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

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at the Sixth Committee of the seventy-fourth session of the United Nations General Assembly under agenda item 82: "Report of the International Law Commission on the work of its seventieth session" Cluster II, Chapter VI (Protection of the environment in relation to armed conflict)

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At the outset, I thank the Special Rapporteur for her work and for presenting the second report on protection of the environment in relation to armed conflicts (A/CN.4/728). I would like to share our delegation's preliminary comments on the draft principles, focusing in particular on the principles contained in Part Four.

As the commentary to the draft principles notes, the law of occupation applies equally to all occupations that fulfill the factual requirements of effective control of a foreign territory irrespective of whether the occupying Power invokes the legal regime of occupation and whether or not occupations are result from a use of force that is lawful in the sense of *jus ad bellum*.

The first point to make in that regard is that the distinct characteristics of the occupation should be taken into consideration while addressing the protection of the environment and property rights in an occupied territory.

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.

In situations of coercive or belligerent occupation, the authority of an Occupying Power is not derived from the will of the territorial sovereign and its people.

As some commentators rightly note, it is wrong to suggest that an Occupying Power can or should administer an occupied territory as a "trustee". A position of a trustee postulates trust, which is missing from the relations between belligerents in wartime.

While the underlying rationale of the relevant provisions of the law of occupation is to ensure, *inter alia*, the survival and welfare or, alternatively, the health and well-being of

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, the legal status of the territory in question remains unaffected by the occupation and the occupant lacks the authority to make permanent changes to that 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 certain that an occupant does not have a free hand to alter the legal and social structure of 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 s ' À ¢ M

Equally, exploitation of natural resources cannot be permitted to cover the expenses of the occupation, particularly where such occupation is a result of a serious breach, such as the violation of a prohibition on the use force.

While noting the various limitations outlined in the commentary to draft principle 21, it should be particularly emphasized that the duties of an Occupying Power in regard to the natural resources can in no way be interpreted as creating any grounds for securing or enhancing territorial claims, engaging more in exploitation of resources and thus prolonging occupation.

We believe that draft principle 21 should be considered in conjunction with the illegal exploitation of natural resources and draft principles 6 *bis* and 13 *ter*, as addressed in section II of the report of the Special Rapporteur.

We support the relevant draft articles and further work of the Commission on the questions related to the responsibility and liability for environmental harm in situations of armed conflicts, including in relations of States as well as non-State actors, such as multinational enterprises and private companies present in conflict zones and occupied territories.

We also note the information provided in the report in regard to non-binding standard-setting, as well as national and regional initiatives that address particular challenges related to the extraction of minerals and other high-value natural resources in areas of armed conflict. It is important that such initiatives continue to provide the guidance for States to incorporate standards into their national legislation and to make them binding on corporations subject to their jurisdiction that operate in conflict-affected or occupied areas.