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Chairman:

Mr. AFONSO

(Mozambique)

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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

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

1. The CHAIRMAN called attention to the fact that, in accordance with its programme of work, the Committee would take up the Secretary-General's report on possible ways of assisting developing countries to attend UNCITRAL meetings at the morning meeting on Friday, 25 October. He urged delegations wishing to take part in the debate to place their names on the list of speakers as soon as possible.

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 (A/46/141 and A/46/358-S/22931)

2. Mr. SALAH (Jordan), introducing the item, said that the unanimity with which it had been accepted by the General Committee reflected the enhanced awareness of the international community when it came to questions of environmental protection. It was pertinent to recall certain characteristics that gave the matter a shared sense of urgency. First, the irreversibility of harm to the environment called for the strengthening of preventive factors and the adoption of new measures to minimize environmental damage before it occurred. Secondly, environmental damage in one part of the globe, if of a certain magnitude, would have implications in far distant and unexpected places and under the most unexpected circumstances, sometimes with devastating effects. It would therefore be short-sighted to believe that anyone could be immune. Both characteristics called for a concerted response on the part of the United Nations and, more specifically, the Sixth Committee.

3. The agenda item did not deal with environmental protection in general - that would duplicate to some extent work being done elsewhere - but only with the protection of the environment in armed conflicts. The catalyst for the inclusion of the item in the agenda had been the Gulf conflict. Therefore, the topic fell at the meeting place between environmental law and humanitarian law.

4. In proposing the inclusion of the item in the agenda, it had not been Jordan's intention that the Gulf war should be refought in the Sixth Committee. The item should not serve as a pretext for seeking to apportion blame or to write history. The purpose was to draw lessons from the excesses committed during that conflict so as to prevent a repetition in the future, and in so doing to help ensure a safer world for everyone.

5. It was sometimes argued that armed conflict was of an exceptional nature, the damage inflicted being required to achieve the purposes of the combatants, and was hence not amenable to treatment within an environmental context. His delegation believed such arguments to be grossly misconceived. First, it was obvious that armed conflict caused damage in the environment of non-combatants and that, from that point of view, the exceptional nature of armed conflict - if it existed - and the righteousness of causes were simply immaterial.

(Mr. Salah, Jordan)

Moreover, such arguments did not take into account the customary and conventional restraints on the waging of armed conflicts and flew in the face of more than 100 years of attempts to limit the right to wage war.

6. Humanitarian law and environmental law had in common the absence of absolute obligations, in the former due to the presence of the doctrine of military necessity, and in the latter due to the need to balance competing rights. Hence, it should not be too difficult structurally to introduce environmental concerns into humanitarian law applicable in armed conflicts.

7. His delegation was not unaware that other delegations had been motivated by the same concerns. Indeed, the Government of Canada had hosted a conference of experts at Ottawa on the use of the environment as a tool of conventional war, held from 9 to 12 July 1991. Although his delegation did not totally share the conclusions of the Chairman of that conference, it viewed the conference as an important step towards greater environmental protection.

8. He expressed his delegation's gratitude both to the Government of Canada for hosting the Conference and to the organizers of the London Conference on a "fifth Geneva Convention" on the protection of the environment in time of armed conflict. The London Conference, being a non-governmental meeting, had had a chance to look at some detailed substantive provisions relating to environmental protection in armed conflict. Again, while his delegation might not agree with all the conclusions of the Conference, the attempt to address such a highly topical subject deserved gratitude.

9. His delegation, which was prepared to listen attentively to all points of view, was particularly aware of the useful role that the International Committee of the Red Cross had played in the codification and progressive development of humanitarian law. At the end of November Budapest would host the twenty-sixth International Conference of the Red Cross and Red Crescent which, he understood, would deal with areas identical to those covered by item 140. His delegation hoped, therefore, that appropriate formulas could be found whereby the Committee could take cognizance of the results of that conference before proceeding with consideration of the item, and, notwithstanding its urgency, his delegation was ready to accept a procedural resolution calling upon the Secretary-General to ask Governments and international organizations for their views, as was customary. The resolution should also establish a link with the Budapest Conference, so that the results of the Conference might be awaited and duplication avoided.

10. Lastly, he was not unaware that the title proposed for the item, concentrating as it did on the exploitation of the environment, might give the impression that what was meant was an environmental modification treaty, whereas what his delegation hoped for was greater environmental protection, in general, in time of armed conflict. Therefore, it would not oppose a change in the title of the item to "Protection of the environment in armed conflict".

11. Mr. KIRSCH (Canada) said that the environmental depredation carried out by Iraq by releasing oil into the Gulf and by destroying numerous Kuwaiti oil wells had focused world attention on the difficult and delicate topic currently before the Committee. What Iraq had done was clearly illegal, as had been affirmed by the relevant Security Council resolutions and shown by the fact that a mechanism had been put in place to obtain compensation for the damage done and the clean-up involved.
12. The issue being addressed by the Committee was whether those actions were specifically illegal under the laws of armed conflict besides being part of an illegal aggression against Kuwait. His delegation took the position that actions of that type were indeed contrary to customary international law, which was binding on all States, and would like to see that point reflected in any resolution that might emerge from the discussion of item 140.
13. An important conclusion reached at the international conference of experts held at Ottawa was that the customary laws of war, in reflecting the dictates of public conscience, now included a requirement to avoid unnecessary damage to the environment. That key conclusion was based on the so-called "Marten's Clause" contained in the preamble of the 1899 and 1907 Hague Conventions, which provided that inhabitants and belligerents remained under the protection and the rule of the principles of the law of nations, as they resulted from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.
14. In effect, the practice of States, generally accepted environmental principles and public consciousness about the environment had combined with the traditional armed conflict rules on the protection of civilians and their property to produce a customary rule of armed conflict prohibiting the infliction of unnecessary damage on the environment in wartime.
15. The matter was expected to be considered in a substantive manner at the twenty-sixth International Conference of the Red Cross and Red Crescent, to be held at Budapest from 26 November to 6 December and it was hoped that amendments or additions to military manuals would be suggested. That would mark a transition from the realm of general discussion to the practical world of rules of conduct for military commanders during armed conflict.
16. Since the Budapest Conference was expected to address the topic in detail and had traditionally served as the forum for dealing with the law of armed conflict, it would appear sensible to refer directly to the Conference in any resolution adopted by the Sixth Committee and await the outcome of the Conference before embarking on a programme of work on the topic.
17. His delegation was well aware of the years of work and the resources required for the negotiation of the legal instruments elaborated on the environment and armed conflict, which represented a somewhat fine balance between competing interests and views. A clear picture of the desired objective and the chances of success would be necessary before embarking on an

(Mr. Kirsch, Canada)

exercise to amend the scope of those instruments or create new ones. His delegation would prefer to take stock of the current situation with regard to the question in order to ensure that any efforts made would be proportionate to the potential practical results and the views of Members of the United Nations must be solicited to that end.

18. Lastly, the need to implement the instruments in force more effectively through an increase in the number of States parties to existing agreements and conventions and better use of the mechanisms for which they provided should be reflected in any resolution adopted on the item.

19. Mr. MARTINEZ GONDRA (Argentina) welcomed the inclusion in the agenda of the item proposed by Jordan and said that the recent conflict in the Gulf had had serious environmental consequences, especially the massive and deliberate oil spills into the sea and the burning of oil wells. Such acts were a clear-cut example of the hostile use of environmental modification techniques prohibited by the 1977 Convention, which, as indicated by Jordan in its explanatory memorandum (A/46/141) was "painfully inadequate".

20. The effects of the conflict had reopened questions about international agreements and conventions designed to avoid the exploitation of the environment as a means of indiscriminate destruction in wartime and the infliction of serious damage to the population and its health.

21. The question of the use of environmental techniques for military purposes had not been sufficiently debated during the United Nations Conference on the Human Environment (Stockholm, 1972). Moreover, not many international agreements contained provisions on the protection of the environment in the event of armed conflict. Some allusions were made to it in the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (London, 1972); Protocol I to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts (1977); and the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (1977).

22. The Convention on environmental techniques, which had entered into force in 1978 and to which the Argentine Republic was a party, tolerated the hostile use of environmental modification techniques provided that they did not have "wide spread, long-lasting or severe effects" (art. I). Rather than banning so-called "environmental warfare" completely, it had seemed preferable to ban it on a qualified or limited basis. The Convention also provided for consultation and cooperation procedures (art. V), and procedures for investigations and fact-finding, which had not yet been made use of; it contained provisions concerning its amendment (art. VI) and on review of its operation (art. VIII), of which the parties had likewise made no use. While the Convention was a valuable reference for the debates of the Sixth Committee, questions concerning review of its operation and amendment should be left to the parties themselves.

(Mr. Martinez Gondra, Argentina)

23. The consequences of the Gulf war, however, could serve to clarify and aid the analysis of, inter alia, the implementation of the rules of customary and treaty law on environmental protection, together with other rules applicable to armed conflict. The advisability and feasibility of reorganizing and, when necessary, updating rules on environmental protection in time of armed conflict could also be assessed.

24. The views of Governments should be sought on the item under consideration and the item should be included in the agenda for the forty-seventh session of the General Assembly, either under its current title or another which would embrace all the various positions.

25. Mr. YENGEJEH (Islamic Republic of Iran) referred to the environmental disaster which had resulted from the Persian Gulf crisis and said that its vast ecological dimensions necessitated international cooperation to facilitate the elimination of its adverse effects on the environment and take the necessary steps to prevent its recurrence in the future. The report of the Secretary-General of the United Nations Conference on Environment and Development (A/CONF.151/PC/72), dated 15 July 1991 and the declaration by the conference of the Regional Organization for the Protection of the Marine Environment, recently held in Kuwait, testified to the magnitude of the environmental and economic damage caused by that disaster.

26. After a decade of suffering from the effects of war, Iran had ample reason to offer its support and cooperation to regional, international and inter-agency projects designed to accelerate the elimination of current environmental pollution. Accordingly, he wished to express his delegation's appreciation to individuals, Governments and international organizations for their efforts in organizing meetings on the subject, such as those held in Ottawa and London.

27. The Jordanian proposal, which was commendable, stressed that there were two categories of law on the protection of the environment - environmental law, aimed at protecting the environment in general, and the law of armed conflict, which sought to prevent unnecessary damage to the environment. Referring to the law of armed conflict, he said that both customary law and treaty law prohibited belligerent parties from inflicting either direct or indirect damage on the environment.

28. The principle of proportionality, which was enshrined in customary law, set important limits on warfare whereby damage not necessary to the achievement of a definite military advantage was prohibited. Another principle of customary law, whereby military operations not directed against military targets were prohibited, had been incorporated in the preamble to the 1868 Declaration of St. Petersburg to the effect of prohibiting the use of certain practices in wartime and in article 35.1 of Protocol I (1977) additional to the Geneva Conventions. Lastly, The Hague Regulations concerning the Laws and Customs of War on Land prohibited the destruction of

(Mr. Yengejeh, Islamic
Republic of Iran)

non-military enemy property unless imperatively demanded by the necessities of war. Moreover, under treaty law, parties to an armed conflict were obligated to protect the environment in time of war. The majority of countries were parties to the Geneva Conventions of 1949 and were obligated to comply with them in an international conflict. The Fourth Geneva Convention contained two provisions intended to ensure indirect protection of the environment in the context of protecting property rights in occupied territories. Thus, for example, an occupying Power which destroyed industrial installations in an occupied territory, causing damage to the environment, would be in violation of the Fourth Geneva Convention unless such destruction was justified by military necessity. If such destruction was extensive, it constituted a grave breach of the Convention and even a war crime.

29. He cited various provisions of Additional Protocol I (1977) to the Geneva Conventions which related to the protection of the environment and led to the conclusion that that instrument clearly prohibited attacks on the environment and the use of the environment as a tool of warfare. In addition to those, there were other instruments which were indirectly related to the protection of the environment, including the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. The International Law Commission, for its part, had completed the first reading of the Draft Code of Crimes Against the Peace and Security of Mankind.

30. Turning to the law on the protection of the environment, he pointed out that the general principles of customary international law clearly contained specific rules on the protection of the environment. One such rule was the obligation of States not to damage or endanger the environment beyond their jurisdiction, a rule which had been enshrined in numerous international and regional agreements.

31. With regard to the application of environmental law in time of war, he said that the relationship between a party to the conflict and a neutral State was essentially governed by the law in time of peace and, consequently, belligerent parties had an obligation to respect environmental law vis-à-vis non-belligerent States. There was no universally accepted rule concerning the application of international law on the protection of the environment to belligerent parties, and some argued that the relationship was governed by the law of armed conflict, which meant that with the outbreak of war, the application of rules on the protection of the environment was suspended. However, others argued that in such cases, under treaty law and customary law international legal rules protecting the environment were neither suspended or terminated, since the law of armed conflict itself tended to protect the environment in time of war.

32. For those reasons, his delegation was convinced that there were well-established rules of both customary and treaty law which held a party to

(Mr. Yergeh, Islamic
Republic of Iran)

a conflict responsible for unnecessary damage to the environment, and it believed that it was on the basis of those rules that the Security Council had decided in paragraph 16 of resolution 687 (1991) that Iraq was "liable under international law for any direct loss [or] damage, including environmental damage and the depletion of natural resources".

33. The Organization should concentrate its efforts on persuading States parties to ratify the existing instruments on the protection of the environment and encourage them to abide by their obligations under international law. Perhaps it would be a positive step if the United Nations elaborated a provision to the effect that the norms governing the protection of the environment were neither suspended nor terminated in time of war, as that would leave no doubt as to the applicability of environmental law in time of war. The task could be entrusted to the legal working group of the United Nations Conference on Environment and Development and the provision subsequently could be incorporated in the Earth Charter to be adopted at the Conference.

34. Mr. ROSENSTOCK (United States of America) said that the item under consideration probably would not be on the agenda were it not for the fact that 10 months earlier Iraq had deliberately exploded more than 700 oil wells in Kuwait and released over 1 million tons of crude oil into the Persian Gulf. The oil spills were likely to disrupt the Gulf ecosystem in immeasurable ways for years to come, and the toxic effects of the oil well fires could not be compared with any previous man-made environmental disaster. It was not a matter of apportioning blame but of recognizing the unique nature, from a legal point of view, of the acts carried out by Iraq.

35. The environmental carnage wrought by Iraq had understandably generated deep international concern. His country, which had worked actively along with many others to help Kuwait assess and contain the oil spills and respond to the devastating environmental and health consequences of the oil well fires, fully shared the international community's indignation at Iraq's actions.

36. In the face of Iraq's wanton environmental destruction, there were those who favoured the drafting of new international rules to protect the environment in time of war. The problem, however, was not that the existing international law did not cover actions such as those perpetrated by Iraq, for Security Council resolution 687 (1991) had made it clear that the actions by Iraq had been a clear violation of existing international law.

37. The deliberate release of oil into the Gulf and the burning of Kuwaiti oil wells had constituted a serious violation of the prohibition of the destruction of property unless required by military necessity contained in the Fourth Geneva Convention and the Regulations annexed to The Hague Convention concerning the Laws and Customs of War on Land (1907). Those acts had also been a violation of the prohibitions under customary international law against

(Mr. Rosenstock, United States)

any military operation which was not directed against a legitimate military target or which could be expected to cause incidental death, injury or damage to civilians that was clearly excessive in relation to the direct military advantage of the operation. In the situation under consideration, the oil well destruction had taken place at a time when it had been clear to Iraq that the war had ended. Those actions obviously had other objectives: for example, to injure the population of other States in the region, to take revenge on the people of Kuwait and perhaps to demonstrate in the most graphic way the ruthlessness of the Iraqi regime in pursuit of its objectives. It was impossible to imagine conduct more contrary to the very idea of human rights in armed conflict.

38. Those violations of international law had definite legal consequences, as the Fourth Geneva Convention of 1949 acknowledged in stipulating that the destruction of property not justified by military necessity was a grave breach and that persons committing such breaches incurred criminal liability. Moreover, the Charter of the International Military Tribunal stipulated that "plunder of public or private property" and "devastation not justified by military necessity" were war crimes.

39. Further, under Security Council resolution 687 (1991), Iraq was financially liable for the environmental damage it had caused. Thus, existing international law not only prohibited the type of acts committed by Iraq, but also provided important remedies to address and deter such acts, in particular with respect to personal criminal liability and official financial liability.

40. In the view of his delegation, Iraq's actions did not demonstrate that existing international law was inadequate, but, rather, that the problem involved compliance with existing law, and no new rules or conventions were needed.

41. There had been no proposals for new rules which took into account the need to maintain the careful balance between limitations on "means and methods" of warfare and preservation of national self-defence interests under Article 51 of the United Nations Charter. Rather, countries should disseminate knowledge of the existing rules as broadly as possible and as a first step, the requirements of existing international law must be fully incorporated in military manuals and military authorities must be sufficiently instructed in their application.

42. To the extent that there was a desire to propose new rules, to refine and codify existing rules, or to enhance compliance, there was an appropriate forum for that. Those issues would be fully addressed at the twenty-sixth International Conference of the Red Cross and Red Crescent, held in November 1991 at Budapest, which would consider a detailed report on the issue of protection of the environment in time of war. His delegation was confident that the Red Cross Conference would produce a document that would address all the questions about which delegations in the Sixth Committee were concerned.

(Mr. Rosenstock, United States)

It considered the Red Cross Conference the most appropriate body for an initial substantive consideration of the issue as it would provide a basis for determining what further work was necessary and in what forum.

43. The environmental catastrophe that had resulted from Iraq's actions of January 1991, which should not escape denunciation as a flagrant violation of the law, showed that efforts to ensure compliance with existing international law applicable to the protection of the environment in time of armed conflict must be intensified. To that end, the report of the Red Cross Conference would significantly enhance the ability of all Governments to decide what further action by the General Assembly was needed.

44. Mr. KORODI (Observer for the International Committee of the Red Cross) said that his organization was extremely preoccupied by the advent of increasingly destructive means of warfare, which constituted a serious threat to the environment. There was reason to fear that the use of such means could wreak such large-scale destruction as to render illusory the protection afforded civilians under international humanitarian law. Severe environmental damage could in fact seriously hamper or even prevent the implementation of provisions to protect the victims of armed conflicts.

45. The International Committee of the Red Cross (ICRC) had begun showing concern for the protection of the environment in time of armed conflict in the early 1970s and had played a very active role in introducing rules protecting the environment in international humanitarian law.

46. In the wake of the Middle East crisis, in 1990 and 1991, many questions had been raised about the content, scope and possible shortcomings of those rules, which had been discussed at several meetings of experts in which ICRC was invited to participate and also in the Preparatory Committee for the United Nations Conference on Environment and Development. Those meetings had not reached any final conclusions because, among other reasons, it had not been possible to make a scientific assessment of the environmental damage caused by modern warfare or a thorough analysis of the content and limitations of the rules in force. It was therefore necessary to continue those efforts and, in that connection, ICRC was grateful to be able to take part in the discussions of the Sixth Committee.

47. The questions ICRC intended to bring up on protection of the environment in time of armed conflict would be developed at greater length during the twenty-sixth International Conference of the Red Cross and Red Crescent, to be held in December 1991 at Budapest.

48. With respect to the law applicable to protection of the environment in time of armed conflict, ICRC was convinced that despite certain lacunae and imperfections, the existing provisions constituted a solid basis.

(Mr. Korodi)

49. The most important general principle of relevant humanitarian law, according to which the right of the parties to the conflict to choose methods or means of warfare was not unlimited, had first been set forth in the Declaration of St. Peterburg in 1868 and had been frequently reiterated in international humanitarian law treaties, most recently in Protocol I of 1977 additional to the Geneva Conventions. Like the rule of proportionality, it clearly applied to protection of the environment in wartime.

50. In addition to those principles, several treaties contributed to the protection of the environment in wartime, although they contained no specific provisions to that effect. Among them were the 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and of Bacteriological Methods of Warfare, the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, and the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects. Lastly, two recent treaties should be mentioned: the 1976 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques and Protocol I of 1977 additional to the Geneva Conventions of 1949. Both instruments were of major importance and most relevant, since they included specific provisions on environmental protection, such as article 1 of the 1976 Convention and articles 35 and 55 of the 1977 Protocol.

51. After describing briefly the provisions of those instruments, he observed that if they were correctly applied the rules of international humanitarian law in force could considerably limit environmental damage in warfare. A special effort must therefore be made to ensure that the relevant treaties, which were binding international law, were acceded to or ratified by as many States as possible. To date, Protocols I and II had been accepted by 105 and 95 States respectively.

52. With respect to substantive measures for the implementation of international humanitarian law, one could mention in particular the International Fact-finding Commission provided for by article 90 of Protocol I of 1977 and constituted on 25 June 1991. The dissemination of the applicable rules likewise contributed to their respect.

53. For its part, ICRC was of the opinion that, while it seemed unnecessary to revise international humanitarian law for the protection of the environment, certain issues deserved detailed study, for instance: a concerted interpretation of what constituted "widespread, long-term and severe damage" to the environment and protection of the environment in time of non-international armed conflict.

54. One of the tasks of ICRC was to work for the understanding and dissemination of international humanitarian law applicable in armed conflicts. In pursuance of that mandate, ICRC was ready to convene a group of

(Mr. Korodi)

experts to examine the international rules for the protection of the environment in time of armed conflict and to make proposals in that respect. ICRC had already taken initiatives of that kind, which lay at the origin of most of the current rules of international law, such as the four Geneva Conventions, their two additional Protocols, and the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons.

55. ICRC hoped that the projected common efforts would have positive results and would thereby contribute to effectively protecting the natural environment as well as victims of armed conflicts.

The meeting rose at 11.20 a.m.