During the fifty-fourth annual session of the AALCO held in Beijing last April, Professor Sienho Yee, Special Rapporteur of AALCO's Informal Expert Group on Customary International Law, presented his report on the mandated topic. In addition, AALCO organized an informal experts meeting in Malaysia last August, and invited Mr. Wood to exchange views with its experts on the said report. I believe that AALCO's report will help the Commission appreciate the concerns and views of many Asian and African states in relation to the identification of customary international law. I would like to make two comments on the consideration of this topic by the Commission:

First, in determining whether a treaty provision reflects a rule of customary international law, the criteria of objectivity and

Since I will not be able to participate in the Committee's deliberations next week due to prior commitments, please allow me to take this opportunity to present my delegation's views on "Immunity of State officials from foreign criminal jurisdiction" and other topics in cluster 3. With respect to "Immunity of State officials from foreign criminal jurisdiction", the Commission considered the fourth report of Special Rapporteur Ms. Hernandez and the Drafting Committee has adopted ad ref two draft articles. The Chinese delegation commends the progress achieved in the Commission's work on this topic. On the

constituting serious international crimes, and acta jure gestionis, or acts performed in an official capacity but exclusively for personal benefit, do not qualify as acts "performed in an official capacity" and therefore are not covered by immunity ratione materiae. China believes that these views are not in line with the relevant positive international law, and are even in clear breach of relevant rules. For example, the ultra vires character of an act does not affect its recognition as an act "performed in an official capacity". Article 7 of the Draft articles on Responsibility of States for Internationally Wrongful Acts adopted by the Commission clearly provides that an act that exceeds its authority or contravenes instructions shall nonetheless be considered an act of the State.
Finally, the Commission may wish to consider clarifying in the draft article or the commentary thereto that immunity rules are procedural rules and do not pertain to substantive rules of international law that deal with the legality of acts or the issue of accountability. The Special Rapporteur has indicated her intention to address the exceptions to immunity of State officials in her report next year. The Chinese delegation wishes to reiterate that the immunity of State officials is based on the principle of sovereign equality of States and reflects the mutual respect among nations. Immunity provisions are procedural rules and should not be associated with impunity. The International Court of Justice has already made clear this point in its rulings in the Arrest Warrant case and the Jurisdictional Immunities of the State case.

Mr. Chairman,
Last but not least, with respect to "Protection of the environment in relation to armed conflicts", the Chinese delegation is of the view that the Commission should distinguish between rules applicable to international armed conflicts and those applicable to non-international armed conflicts. While the Commission successfully sorted out the applicable rules in relation to the protection of the environment during international armed

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conflicts, research on non-international armed conflicts is relatively limited. Given the current scarcity of international rules directly relevant to non-international armed conflicts and the difficulties involved in obtaining information on relevant practices, it is indeed a challenging task to codify rules for the protection of the environment in the context of non-international armed conflicts. We suggest that the Commission consider limiting the scope of the draft principles to international armed conflicts only. Without the support of international practice, it will be inappropriate to simply transpose rules applicable in international armed conflicts to non-international armed conflicts.

Thank you, Mr. Chairman.

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