technical character and that it should be considered above all by competent technical and scientific expert bodies and inter-governmental fora having a mandate to deal with the law of the sea issues.

We also are concerned with the idea that the membership of the open-ended Study Group established by the Commission "could change from year to year". There should be a firm commitment to work and sense of responsibility for the outcome. Often changing membership of the Study Group does not guarantee most efficient use of resources.

As regards the sub-topics identified in the 2018 syllabus, we consider the third one – namely issues related to the protection of persons affected by sea-level rise – to be suitable for the consideration by the Commission. The Study Group should therefore focus on these issues. Second sub-topic - namely issues related to statehood - because of its speculative nature might be of interest to academia, but does not seem to be appropriate for the body, which has the mandate to assist the General Assembly in its efforts aimed at progressive development of international law and its codification. The first sub-topic - issues related to the law of the sea - by its very nature does not seem to belong to the Commission and should be addressed by those fora which have the mandate to deal with the law of the sea.

We consider that in any event the Study Group cannot effectively handle more than one sub-topic at the time. This is of particular importance in view of the fact that the Commission expects that each "issues paper will be edited, translated and circulated as an official document to serve as the basis for the discussion". This raises also a question to what extent such a request can be satisfied within the existing resources.

Thank you, Mr. Chairman.