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Statement

by Ms. Nguyen Thi Hong Quyen

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at the 70th Session of the Sixth Committee of UNGA

on Agenda Item 83: "Report of the International Law Commission"

Cluster III

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Mr. Chairman,

Allow me first to address the topic **Protection of the environment in relation to armed conflicts.**

My delegation commends the Special Rapporteur, Ms. Marie Jacobsson for her laudable contribution to the topic, as shown through her well-prepared and thorough second report.

I would like to make some brief observations on the topic.

First, we concur with the assertion in draft principles II-1 that "care should be taken to protect the [natural] environment against widespread, long-term and severe damage". To my attention, several members of the Commission raised the necessity to analyze further this notion and the standards used for those criteria. In our view, one important element is requiring environmental impact

assessment prior to deploying such weaponry in battlefield. This requirement of environmental impact assessment is even more pertinent in case of chemical weapons as such weapons, when deployed in mass quantity and over a mass area of the battlefield, may leave significant and enduring adverse impacts on the environment.

Second, we deem it appropriate at this stage to address international armed conflicts rather than encompassing non-international armed conflicts in the scope of the topic. As stated by the Special Rapporteur, only a few legal instruments addressed non-international armed conflicts. While most developments regarding non-international armed conflicts take place in courts and national jurisdiction, the information provided to the Special Rapporteur so far has not indicated sufficient general practice of states regarding the obligation to protect the environment in relations to non-international armed conflicts.

Last but not least, the future plan of work is to elaborate on the post-conflict situation. In our view, particular attention should be paid to rehabilitation efforts because they may have considerable consequences on the complete recovery of the war-torn country and its future generations. Obligations in that period should include providing humanitarian assistance for the purpose of, in particular, clearing landmines, toxic chemicals and other remnants of war. My delegation remains committed to following this topic's further outcomes.

I would now turn to Chapter X of the report on Immunity of state officials from foreign criminal jurisdiction.

My delegation commends Ms. Escobar Hernández, the Special Rapporteur for her second report, which focuses on the notion of immunity *ratione materiae* and its scope.

On the definition of an "act performed in an official capacity", we agree with the views taken by several members of the Commission that it is excessive

and unnecessary to establish a link between the act and its criminal nature. We consider the criminal nature to be of descriptive importance only and the question of immunity is a procedural one. We welcome the decision by the Drafting Committee to delete the phrase "that, by its nature, constitutes a crime in respect of which the forum State could exercise its criminal jurisdiction" and the intention to make it clear in the commentaries that the criminal nature of an act does not, in principle, disqualify it as an official act. The separate opinion in the *Arrest Warrant* case only pronounces on the international crime exception with respect to immunity *ratione personae*. It leaves open the question of exceptions with respect to immunity *ratione materiae*. In this vein, my delegation takes the view that all acts performed in the exercise of state authority, state functions and sovereignty should enjoy immunity *ratione materiae*.

We welcome the Special Rapporteur to focus in the next report on examining the two thorny questions of exceptions and limitations to jurisdictional immunity of state officials together with procedural issues. In doing so, it is advisable that the report survey more broadly practice of states from various legal traditions and various regions and case law of various regional and international tribunals.

Finally, on topic Provisional application of treaties, I would like to express gratitude to the Special Rapporteur, Mr. Juan Manuel Gómez-Robledo for his fourth report. My thanks also extend to the Secretariat for preparing the Memorandum on the legislative development of article 25 of the 1986 Vienna Convention, which was of great assistance to the Commission in its deliberation.

The fourth report continues an analysis of state practice with regard to provisional application of treaties, its legal effects and of the relationship between Article 25 and other relevant provisions of the 1969 Vienna Convention. As mentioned by the Chairman of the Commission, due to time constraints, the

Drafting Committee was unable to conclude discussion of the draft guidelines and expected to do so in 2016. For now, my comments would direct to the progress made so far in this topic.

First, we agree that provisional application of treaties create rights and obligations and the treaty is subject to the *pacta sunt servanda* rule in Article 26 of the 1969 Vienna Convention. Breaches of provisionally applied obligations may entail some international responsibility. However, provisional remains provisional and only those states agreeing to provisional application are bound to parts of the relevant treaty subject to provisional application. In addition, we draw attention to the fact that provisional application may be used to bypass constitutional constraints, in particular in case parliamentary ratification is required. Therefore, it is important to further elaborate on the nuances of "legal effects" as presented in draft guideline 4.

Second, on the form of the project's outcomes, this delegation welcomes the Commission's intention to go along with draft guidelines. We are of the view that the two Vienna Conventions already provide sufficient legal basis for provisional application of treaties. It is expected that these draft guidelines provide states and international organizations with a practical tool in various ways, such as in how to formulate arrangements for provisional application of treaties and its termination or suspension, among other things.

In conclusion, let me reiterate our delegation's intention to examine the draft guidelines together with commentaries when they are adopted by the Drafting Committee with keen interest.

I thank you for your kind attention.