



General Assembly

Distr.: Limited
6 June 2019

Original: English

International Law Commission

Seventy-first session

Geneva, 29 April–7 June and 8 July–9 August 2019

Protection of the environment in relation to armed conflicts

Text and titles of the draft principles provisionally adopted by the Drafting Committee on first reading

Part One Introduction

Draft principle 1

Scope

The present draft principles apply to the protection of the environment before, during or after an armed conflict.

Draft principle 2

Purpose

The present draft principles are aimed at enhancing the protection of the environment in relation to armed conflict, including through preventive measures for minimizing damage to the environment during armed conflict and through remedial measures.

Part Two [One] Principles of general application

Draft principle 3 [4]

Measures to enhance the protection of the environment

1. States shall, pursuant to their obligations under international law, take effective legislative, administrative, judicial and other measures to enhance the protection of the environment in relation to armed conflict.
2. In addition, States should take further measures, as appropriate, to enhance the protection of the environment in relation to armed conflict.

Draft principle 4 [I-(x), 5]

Designation of protected zones

States should designate, by agreement or otherwise, areas of major environmental and cultural importance as protected zones.



Draft principle 5 [6]**Protection of the environment of indigenous peoples**

1. States should take appropriate measures, in the event of an armed conflict, to protect the environment of the territories that indigenous peoples inhabit.
2. After an armed conflict that has adversely affected the environment of the territories that indigenous peoples inhabit, States should undertake effective consultations and cooperation with the indigenous peoples concerned, through appropriate procedures and in particular through their own representative institutions, for the purpose of taking remedial measures.

Draft principle 6 [7]**Agreements concerning the presence of military forces in relation to armed conflict**

States and international organizations should, as appropriate, include provisions on environmental protection in agreements concerning the presence of military forces in relation to armed conflict. Such provisions may include preventive measures, impact assessments, restoration and clean-up measures.

Draft principle 7 [8]**Peace operations**

States and international organizations involved in peace operations in relation to armed conflict shall consider the impact of such operations on the environment and take appropriate measures to prevent, mitigate and remediate the negative environmental consequences thereof.

Draft principle 8**Human displacement**

States, international organizations and other relevant actors should take appropriate measures to prevent and mitigate environmental degradation in areas where persons displaced by armed conflict are located, while providing relief and assistance for such persons and local communities.

Draft principle 9**State responsibility**

1. An internationally wrongful act of a State, in relation to an armed conflict, that causes damage to the environment entails the international responsibility of that State, which is under an obligation to make full reparation for such damage, including damage to the environment in and of itself.
2. The present draft principles are without prejudice to the rules on the responsibility of States for internationally wrongful acts.

Draft principle 10**Corporate due diligence**

States should take appropriate legislative and other measures aimed at ensuring that corporations and other business enterprises operating in or from their territories exercise due diligence with respect to the protection of the environment, including in relation to human health, when acting in an area of armed conflict or in a post-armed conflict situation. Such measures include those aimed at ensuring that natural resources are purchased or obtained in an environmentally sustainable manner.

Draft principle 11**Corporate liability**

States should take appropriate legislative and other measures aimed at ensuring that corporations and other business enterprises operating in or from their territories can be held liable for harm caused by them to the environment, including in relation to human health, in an area of armed conflict or in a post-armed conflict situation. Such measures should, as

appropriate, include those aimed at ensuring that a corporation or other business enterprise can be held liable to the extent that such harm is caused by its subsidiary acting under its *de facto* control. To this end, as appropriate, States should provide adequate and effective procedures and remedies, in particular for the victims of such harm.

Part Three [Two]

Principles applicable during armed conflict

Draft principle 12

Martens Clause with respect to the protection of the environment in relation to armed conflict

In cases not covered by international agreements, the environment remains under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.

Draft principle 13 [II-1, 9]

General protection of the natural environment during armed conflict

1. The natural environment shall be respected and protected in accordance with applicable international law and, in particular, the law of armed conflict.
2. Care shall be taken to protect the natural environment against widespread, long-term and severe damage.
3. No part of the natural environment may be attacked, unless it has become a military objective.

Draft principle 14 [II-2, 10]

Application of the law of armed conflict to the natural environment

The law of armed conflict, including the principles and rules on distinction, proportionality, military necessity and precautions in attack, shall be applied to the natural environment, with a view to its protection.

Draft principle 15 [II-3, 11]

Environmental considerations

Environmental considerations shall be taken into account when applying the principle of proportionality and the rules on military necessity.

Draft principle 16 [II-4, 12]

Prohibition of reprisals

Attacks against the natural environment by way of reprisals are prohibited.

Draft principle 17 [II-5, 13]

Protected zones

An area of major environmental and cultural importance designated by agreement as a protected zone shall be protected against any attack, as long as it does not contain a military objective.

Draft principle 18

Prohibition of pillage

Pillage of natural resources is prohibited.

Draft principle 19**Environmental modification techniques**

In accordance with their international obligations, States shall not engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State.

Part Four**Principles applicable in situations of occupation****Draft principle 20 [19]****General obligations of an Occupying Power**

1. An Occupying Power shall respect and protect the environment of the occupied territory in accordance with applicable international law and take environmental considerations into account in the administration of such territory.
2. An Occupying Power shall take appropriate measures to prevent significant harm to the environment of the occupied territory that is likely to prejudice the health and well-being of the population of the occupied territory.
3. An Occupying Power shall respect the law and institutions of the occupied territory concerning the protection of the environment and may only introduce changes within the limits provided by the law of armed conflict.

Draft principle 21 [20]**Sustainable use of natural resources**

To the extent that an Occupying Power is permitted to administer and use the natural resources in an occupied territory, for the benefit of the population of the occupied territory and for other lawful purposes under the law of armed conflict, it shall do so in a way that ensures their sustainable use and minimizes environmental harm.

Draft principle 22 [21]**Due diligence**

An Occupying Power shall exercise due diligence to ensure that activities in the occupied territory do not cause significant harm to the environment of areas beyond the occupied territory.

Part Five [Three]**Principles applicable after armed conflict****Draft principle 23 [14]****Peace processes**

1. Parties to an armed conflict should, as part of the peace process, including where appropriate in peace agreements, address matters relating to the restoration and protection of the environment damaged by the conflict.
2. Relevant international organizations should, where appropriate, play a facilitating role in this regard.

Draft principle 24 [18]**Sharing and granting access to information**

1. To facilitate remedial measures after an armed conflict, States and relevant international organizations shall share and grant access to relevant information in accordance with their obligations under international law.
2. Nothing in the present draft principle obliges a State or international organization to share or grant access to information vital to its national defence or security. Nevertheless,

that State or international organization shall cooperate in good faith with a view to providing as much information as possible under the circumstances.

Draft principle 25 [15]

Post-armed conflict environmental assessments and remedial measures

Cooperation among relevant actors, including international organizations, is encouraged with respect to post-armed conflict environmental assessments and remedial measures.

Draft principle 26

Relief and assistance

When, in relation to an armed conflict, the source of environmental damage is unidentified, or reparation is unavailable, States are encouraged to take appropriate measures so that the damage does not remain unrepaired or uncompensated, and may consider establishing special compensation funds or providing other forms of relief or assistance.

Draft principle 27 [16]

Remnants of war

1. After an armed conflict, parties to the conflict shall seek to remove or render harmless toxic and hazardous remnants of war under their jurisdiction or control that are causing or risk causing damage to the environment. Such measures shall be taken subject to the applicable rules of international law.
2. The parties shall also endeavour to reach agreement, among themselves and, where appropriate, with other States and with international organizations, on technical and material assistance, including, in appropriate circumstances, the undertaking of joint operations to remove or render harmless such toxic and hazardous remnants of war.
3. Paragraphs 1 and 2 are without prejudice to any rights or obligations under international law to clear, remove, destroy or maintain minefields, mined areas, mines, booby-traps, explosive ordnance and other devices.

Draft principle 28 [17]

Remnants of war at sea

States and relevant international organizations should cooperate to ensure that remnants of war at sea do not constitute a danger to the environment.
