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Report of the International Law Commission on the work of its sixty-eighth session

Protection of the environment in relation to armed conflicts

Statement by Jane J. Chigiya

Permanent Representative

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Mr. Chairman,

In this intervention, Micronesia wishes to focus on the Commission's consideration of the topic of the protection of the environment in relation to armed conflicts. Micronesia welcomes Ms. Jacobsson's third report on the topic and commends her on the comprehensiveness and care with which she produced the report.

Micronesia has a keen interest in this topic. The hundreds of islands that comprise Micronesia have a long history of being theaters of war and staging grounds for military activities conducted by foreign powers, especially in the prelude to and during World War II. Today, wrecks of military ships and aircraft as well as hulking weaponry and unexploded ordnances litter the land and sea of Micronesia, remnants of intense fighting during World War II and the massive buildup that preceded the hostilities. In Chuuk Lagoon, the former headquarters of the Japanese naval fleet in the Pacific prior to and during World War II, there are over 60 military wrecks in an area of only 40 miles wide, with large caches of oil that have reportedly begun leaking into the waters of the Chuuk Lagoon and posing major health hazards not only to the marine ecosystem but also to the population of Chuuk in the area. Clearly, the dangers posed by those wrecks and other remnants of armed conflicts to the natural environment of Micronesia—not to mention its local population—are persistent and significant. It is unconscionable that these wrecks and remnants of armed conflict have remained underwater for many decades without clear prospects of being removed or addressed anytime soon by the responsible parties.

In light of those considerations, Micronesia submitted Comments to the International Law Commission in January of this year on this topic. Micronesia is pleased that Ms. Jacobsson's third report cites the Comments extensively and incorporates some of the interests and concerns raised by Micronesia's Comments into her proposed draft principles, particularly those regarding the post-conflict phase. Micronesia's interest in this topic stems from Micronesia's history as a

victim of war and an innocent bystander during major armed conflicts waged by foreign powers, as well as longstanding stewards of rich natural ecosystems crucial to the livelihoods and cultural identity of the people of Micronesia. The draft principles being developed and adopted by the Commission will go a long way toward ensuring that the environments of States like Micronesia are not marred for all eternity by the unchecked belligerence of foreign powers.

Micronesia notes that a suggestion was made in the Commission that the pre-conflict and post-conflict phases covered by the draft principles should be limited to the periods immediately before and immediately after an armed conflict, respectively. However, Micronesia strongly maintains the view that this limitation is irrelevant and should not be adopted. An armed conflict does not always occur spontaneously or in a vacuum, but instead tends to develop over time and creates devastating effects that last far beyond the actual cessation of hostilities. A belligerent is perfectly capable of systematically altering the natural environment of a potential theater of war over months—if not years—in preparation for a looming armed conflict. Similarly, as the example of Chuuk Lagoon attests, the physical remnants of war can pose persistent threats to the natural environment of a battleground for years—if not decades—after cessation of hostilities. Accordingly, any legal obligations of belligerents under international law to protect the environment in which they wage armed conflicts must recognize the extent and degree of damage inflicted, whether actual and potential, and should not be subject to an arbitrary time schedule that does not correspond to the objective reality on the ground.

Micronesia also notes the concerns raised by some members of the Commission that the draft principles go too far beyond the protection of the natural environment and deal with the environment from a resource or human rights perspective. Micronesia wishes to stress, however, that a natural environment cannot be viewed as distinct from the people who inhabit it and rely on it for sustenance, shelter, cultural practices, sustainable development, and other major interests. Micronesia agrees that the natural environment deserves protection in and of itself, as a source of biodiversity and a key component of various natural processes critical to the proper functioning of our planet. Nevertheless, there is no reason why addressing the protection of the natural environment in relation to armed conflicts should not also involve addressing the effects on human populations caused by the destruction of the natural environment by armed conflicts. As Ms. Jacobsson has noted, the topic before the Commission is not limited to the law of armed conflict but is instead expansive enough to sweep in other disciplines in international law dealing with obligations to protect the natural environment, including for the sake of its human inhabitants and dependents.

Micronesia further notes the comments made by a number of members of the Commission regarding the inapplicability of status of forces and status of mission agreements to the topic. However, it is Micronesia's view that as long as those agreements contain provisions regarding the protection of the environment by the entities covered by those agreements, then those agreements can be bases for developing draft principles on the topic. After all, the topic covers pre-conflict and post-conflict temporal phases in addition to times of actual armed conflicts, and those agreements typically regulate the activities of forces and missions that might have negative impacts on the natural environments where armed conflicts might take place or already occur. Draft principle 7, as provisionally adopted by the Drafting Committee, is a welcome encouragement to States and international organizations to take heed of the potential

environmental consequences of their forces and missions in foreign territories, including in pre-conflict and post-conflict phases.

Micronesia welcomes the Drafting Committee's provisional adoption of draft principle 15, which encourages relevant actors in an armed conflict to cooperate with respect to post-armed conflict environmental assessments and remedial measures. Micronesia understands the concern noted in the Commission that former belligerents are unlikely to cooperate immediately after the cessation of hostilities, but this matter can be addressed by encouraging certain non-State actors—including competent international organizations—to assist in conducting post-armed conflict environmental assessments. Whatever approach is taken, the primary responsibility for conducting those assessments should not fall on third party States in whose territories the belligerents wage their armed conflicts. Those belligerents have the responsibility to conduct those assessments, just as they have the responsibility to adopt and implement remedial measures for the benefit of those third party States.

Micronesia is pleased that many members of the Commission join Ms. Jacobsson in viewing the draft principles on remnants of war as being highly pertinent to this topic. Draft principles 16 and 17, as provisionally adopted by the Drafting Committee, place the onus squarely on belligerents in an armed conflict to remove or render harmless the remnants of war under their jurisdiction or control on land or at sea that are causing or risk causing damage to the environment, including through joint operations where appropriate. Under international law, certain remnants of war—particularly warships—remain the property of belligerents who originally employ them, including long after the cessation of the relevant armed conflicts. It is challenging for a third party State on whose territory an armed conflict occurs to take steps to remove or render harmless those remnants of war when that State does not have legal ownership of those remnants. In that connection, Micronesia appreciates having a separate draft principle that recognizes this challenge faced by a third party State in addressing remnants of war at sea, as such remnants implicate markedly different conventions and disciplines of international law than those implicated by remnants found on land. Micronesia also supports expanding draft principle 16 to ensure as comprehensive a coverage of toxic and hazardous remnants of war as possible, including those that might no longer be under the jurisdiction or control of belligerents but for which the belligerents should retain some responsibility under international law.

Micronesia is concerned, however, that the draft principles on remnants of war no longer include language proposed by Ms. Jacobsson regarding taking the necessary removal actions “[w]ithout delay after the cessation of active hostilities.” Some remnants of war do have immediate impacts upon the environment, and any delay in their removal could spell disaster to the environment in addition to the continuing hazard posed to the human population. Mentions were made in the Commission as to how the removal of remnants of war should be a priority requiring quick action after the cessation of hostilities only if such removal is necessary to satisfy the immediate needs of the affected population. Micronesia is uncertain as to whether this understanding is supported by international law. The law of armed conflict might lend credence to this understanding, but there are numerous other disciplines of international law that have bearing on this issue and support a speedy removal of threats to the natural environment irrespective of the immediate needs of the affected population, including international environmental law, the law of the sea, and international human rights law. Additionally, as Ms. Jacobsson has noted, such

language on the speedy removal of remnants of war can be found in article 10 of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices. If the obligations of States to protect the environment in relation to armed conflicts that they wage extend to the post-conflict phase, then they should cover the entire post-conflict phase rather than a certain segment of that phase.

Micronesia welcomes draft principle IV-1 as proposed by Ms. Jacobsson, dealing with the rights of indigenous peoples in relation to their natural environments. Micronesia notes the extensive debate in the Commission on the proposed draft principle and understands the concerns raised in the Commission about the relevance of indigenous peoples' issues to the topic at hand. However, it is Micronesia's strong view that the draft principles should clearly address the obligations of belligerents to take into consideration the traditional knowledge and practices of indigenous peoples in connection with their natural environments. Terrestrial and maritime areas and resources are typically of great importance for indigenous communities, being closely linked to their cultural practices, socio-political rankings, traditional identities, and basic sustenance in a unique manner. This is particularly true for indigenous communities that are bystanders in armed conflicts waged by other States in those areas. Protecting those natural environments is equivalent to protecting the indigenous communities that depend on those environments. Various hard and soft law instruments in international law underscore this connection. The interests of those communities should be respected throughout all phases of an armed conflict, including post-conflict remediation.

Finally, Micronesia looks forward to the Commission's future work on this topic, particularly on the issues of responsibility, liability, and compensation in the context of the draft principles. When belligerents engage in armed conflicts in the territories of third party States and communities, those belligerents have a responsibility to those third parties to protect their environment during all phases of the armed conflict, including long after the cessation of active hostilities if threats to the natural environment persist. When the belligerents fail to discharge that responsibility, they must provide sufficient remedies to the affected third parties who depend on or are stewards for the affected natural environment. Micronesia will continue to engage in this discussion at every opportunity in the future.

Thank you, Mr. Chairman.