THE PERMANENT MISSION OF THE REPUBLIC OF AZERBAIJAN TO THE UNITED NATION

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Statement by Mr. Tofig F. Musayev
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I would like to share our delegation's comments on the first report on protection of the environment in relation to armed conflicts submitted by the Special Rapporteur (A/CN.4/720).

At the outset, I wish to express our general support for the work of the Commission on the topic and thank the Special Rapporteur for submitting her first report on the subject matter, which focuses on protection of the environment in situations of occupation and contains the proposed three draft principles.

Provisions dealing with occupation are essentially laid down in three instruments, being the Regulations concerning the Laws and Customs of War on Land, annexed to The Hague Convention IV respecting the Laws and Customs of War on Land of 18 October 1907, which are considered as reflecting customary international law; the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949; and Additional Protocol I to the Geneva Conventions of 1949 relating to the Protection of Victims of International Armed Conflicts 1977. The report clearly elaborates on that.

Although whether and to what extent international environmental law applies and provides protection during armed conflict is a matter of debate, we support generally the consideration of the interplay between the law of armed conflicts and other branches of international law, in particular international human rights law and international environmental law. At the same time, we note that, according to the report, the "Commission does not intend, nor is it in a position, to modify the law of armed conflict".

As is known, situations of occupation vary in nature and duration, and, therefore, while addressing, inter alia, the protection of the environment and property rights in an occupied territory, the distinct characteristics of the occupation should be taken into consideration, particularly when such occupation is a result of the unlawful use of force deplored by the Security Council and the General Assembly.

The first point to make in this connection is that international law specifies that territory cannot be acquired by the use of force. The prohibition of the use of force contrary to the Charter of the United Nations is a peremptory rule of international law, recognized as such by the international community of States as a whole.

Therefore, while the underlying rationale of the relevant provisions of the law of occupation is to ensure, inter alia, the survival and welfare of the civilian population under occupation, the rights and interests of the population expelled from an occupied territory and seeking return to their homes and properties in that territory cannot be neglected. It is clear that no right can be exercised at the expense of the violation of the rights of others. This is particularly relevant in regard to property rights and the protection of the environment and natural resources of the occupied territory.

The occupying State must not exercise its authority and exploit the resources or other assets of the occupied territory for the benefit of its territory and population, and this is clearly reflected in the report, nor should it further the interests of the local surrogate operating in the occupied territory under effective political, military, economic and other control of the occupier. Equally, exploitation of natural resources cannot be permitted to cover the expenses of the occupation, particularly where such occupation is a result of the unlawful use of force.

States have and shall exercise full sovereignty over their wealth, natural resources and economic activities, and the principle of permanent sovereignty over natural resources applies in the situations of military occupation.

We cannot agree with the view that the notion of "safeguarding the capital", in light of the general development of international law, have to be equated with "sustainable use of natural resources". Such a view may undoubtedly be misinterpreted by the occupiers as a pretext to secure or enhance territorial claims, engage more in exploitation of resources and thus prolong occupation. As is known, in some situations of military occupation there exists a clear link between the exploitation and pillage of natural resources and other wealth in the occupied territories and unconstructive position of occupying States in conflict settlement processes. Therefore, we strongly believe that draft principle 20 requires additional clarification to avoid such misinterpretations and abuse.

Limitations imposed on an occupant by international law are derived from the temporary nature of the occupation. Indeed, occupation does not confer sovereignty over the occupied territory upon the occupier and the legal status of the territory in question remains unaffected by the occupation of that territory. International law prohibits actions which are based solely on the military strength of the occupying State and not on a sovereign decision by the occupied State. The character of occupation indicates that an occupant lacks the authority to make permanent changes to the occupied territory.

International humanitarian law provides for the keeping in place of the local legal system during occupation. The key features of the provision of Article 43 of the Hague Regulations read together create a powerful presumption against change with regard to the occupant's relationship with the occupied territory and population, particularly concerning the maintenance of the

existing legal system, while permitting the occupant to "restore and ensure" public order and safety. While the balance between the two is not always clear, especially in extended occupations, it is nevertheless clear that an occupant does not have a free hand to alter the legal and social structure in the territory in question and that any form of "creeping annexation" is forbidden.

The presumption in favour of the maintenance of the existing legal order is particularly high and is supplemented by provisions in Geneva Convention IV, in particular its Article 64. However, this is to be restrictively interpreted, and the difference between preserving local laws and providing for "provisions" which are "essential" is clear and significant. They mean not only that the legal system as such is unaffected save for the new measures which are not characterized as such as laws, but that the test for the legitimacy of these imposed measures is that they be "essential" for the purposes enumerated.

Geneva Convention IV provides for the continued existence of convention rights and duties irrespective of the will of the occupying State. It is clear that occupants cannot evade its responsibility for its illegal acts of invasion and military occupation, as well as for subsequent developments by setting up, or otherwise providing for the continuing existence of, puppet regimes, including in particular those formed within the local segments in the occupied territory.

In this respect, and generally given the need of strengthening the legal constituents of protection of the environment, we would support the future work of the Commission on the questions related to the responsibility and liability for environmental harm in relation to armed conflicts, in particular in situations of military occupation.

As to the issue of the immunity of State officials from foreign criminal jurisdiction (Chapter XI of the ILC Report), we commend the efforts of the Commission to clarify this important area of international law.

At the same time, we note that Member States and the Commission itself are divided with regard to limitations and exceptions to the immunity of State officials from foreign criminal jurisdiction.

We share the view that more should be done at the international level to ensure that those responsible for serious crimes, including State officials, are brought to justice. We have consistently stated this position, which remains unchanged. The establishment of truth with respect to gross violations of international humanitarian and human rights law committed during armed conflicts, the provision of adequate and effective reparations to victims and the need for institutional actions to prevent the repetition of such violations are among the necessary prerequisites for sustainable peace and long-term stability.

Nevertheless, we are not fully confident that the work of the Commission on the topic is an appropriate way of addressing this issue. It rather opens an opportunity for misinterpretations and politically motivated actions, in contravention of the principle of sovereign equality of States and the interest of stability of international relations. We are also of the opinion that draft article 7, in particular some of the categories of crimes listed therein, lacks sufficient support in State practice and does not reflect customary international law.

Finally, report on protection of the environment in relation to armed conflicts contains references to the *Chiragov* case of the European Court of Human Rights, as well as to Security Council resolutions 822 (1993) and 853 (1993), as examples of existing situations of military occupation. We thank the Special Rapporteur for this and believe that these references should have been supplemented also by Security Council resolutions 874 (1993) and 884 (1993), as well as by General Assembly resolutions 60/285 of 7 September 2006 and 62/243 of 14 March 2008, on the same subject matter. The mentioning of these sources would also be relevant in relation to the analysis contained in the second report on succession of States in respect of State responsibility (A/CN.4/7190).