

Islamic Republic of I R A N

Permanent Mission to the United Nations

Statement by
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**Report of the International Law Commission
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Chapters IX-X-XI

Protection of the Environment in Relation to Armed Conflicts

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Provisional Application of Treaties

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In the name of God, the most Compassionate the most Merciful

Protection of the Environment in Relation to Armed Conflicts

Mr. Chairman

On the topic “protection of the environment in relation to armed conflicts”, my delegation commends the Special Rapporteur, Ms. Marie G. Jacobsson, for the work undertaken in second report.

The necessity to protect the environment during armed conflict dates back to ancient time, but with the development of military technology, the risk of environmental destruction as a result of armed conflict grows. Therefore, the protection of the environment in modern time is considered as a common concern of international community. The most fundamental principles of the law of the armed conflict namely principle of distinction, principle of proportionality and the precaution in attacks, as well as the rule of military necessity must be taken in to account in any kind of armed conflict.

My delegation believes that in consideration of the topic, the Commission should attempt to strike a proper balance between safeguarding legitimate rights of a State and protection of the environment in relation to armed conflicts.

We would like to highlight the necessity of override any distinction between different types of weapons during the work of the Commission on the topic. All weapons including weapons of mass destruction which are not able to make distinction between military and civilian objects and have widespread and longstanding effect on the environment should be included in consideration. In particular, nuclear weapons, as well as all weapons consisting in depleted uranium inflicting unnecessary suffering to civilians deserve serious consideration.

Likewise, on the applicability of Additional Protocol I to different types of weapons, we are of the conviction that the provisions of the said protocol applies to all kinds of weapons – whether conventional or non-conventional- in particular nuclear weapons. The ICJ in paragraph 30 of advisory opinion on *the legality of use or treat of nuclear weapons* stated that "the treat or use of nuclear weapons will be generally contrary to the rules of international law applicable in armed conflict and in particularly the principle of humanitarian law". Furthermore, an important number of States, upon ratification of the ICC Statute declared that it would be inconsistent with the principle of international humanitarian law to limit the scope of application of article 8, paragraph 2 (4) of the said Statute regarding the environment to the events that involve conventional weapons only.

Mr. Chairman

The Islamic Republic of Iran welcomes the decision of the Special Rapporteur to include the issue of "protected zones and areas" in particular, the establishment of nuclear- weapon free zones, in consideration of the topic. We do share the same view with the Special Rapporteur that "it is not uncommon for physical areas to be assigned special legal status as a mean to protect and preserve the area". The definition of nuclear -weapon free zone has been adopted by the UNGA in 1975, pursuant to the proposal made by Iran in 1974 to create such a zone in the Middle East. Unfortunately, based on political pretext due consideration has not be given to this issue. Moreover, in 1995, the establishment of nuclear- weapon free zone of Middle East has been included in a package that resulted indefinite extension of NPT by the Review Conference.

As the Special Rapporteur decided to address the topic from the temporal perspective, there are some important issues which need to be considered in coming reports regarding the post-conflict situations. Rehabilitation of the environment after the ending of hostile activity, responsibility of the States concerned to address pollution caused by conventional or chemical weapons remained unexploited, lost, stockpiled or immersed and undertaking necessary measures by the parties to an armed conflict aimed at the demining are among these issues. The inclusion of environmental rehabilitation clause in peace agreements is also recommended in this regard.

We would like to remind that different manuals on international law applicable to armed conflict, *inter alia*, San Remo Manual on International Law Applicable to Armed Conflicts at Sea, prepared by independent experts and cannot bind States. Despite this fact that these manuals cannot replace treaty based provisions and state practice, nevertheless, in some cases, their provisions may reflect well established rules of customary international laws, such as the provision of the San Remo Manual in relation for the protection of marine environment during armed conflict.

The Islamic Republic of Iran has suffered severe damages to the environment resulting from attacks to offshore installations and pipelines situated on continental shelf in the Persian Gulf. We believe that the list provided in Additional Protocol I, paragraph 56 and Additional Protocol II, paragraph 15, lacks oil and gas platforms as these may cause the release of dangerous forces and consequent severe losses to the environment in the event of an attack. These installation must be protected during armed conflict, in conformity with the Security Council resolutions in which targeting of oil installation has been condemned.

The same applies to the protection of cultural and natural heritage. The Security Council in numerous occasions addressed the necessity to protect cultural heritage in the context of armed conflict. The wanton destruction of cultural heritage in the Middle East shocked the conscience of humanity.

A number of the decisions of international courts and tribunals with the situation of military occupation taken in to account the implementation of international humanitarian law on the exploitation of natural resources of occupied territories. ICJ in paragraph 133 of the advisory opinion on the *legal consequences of the construction of Wall in the Palestinian occupied territory* stated that the construction has "serious repercussion of agricultural production". We firmly hope that the Special Rapporteur in next report will tackle those issues.

To sum up this topic, Mr. Chairman, in recent years, my country has been suffering from the long-term effects of armed conflicts on the environment in the region which remain to inflict serious multi-faceted problems by the spread of highly polluted haze. This demonstrates the real adverse effects of armed conflicts long after the end of hostile activity.

Immunity of State Officials from Foreign Criminal Jurisdiction

Mr. Chairman,

Turning to the topic "immunity of state officials from foreign criminal jurisdiction", I would like to thank the Special Rapporteur, Ms. Concepción Escobar Hernández for the fourth report.

The Islamic republic of Iran believes that immunity of State officials from foreign criminal jurisdiction while they perform official acts, is a consequence of the principle of sovereign equality and has been well recognized in international law in order to protect state sovereignty and ensure that international relation can be carried out peacefully.

We welcome the efforts made by the Special Rapporteur to provide some solid elements in defining the concept of "act performed in official capacity". As this concept has not been defined by international law, there are some important issues with respect to its definition that deserve consideration in future reports. First of all, it is worth noting that there is a close relationship between this concept and the concept of State official. We are of the view that the concept of "State Official" consists of all individuals who are in the position to exercise State function in all forms, represent States or act on behalf of States. Consequently, the concept of "act performed in official capacity" should comprise all functions by the State official in their

official capacity. The main point here is that the “act performed” ought to be regarded as an official “governmental” act, without distinction between the capacities in which one acted.

In this concern, national case-law and practice of national courts cannot be given the same weight as the jurisprudence of international courts and tribunals. As noted by the Special Rapporteur, resort to national legislation of some States in defining the concept “act performed in official capacity” is irrelevant. The jurisprudence of international judicial bodies are quite important and can be informative for the study. The review of the judgments of these bodies clarifies the mere fact that criminal nature of the acts cannot constitute sufficient basis to exclude them from being an official act and consequently exclude from the scope of the immunity. In other words, in determining an act as “act performed in official capacity” or “act performed by individuals acting in their personal capacity”, as a requirement for determining the possibility of immunity, the core criterion is governmental and official nature of such act. Therefore, we maintain that all such activities derive from the exercise of elements of governmental authority shall be subject of immunity. On the same way, we believe that International crimes cannot be performed by individuals themselves, without governmental connivance.

It is worth noting that some acts such as money laundering, corruption and murder, exceed the limits of official function and governmental authority and therefore are not covered by immunity. This can be considered in the limitations and exceptions to “act performed in official capacity” in the Special Rapporteur’s future reports.

My delegation believes that extension of the number of State officials who enjoy immunity *ratione personae* other than Heads of State, Heads of Government and Ministers of Foreign Affairs could be a matter of progressive development of international law. This extension is critical for the realities of international relations and preserves stability in inter-state relations. We are of the view that all acts performed by these officials are covered by immunity whether those acts are carried out in personal or official capacity. We also endorse the basic characteristics of immunity *ratione materiae* by the Special Rapporteur. We believe that immunity *ratione materiae* must be guaranteed to all State officials in respect to acts defined as act performed in official capacity whether they are in the office or has left the office.

To conclude this topic, my delegation believes that the deep analysis of the topic by Special Rapporteur through reviewing the jurisprudence of the international court and tribunals clarified that at the time there is no sufficient legal basis for codification of some principles on the present topic in international law, subsequently, the Commission, inevitably, shall take in to account the progressive developments of international law.

Provisional Application of Treaties

Mr. Chairman,

On the topic “Provisional Application of Treaties”, my delegation would like to express its appreciation to the Special Rapporteur, Mr. Juan Manuel Gomez-Robledo for the third report on this topic.

The Islamic Republic of Iran supports the role of the provisional application of treaties in acceleration of the acceptance of international law. In this context, we do share the Special Rapporteur's viewpoint that the primary beneficiary of provisional application is the treaty itself, since it is allowed to be applied without being in force, but the more important beneficiaries are the negotiating States who could partake in the provisional application and benefit from the rights stipulated in the treaty. My delegation believes that in a case when a treaty already entered in to force, a State may decide to apply such treaty provisionally.

However, the work of the Commission is fraught with difficulties and this is due to the fact that only a limited number of States have regulated provisional application of treaties in their domestic laws or constitutions. It worth noting here that there is no provision concerning the provisional application of treaties in the Constitution of the Islamic Republic of Iran.

We also believe that the concept of provisional application of treaties is limited to multilateral instruments and cannot be applied in bilateral treaties.

We are of the view that any work on the topic must be according to this general principle of international law that provisional application of treaties is merely determined by the decision of the State concerned. The will of the States parties to a treaty plays a pivotal role in provisional application as provided by Article 25 of the 1969 Vienna Convention on the Law of the Treaties. In other words, the obligation of a State to provisionally apply treaty provisions is derived from an explicit clause, contained in the treaty or a separate instrument or otherwise agreed by the negotiating States.

The modalities used to express consent by States to be bound by a treaty are linked solely to its entry into force, while the provisional application is aimed to effectuate during the period preceding the entry into force of a treaty; therefore, the means to express consent for provisional application should be materially distinct. Also, the legal regime and modalities for the termination and suspension of provisional application need further clarification.

The provisional application of a treaty does not prejudice the right of States to apply reservations on the same treaty at the time of ratification, acceptance, approval or accession. By way of explanation, the provisional application would not be basis for restriction of the rights of States in its future conducts toward treaty.

Mr. Chairman, my delegation takes note the proposed draft guidelines and welcomes the future work plan proposed by the Special Rapporteur.

Thank you Mr. Chairman.