

Statement by

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The representative of the Islamic Republic of Iran before

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Cluster III

Chps: IX (Protection of the environment in relation to armed conflicts),
X (Succession of States in respect of State responsibility) and
XI (Immunity of State officials from foreign criminal jurisdiction)

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

Mr. Chairman,

As to the topic **Protection of the environment in relation to armed conflicts**, my delegation has read with interest the first report of the Special Rapporteur, Ms. Marje Letho, and Chapter IX of the Commission's report. In this regard, we wish to thank the Special Rapporteur for her valuable work on the topic. The focus of the report is on relevant applicable environmental norms and their legal basis in situations of occupation.

My delegation wishes to make some comments on the topic and the report.

First, we are confident that present Draft Principles and commentaries thereto would be merely limited to international armed conflicts and not be applied to non-international armed conflicts, because the international and non-international armed conflicts are different in nature and therefore, the application of related rules in the non-international domain would be different.

Second, we believe that it would be important to define the occupation. In considering the definition of occupation in relation to armed conflict, it is not quite clear whether reference made to occupation would be compatible with article 42 of The Hague regulations of 1907 concerning the laws and customs of war on land, or applicable regulations of Geneva Conventions of 1949. This makes more complicated and needs to be addressed and clarified. In this context, we deem it necessary that such concept would be more compatible with article 42 of Hague regulations of 1907 rather than Geneva Conventions. We maintain that presence of armed forces is only one of requirement of the occupation and the criteria of control of territory without presence of armed forces also should be taken into account. This notion also has been confirmed and recognized by the International Court of Justice which has referred to it as the exclusive standard for determining the existence of a situation of occupation under the law of armed conflict. Furthermore, as the special rapporteur stated in her report, the concepts of “armed conflict” and “environment” have already been defined in the preliminary report of the former Special Rapporteur.

Third, on the issue of the applicability of the law of occupation to international organizations, we are in agreement with some members of the commission to allocate such applicability in the draft principles or commentaries, since in some circumstances the international organizations perform similar functions such as control and administration of a territory.

Fourth, in considering the relationships between the law of occupation and human rights and environmental law, the Special Rapporteur indicated that they should help inform principles of environmental protection. In this context, the wide range of human rights instruments, their normative status and their concurrent applicability are sufficient to inform obligations to protect human health from environmental risks, and to limit environmentally harmful practices; obligations that develop and grow in line with the length of the occupation. Given that environmental damage can be cumulative, with many apparently modest harms ultimately amounting to severe damage over time, the question of how obligations should increase in line with the duration of an occupation is an important one.

Fifth, we concur with the special rapporteur that some pertinent draft principles in particular contained in Part three of the draft principles could be, under law of occupation, useful to apply to the situation of occupation. In this regard, we consider that Draft principle 6, para. 2 (Protection of the environment of indigenous peoples), Draft principle 15 (Post-armed conflict environmental assessments and remedial measures), Draft principle 16 (Remnants of war), Draft principle 17 (Remnants of war at sea) and Draft principle 18 (Sharing and granting access to information) would be appropriate to apply to the situation of occupation.

Mr. Chairman,

On the topic “**Succession of States in respect of State responsibility**”, I would like to thank the Special Rapporteur, Mr. Pavel Sturma, for his efforts in preparation of second report on the topic.

Having considered the content of the second report, my delegation is not yet convinced that “draft articles” on the topic “Succession of States in respect of State responsibility” is a good choice for the time being. It should also bear in mind that the previous works of the Commission on the related topic including the 1978 Vienna Convention and 1983 Vienna Convention, have not yet received widespread endorsement by States and the States concerned have preferred to settle their disputes through bilateral agreements. Thus, we are not agreement with the suggestion of some members of the Commission that draft guidelines would be more appropriate. Moreover, as the special rapporteur indicated in his first report on this topic, the issue of succession of states in respect of state responsibility is not supported sufficiently by state practice.

In this context, it is important for the Commission to take into consideration in the selection of its topics, its recommendations at fiftieth session in 1998 upon which must reflect the needs and priorities of States; and be at a sufficiently advanced stage in terms of State practice to permit progressive development and codification.

Mr. Chairman,

Turning to the topic “**Immunity of State officials from foreign criminal jurisdiction**”, my delegation would like to thank the Special Rapporteur Ms. Concepción Escobar Hernández, for considerable work on the topic. The report seems to address some procedural aspects of immunity of State officials from foreign criminal jurisdiction. In this regard, we welcome that the Special Rapporteur intends to address in her seventh report in 2019, the consideration of procedural issues.

We maintain that the discussion on procedural issues is essential to ensure that immunities, where applicable, are respected in order to safeguard the stability of international relations and ensure respect for the sovereign equality of States. It is equally vital to take into account the rights of the State official concerned.

While the immunity of State officials from foreign criminal jurisdiction continues to remain great importance to States, we concur with the special rapporteur that the focus of the members of the Commission with regard to the procedural aspects of immunity of State officials from foreign criminal jurisdiction has shifted towards the need to establish procedural safeguards to avoid the politicization and abuse of criminal jurisdiction in respect of foreign officials. From that standpoint, as stated by the special rapporteur in her report, the procedural aspects to be considered should essentially comprise clauses safeguarding the sovereignty of the foreign State. This approach has also appeared in the Sixth Committee. The significance in the procedural aspects of immunity from foreign criminal jurisdiction has thus indicated itself to be closely linked to the safeguarding and strengthening of immunity and of the principle of the sovereign equality of States.

In closing, my delegation would like to express its disappointment with the manner in which draft article 7 has been drafted and the impact that it would have on the working methods of the Commission. We are of the view that it is not possible to remedy through procedural safeguards the substantive flaws in draft article 7.

I thank you Mr. Chairman, for your attention.