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Chairman: Mr. AFONSO (Mozambique)

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The meeting was called to order at 10.05 a.m.

AGENDA ITEM 140: EXPLOITATION OF THE ENVIRONMENT AS A WEAPON IN TIMES OF ARMED CONFLICT AND THE TAKING OF PRACTICAL, MEASURES TO PREVENT SUCH EXPLOITATION (continued) (A/46/141, A/46/358-5/22931)

1. Mr. WINKLER (Austria) said that at its sixteenth session, held in May 1991 at Nairobi, the *Governing* Council of the United Nations Environment Programme (UNEP) had adoptod a decision on the environmental effects of warfare on the basis of a joint initiative undertaken by Austria and other countries. That decision reflected the concern of States about the devastating effects of the (If conflict on the environment of all States in the region and on Kuwait in particular. He therefore expressed appreciation to the Jordanian delegation for the proposal to include the item in the agenda and hoped that at the current session of the General Assembly there would be a thorough consideration *of* the manifold and complex aspects of the issue,

2, The progressive development *of* international law and its codification was not a goal in itself, At a time when there was a growing awareness that the rule of law and respect for the norms and principles *of* international law constituted the foundation of the international community, it had become clear that international law-making was needed to react to events in order to prevent their recurrence or *at* least substantially mitigate their effects. In that respect, the large-scale damage inflicted on the environment by Iraq in the course of the Gulf conflict underlined the importance for the international community of going beyond mere declarations or condemnations and working to confirm existing rules of international law and elaborate a new legal framework which would be conducive to respect for the law and would prevent such damage to the onvironment ever being inflicted again.

3. Ever since the deliberate acts of environmental destruction in the Gulf conflict, scholars and international legal and environmental institutions had begun A stock-taking of existing rules of international law in the field of humanitarian law in times of armed conflict and deliberations on ways to further improve and complement the existing legal framework in that field. The United Nations should now embark on *a* study of those problems and the approptints forum for that discussion was the Sixth Committee,

4. The fact that not all members of the international community respected the rule of law in international relations should in no way detract from the importance of a thorough study of the matter. In the long run, the efforts made would contribute to an enhanced awareness by all Governments of the fundamental importance *of* scrupulous respect for international law.

5. Events in the Gulf conflict had brought to light a whole range of questions on how the legal institutions and mechanisms at the disposal of the international community could be used against a blatant breach of the most fundamental rules of law. The unanimous reaction of the international community to the act of aggr ession committed by Iraq had allowed t.he competent

(Mr. Winkler, Austria)

organs of the United Nations to take the measures provided for in the Charter to respond adequately to that breach of international peace and security. But while there could be no doubt whatsoever that those deliberate acts of environmental destruction flagrantly violated existing international law and could not, even in the most remote sense, be justified by military necessity, those events had demonstrated that international law was not sufficiently equipped to deal with the consequences of those acts, *since* there were no precise legal rules for assessing the damage *done* or for taking judicial steps against those responsible for such damage. In the view of his delegation, the provisions concerning environmental protection in the Protocols Additional to the Geneva Conventions and in the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, as well as the applicable norms of customary international law, were inadequate to deal with all aspects of environmental destruction caused by setting fire to oil wells in Kuwait and deliberately spilling crude oil into the Gulf, After referring to the various provisions in existing international law on the subject, he commended the expose delivored on the previous day by the representative of the Islamic Republic of Iran and said that there could be *no* doubt as to the illegality of the acts committed by Iraq, entailing international responsibility of that State as well as personal criminal liability of those responsible for those acts. In addition to the prohibitive provisions of international law already mentioned, the Geneva Conventions and additional Protocol I specifically prohibited any act whose sole purpose was to spread terror among the civilian population, and the deliberate destruction of the environment in the Gulf region fell within that category.

6. The problems raised in connection with the item were manifold and very complex indeed and no hasty conclusions should be drawn. However, the complexity of the matter should not be a deterrent to seriously and objectively studying the issues involved, and taking appropriate action in order to arrive at an effective regime for the protection of the environment,

7. The issue of the protection of the environment in times of armed conflict was also being discussed in other forums, such as the 26th International Conference of the Red Cross and Red Crescent, which was due to take place the following month at Budapest. Those deliberations would undoubtedly produce substantial results and guidance for the work of the United Nations in that field, It would not be appropriate, however, to leave the adoption of all further steps entirely to other forums and bodies. In *his* delegation's view, any further consideration of the subject by the United Nations should take into account the results of the Conference of the Red Cross and the views of Governments on the measures that should be adopted, His delegation would therefore support a resolution on the agenda item which would clearly state the illegality, under international law, of the destructive acts committed by Iraq in the course of the Gulf conflict and would invite Governments to submit their views on the procedural and substantive aspects of the item. In light of those views, the Sixth Committee should continue at the following session of the General Assembly its study of the most appropriate ways and means of achieving the goal of an international legal framework to deal with the

(Mr. Winkler, Austria)

deliberate destruction of the environment in the course of armed conflicts, It would be premature, at the current stage, to speculate on the possible outcome of the study to be undertaken by the members of the Committee, His delegation would keep an open mind with regard to all possible solutions, including the elaboration of an appropriate new legal instrument, should the general view prevail that the existing rules of international law were not sufficient to deal with all aspects of the problem, ,

8. Mr. LIU (China) said that agenda item 140 touched on the issue of environmental protection, which was one of common concern to the international community and which his Government regarded as part of a peaceful, stable, just and equitable new international order,

9. With regard to the protection of the environment in times of armed conflict, humanitarianism had imposed constraints on the modification of the environment long before that issue had become one of common concern to mankind. The Hague Conventions of 1899 and 1907, and the Geneva Protocol of 1925 for the prohibition of chemical and bacteriological methods of warfare contained regulations on that subject. Other Conventions, such as the Convention on the Protection of the World Cultural and Natural Heritage of 1972, and the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques were also relevant to the subject, His delegation had noted that the International Conference of the Red Cross and Red Crescent, to be held in late November 1991 at Budapest, would consider the question of environmental protection in times of armed conflict, and that the work of the Preparatory Committee for the United Nations Conference on Environment and Development also covered the subject. In addition, the Canadian Government, and the Secretary-General had jointly sponsored an expert meeting at Ottawa on the use of the environment as a tool for conventional warfare, while a meeting had been held in London to explore the possibility of formulating the so-called fifth Geneva Convention. All of that indicated that the subject was receiving increasing attention from the world community.

10. The question of environmental protection in times of armed conflict was related to both international environmental law and international humanitarian law. Conservation of the environment and protection of the earth were crucial to the conditions for the survival of mankind, The solution to the problem required not only the active and concerted efforts of all countries, but also the necessary restraint by mankind on its activities. Since the end of the Second World War, international humanitarian law had developed considerably, and, since the United Nations Conference on the Human Environment, in 1972, the world community had made unremitting efforts to formulate a series of international instruments relating to the protection of the common environment on land, at sea and in the atmosphere, International environmental law was becoming an important area for the progressive development and codification of international law. With respect to the question of environmental protection in times of armed conflict, although relevant provisions had been incorporated in some international treaties, those provisions needed to be further improved

(Mr. Liu, China)

in order to make them more systematic, comprehensive and capable of implementation. The question of whether it was necessary to undertake that task at the current stage and of when to *begin* work was a complicated one that required further study.

11. Lastly, his delegation agreed that at its current session the General Assembly should request the Seerotary-General to solicit the views of Member States on the matter. His delegation hoped that, through timely consultations among all delegations, a consensus resolution could be adopted,

12. Mr. CHEANUX-REPOND (Observer *for* Switzerland) said that, while the announcement by the two super-Powers that they would significantly reduce their nuclear arsenals went a long way towards removing the danger that loomed over the survival of the planet, the experience of the Gulf war had demonstrated clearly the extent to which the earth and its fragile ecosystem could be threatened by a conventional armed conflict with catastrophic consequences. For that reason, he wished to thank the delegation of Jordan for bringing before the General Assembly the problem *of* the environment and armed conflict.

13. The tragic experience of the Gulf war showed that such a catastrophe should not and probably would not occur again if there was universal participation in the international conventions governing the subject and if all the parties to a military conflict scrupulously observed their provisions. That was why Switzerland had always attached particular importance to international humanitarian law and, as the depository *of* the four Geneva Conventions of 1949 and *of* the two additional Protocols of 1977, it again urged those States that had not yet done so to become parties to those instruments,

14. The use of the environment as an instrument for military purposes was merely one aspect *of* the problem *of* protecting the environment in times *of* armed conflict. Generally speaking, the applicable humanitarian law sought to protect the environment as a possible victim of the methods or weapons of war, The current case was different in that the environment had not been the primary objective nor the object of a military attack. On the contrary, it had itself been the weapon *of* attack. Nevertheless, the difference was only apparent because it was always man who misused the environment for military purposes . In other words, the problem would always have to be examined from the point of view of the protection *of* the environment,

15. The provisions of additional Protocol I to the Geneva Conventions prohibiting the use *of* methods or means of warfare which were intended or might be expected to cause widespread, long-term and severe damage to the natural environment should be interpreted broadly so as *to* include, inter alia, the deliberate misuse *of* the environment *for* military purposes. That had seemed to be the intention of the States which had participated in the elaboration *of* additional Protocol I, and a similar prohibition was

(Mr. Cheanux-Repond, Observer, Switzerland)

contained in the Convention on tho Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, to which his country was also a party. However, it was not enough to *note* with satisfaction that there were already international Conventions for the protection of the natural environment in times of armed conflict and that they had been ratified by a large number of countries, because, however extensive the participation, their provisions were useless if they were not observed in times of armed conflict. Strict compliance with the provisions of the Conventions was particularly important for the protection of the environment because it helped to prevent serious and lasting damage to the natural environment, which was often difficult to repair and whose consequences would have to be borne by entire generations.

16, Verification machinery should receive priority attention. Both the Convention *on* the Prohibition of Military or *Any* Other Hostile Use of Environmental Modification Techniques and Protocol I Additional to the Geneva Conventions envisaged such machinery. The first provided for a Consultative Committee of Experts, and the second established an International Fact-Finding Commission which would come into being once the necessary number of ratifications had been received. After listening with interest to the many delegations which had spoken in favour of strengthening fact-finding measures during the consideration of the report of the Special Committee on the Charter, Switzerland was confident that those States would take advantage of the opportunity to put their words into practice by subscribing to the relevant provision of additional Protocol I.

17, The International Conference of the Red Cross and Red Crescent to be held shortly at Budapest was the most appropriate place for an in-dopth examination of the issue of the environment and armed conflicts in all its aspects. His delegation therefore supported the ICRC proposal to convene a working group to examine the content and limitations of and possible lacunae in the international rules on the subject. The relevant international conventions should be examined in the light of the events that had taken place since their entry into force to ascertain whether their pertinent provisions continued in practice to guarantee full protection for the natural environment. In his delegation's view that protection was adequate provided the conventions in question were widely disseminated and strictly applied. As the United States delegation had pointed out, each State's attitude of responsibility played an important role in that respect.

18. His delegation hoped that the recent tragic experiences would not be wasted, and was willing to participate in the elaboration of new international rules that would help to improve protection for the environment,

19, TUNKU DATO' NAZIHAH MOHAMMED RUS (Malaysia) said that the recent Gulf war had clearly shown the horrendously devastating effect that warfare could have on the economy, society and environment of the *region* concerned and on the

(Tunku Dato' Nazihah Mohammed Rus, Malaysia)

rest of the world. Even as she spoke, some 200 oilfields were continuing to burn despite international efforts to remedy the situation. Protection of the environment was thus an urgent concern for all mankind because its impact was felt beyond national boundaries. As Principle 24 of the Stockholm Declaration of 1972 made clear, the *only* effective means of protecting and preserving the environment at the world level was international cooperation.

20. The obligation to cooperate, which was incumbent upon all States, manifested itself as a duty to act in good faith in the general interest, It would be difficult to provide a list of exactly what action was required, but there were indications that States had already cooperated in areas such as information, consultations, mutual assistance and negotiations which often complemented the systems of environmental protection provided for by international law. The multilateral treaties on military activities were certainly relevant, not only for disarmament or humanitarian purposes but also for their objective of preserving the environment. Several of those treatioa contained provisions on the subject. Some 54 countries had so far signed the 1977 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques. Nevertheless, the Gulf war had shown that the Convention was inadequate and it had not proved effective in protecting the environment. However, that war and the steps taken by the United Nations during and after it to destroy chemical weapons in Iraq had reinforced international concern about the environmental effects of military activities,

21. In practice, all military activities, both in time of war and in peacetime, had environmental implications, From ancient times, the destruction of the environment had been an established method of both defensive and offensive warfare. Damage was caused by the direct effects of weapons and by the secondary effects, All *kinds* of dangerous wastes, including unexploded missiles and mines, remained in relatively large amounts on the battlefield long after the cessation of hostilities. The probloms that that situation caused for the rebuilding of the countries concerned were obvious.

22. Modern technology helped to increase the systematic destruction of the environment, The *growing* use of environmentally dangerous chemicals *in* warfare could destroy forests and crops and cause severe health hazards for the population, The damage to living creatures *and* plants upset the ecosystem. In general, the indirect effects affected much wider areas, The rehabilitation of the environment could take decades or centuries. For example, the defoliants used by the United States *in* South Viet Nam had devastated crops and 1,500 square kilometres of forest.

23. The environmental impact of a large-scale nuclear war would be of a different order of magnitude. The combined effects of radioactive fallout, depletion of the ozone layer and climate change would represent immeasurable disaster for most of the globe.

(Tunku Dato' Nazihah Mohammed Rus, Malaysia)

24. Peacetime military activities which also affected the environment included the production and testing of weapons, military training and exercises, the establishment of bases, and accidents. For example, it was calculated "hat the radioactive debris released into the atmosphere by atmospheric tests of nuclear weapons was between 200 and 1,000 times more than that released in the accident at Chernobyl.

25. In general, military accidents did not affect the environment. Those which did awake widespread attention are those involving nuclear weapons or nuclear reactors. Crashes of United States bombers equipped with nuclear weapons, as at Palomares in Spain in 1966 and Thule in Greenland in 1968. had entailed laborious and costly clean-up operations. Other examples of accidents included the case of the reactor-powered satellite Cosmos 954 in Canada in 1978, and the sinking of Soviet nuclear-powered submarines in the North Atlantic in 1988 and 1989.

26. The militarization of human society, as represented by the level of rmaments and military outlays, had resulted in an unconscionable waste of resources and energies. Tho end of the cold war opened perspectives for preparing collective approaches to peacemaking and conflict control, In her delegation's opinion, the international community should give priority to reduc i ng nuc lear weapons, arresting the uncontrolled proliferation of modern weapons of mass destruction, concluding a convention for the comprehensive prohibition of chemical weapons, and strengthening the basic obligations of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on their Destruction. Another area which should be addressed was the secrecy of military operations, since the public had a right to know the adverse effects of military operations on the environment.

27. With respect to implementation of Security Council resolution 678 (1990), his delegation agreed with the Secretary-General that, as the latter had indicated in his report on the work nf the Organization (A/46/1), in order to preclude controversy, the Council should satisfy itself that the rule of proportionality in the employment of armed force was observed and the rules of humanitarian law applicable in armed conflicts were complied with. Indeed, the excessive use of force in violation of the principle of proportionality and of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques had caused great harm to the environment. Tho situation was further aggravated by the irresponsible actions of Iraqi forces in burning oilfialds in Kuwait.

28. Malaysia wished to impress upon the international community the need to ensure that military activities conformed to environmental norms and regulations. It also supported the proposal that the General Assembly should set up a committee to make appropriate recommendations for a mechanism to combat the exploitation of the environment in times of armed conflict.

29. Mr. SARDENBERG (Brazil) said that it was appropriate for the Sixth Committee to address the issue of the exploitation of the environment as a weapon in times of armed conflict, as suggested by Jordan. The inclusion of the item in the agenda for the current session might be even more justifiable in the aftermath of a conflict in which deliberate and indiscriminate attempts had been made to use the environment to achieve military purposes. On the basis of any criteria, the harm to the environment caused by the Gulf conflict was serious; no less serious was the potential threat Posed by existing nuclear arsenals and other weapons of mass destruction, as had been recognized in the 1972 Stockholm Declaration.

30. With respect to the procedural aspects of consideration of the item, Jordan, after pointing out the inadequacies of the United Nations Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, had suggested in its explanatory memorandum (A/46/141, annex) that a committee should be established to deal with the question and submit to the General Assembly, if possible by the forty-seventh session, proposals for an efficient mechanism to combat the exploitation of the environment in times of armed conflict. Brazil had signed and ratified the 1977 Convention and had taken part in the negotiations leading up to its adoption. At that time, the Brazilian delegation had indicated that the draft was a painstakingly negotiated document and, as such, inevitably fell short of the original position of any individual delegation. While not fully satisfied with the draft Convention, the Brazilian delegation had accepted it, acknowledging that it constituted a realistic compromise. Ultimately, the 1977 Convention had been the result of a reaction to attempts to harness the forces of nature for hostile purposes.

31. Concern for the protection of the environment was a relatively recent phenomenon, but there were a number of legal instruments setting limits to the right of belligerents to destroy the natural environment, as previous speakers had pointed out in greater detail. One could argue that the fragmentary nature of the rules that applied to protection of the environment was enough to justify a new international instrument. Yet, the main problem did not lie in a lack of rules but in non-compliance with existing rules and in certain provisions that made such rules ineffective.

32. Much could be said to demonstrate the complexities and limitations of an exercise such as the one proposed by Jordan. However, in view of the relevance of the subject and the fact that it had only just been included in the agenda, States should be given more time to consider it and be invited to express their views before the forty-seventh session of the General Assembly. Such timing would also give the international community the benefit of having the results of the United Nations Conference on Environment and Development, to be held at Rio de Janeiro in 1992, and of the 26th International Conference of the Red Cross and the Crescent, to be held at Budapest in November/December 1991.

33. Mr. VILLAGRAN KRAMER (Guatemala) said that his delegation had followed with interest the debate on the Jordanian propoaal, particularly the atatement by the observers of the International Committee of the Red Cross *and* Switzorland on the applicability of ths Geneva Conventions and of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental *Modification* Techniques, Disapproval had been expressed because the latter convention had not prevented horrendous ucts from being commitsd during the Gulf war. That convention did however contain provisions for its own amendment) *in* principle, it was for States parties to review the amendment procedure. On the other hand, States parties to the Conventlon were not the only ones expressing their dissatisfaction with it; other States that had not ratified the Convention might do so if the text were amended.

34, All aspects of the question ought to be reviewed, both at the meetings to be held in Geneva in July and August 1992 and elsewhere. To be more specific, the Geneva meetings need not be an obstacle or a hindrance to, or a constraint on, analysis of the issue by either the Sixth Committee or, of course, the General Assembly.

35, Three fundamental issues must be taken into account in that *connection8* pollution *of* watercourses, transboundary pollution and the concept of global commons. Obviously, concern for the environment and at the harmful *effects* of human actions must not be confined to cases of war, It was not war as such that caused the greatest difficulties.

36, Indaed, when reading *of* the tragic effects in Europe of the two world wars, *one* could suppose that the warring countries were impelled by certain Western cultural values to carry through military operations with some caution. Although people had been killed and crops had been destroyed, Europeana had not damaged their forests nor poisoned their waters. Now, however, the situation was different: highly civilized notions thought they must use means of warfare whose consequences were unprecedent .d. War and peace had therefore taken on a new dimension, one that had to be faced up to, The matter was too important not to be examined i.i various forums.

The meeting rose at 11.05 a.m.