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MISSION TO THE UNITED NATIONS

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Statement by Mr. Pham Ba Viet
DELEGATION OF VIET NAM
at the 71st Session of the Sixth Committee of UNGA
on Agenda Item 78: "Report of the International Law Commission"

Cluster III (Chapters X, XI and XII)

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Thank you Mr. Chairman,

With your permission, I would like to first address the topic of **Protection of the environment in relation to armed conflicts.**

At the outset, Viet Nam reiterates its appreciation to the Special Rapporteur, Ms. Marie G. Jacobsson for her ceaseless contribution to this topic over the years. We note with appreciation the efforts of the Special Rapporteur in identifying rules that are of particular relevance to post-conflict situations as well as those related to the pre-conflict phase in her third report to the Commission.

As regards draft principles related to the pre-conflict phase, we note that the proposal for environmental regulations and responsibilities to be incorporated into status of forces and status of mission agreements and peace operations has drawn disagreements within the Commission. Thus, in order to substantiate the relevance of and need to include such a provision, further studies need to be made in relations to state practice and effectiveness in that regard.

On the issue of the remnants of war, we welcome the requirement of international technical and material assistance in dealing with remnants of war on land and at sea, as provided for in draft principles III-3 and III-4. In order for these principles to be effective, we believe that there must be a clear indication of the State or entity who bears the primary responsibility of dealing with minefields,

mined areas, mines, booby-traps, etc. We therefore suggest that these principles be reconstructed to reflect the notion that in an armed conflict, the belligerent party that introduces substances that are harmful to the environment shall bear the legal consequences of its actions. Moreover, in the aftermath of said conflict, that party shall be responsible for carrying out the search, clearing, and destruction of remnants of war which it has used. In cases where these remnants continue to cause negative impacts to the natural environment, the belligerent party shall also bear the responsibility to restore and recover the environment.

We also would like to voice our concern over the inclusion of the rights of indigenous people, as stated under draft principle IV-1. It is our view that the matter of indigenous people is of little relevance to the context of armed conflicts. Moreover, as we observe, the issue of indigenous people is handled differently from State to State; particularly in the sense that States vary in their definition of indigenous people, while in some States this concept does not exists. Therefore, the inclusion of this draft principle in practice may cause more problems than it attempts to resolve.

Turning next to the topic of **Immunity of State officials from foreign criminal jurisdiction,** my delegation extends our gratitude to the Special Rapporteur, Ms. Concepción Escobar Hernández, for her fifth report to the Commission on this issue. On this topic, I will make two brief observations.

First, immunity from criminal jurisdiction originates from customary international law. Thus, the codification of the rules in this matter needs to be carefully undertaken with due regards to the principles of sovereign equality, non-intervention into the domestic affairs of States, as well the need for the maintenance of international peace and security, ensuring the balance between the benefits of granting immunity to State officials and the need to address impunity. The drafting of the articles need to ensure the mentioned principles and reflect the codification of established norms.

Second, we believe that the exceptions to criminal jurisdiction warrant further debate. In the course of this study, it will be necessary to clarify the concept of "acts performed in an official capacity". It is ill-advised to attach the criminal nature of an act to the representative nature of such act, as in practice, the criminality of an act does not affect or determine whether an act is performed in an official capacity. Moreover, the view that international crimes should not be considered as acts performed in an official capacity should be carefully considered,

and greater clarity should be given to the crimes that constitute "international crimes". We take note of the decision of the ICJ in the *Arrest Warrant* case, in which only serious international crimes are not considered as acts performed in an official capacity. There is a distinction to be made between the concept of "international crimes" and "serious international crimes", where the former cover a broader spectrum of criminal acts.

On the final topic of **Provisional application of treaties**, we would first like to thank Mr. Juan Manuel Gómez-Robledo for his fourth report on the subject matter, which builds on the discussion of previous sessions and continues the analysis of the relationship of provisional application to other provisions of the 1969 Vienna Convention on the Law of Treaties and practice of international organizations with regards to provisional application.

First, we concur with the overall idea of draft guideline 8, which states that the provisional application of a treaty produces legal effects and is capable of giving rise to legal obligations and that the breach of an obligation arising under a treaty or a part of a treaty that is provisionally applied entails international responsibility. However, we believe that the extent of legal consequences arising out of a breach of a treaty being provisionally applied requires further study. Particularly, if the responsibility arising from a breach of a treaty that is provisionally applied equates to that where the treaty in question is in full effect, it will render States unable to invoke national law to justify the breach. This, in turn, will have a negative impact on the desirability to ratify or approve an international treaty. Therefore, we welcome the Comission's decision to request from the Secretariat a memorandum analysing State practice in respect of treaties deposited or registered in the last 20 years with the Secretary-General, which provide for provisional application, including treaty actions related thereto.

Second, as regards the forms through which provisional application of a treaty may be applied, provided for under draft guideline 4, we are of the view that provisional application of a treaty should first and foremost be decided by the States concerned themselves. Otherwise, any other form for decision of provisional application of treaties would be a depart from Article 25 of the 1969 Vienna Convention. Furthermore, the agreement through a resolution adopted by an international organization or at an intergovernmental conference may lead to cases where it unnecessarily infringe upon the sovereignty of States. Therefore, further

studies should be given to this matter, as well as international practice in this regard.

Thank you, Mr. Chairman.