# 74th Session of the General Assembly

## Sixth Committee

## Agenda Item 79

Report of the International Law Commission on the work of its 71st Session

Cluster II: Chapters: VI (Protection of the environment in relation to armed conflicts), VIII (Immunity of State officials from foreign criminal jurisdiction) and X (Sea-level rise in relation to international law)

## Statement by

Ambassador Helmut Tichy

Legal Adviser of the Ministry of Europe, Integration and Foreign Affairs of Austria

#### Chairperson,

Austria expresses its appreciation for the work of Special Rapporteur Marja Lehto and for her second report on the Î Protection of the environment in relation to armed conflicts i. We also congratulate the Commission on the conclusion of the first reading of the draft principles, which present a full picture of the regime relating to this important area of international law.

As to draft principle 9 on state responsibility, we are not convinced by the current wording. Contrary to the text proposed by the Special Rapporteur, the current text adopted by the Commission reiterates the general rule that the draft principles are without prejudice to the rules on state responsibility. Therefore, draft principle 9 para. 1 is only of a subsidiary nature, and its only addition to legal discourse is that it specifies that reparation for damage must In our view, it would have been clearer

to retain the drafting of the third paragraph proposed by the Special Rapporteur, namely that , irrespective of whether the

damaged goods and services were traded in the market or placed in economic use". We also wonder to what extent existing regimes of state liability, *i.e.* regimes not relating to wrongful acts,

bello. However, these principles are also important for the ius ad bellum where the consequences of military actions for the environment have to be considered as well.

Austria welcomes that those draft principles applicable in situations of occupation, i.e. draft

humanitarian law. According to Article 2 of the Fourth Geneva Convention of 1949, an occupation exists, even if the said occupation meets with no armed resistance. This understanding is in line with the advisory opinion of the International Court of Justice on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory and is duly reflected in the commentary to the present draft principles introducing Part Four on occupation.

### Chairperson,

Turning now to the topic Î = a i b]mcZGNJhYcZZJVJUgZfca ZcfY][b Wf]a]bU 1 f]gX]Wh]cb the Austrian delegation commends Special Rapporteur Concepción Escobar Hernández for her seventh report which contains a rich analysis of the relevant state practice, the jurisprudence of domestic and international courts as well as the pertinent legal writing in this field. However, my delegation notes with regret that the Commission was not in a position to discuss the draft articles as proposed by the Special Rapporteur in more detail. We will thus focus in this intervention on the draft articles as proposed by the Special Rapporteur in her seventh report and the preliminary debate on them as reflected in the

Concerning draft articles 10 on invocation and 11 on waiver of immunity, the Special Rapporteur mentioned that the organ competent to invoke or waive immunity should be part of the judicial system of the state of the official. However, in many legal systems these matters belong to the competences of the executive branch of government, and therefore it is often the foreign ministry that is competent to make such decisions.

Draft article 10 (2) as proposed by the Special Rapporteur creates the impression of an obligation to invoke immunity, whereas the invocation of immunity is a matter of discretion

results of the study group established this year. In any case, we wish to underline that the provisions of the UN Convention on the Law of the Sea should remain unaffected.