

B. Protection of the environment in relation to armed conflicts

a. Treaties including relevant regional or bilateral treaties

At present, the Kingdom of the Netherlands is not party to any relevant regional or bilateral treaty regulating the protection of the environment in a situation of armed conflict.

b. National legislation

With respect to the issue of the protection of the environment in relation to armed conflicts, the Netherlands wishes to point out that national legislation in the Netherlands concerning protection of the environment is in principle also applicable to the armed forces. Legislation does provide for the (possibility of making) exceptions, however. An example is Article 9.2.1.5 of the Environmental Management Act (*Wet Milieubeheer*). This act sets out an integrated approach to environmental management in the Netherlands and provides the legal framework by defining the roles of national, provincial or regional, and municipal government. Article 9.2.1.5 of the act provides for the possibility of excluding the applicability of certain prohibitions and obligations contained in the Act in the interest of national defence. Such exceptions can only be made through implementing legislation or by Royal Decree. National legislation concerning protection of the environment does not include specific reference to armed conflict, with one exception. This exception is found in the Environmental Management Act Title 17 2 of the act regulates the taking of certain measures in case of environmental damage or the imminent threat thereof Article 17.8 (a) (1) excludes from the scope of application of this title environmental damage or the imminent threat thereof as a result of an act of war, hostilities, civil war or insurrection

Furthermore, Dutch criminal law includes the crime of intentionally launching an attack in the knowledge that such attack will cause widespread, long-term and severe damage to the natural environment which would clearly be excessive in relation to the concrete and direct overall military advantage anticipated, when committed in an international armed conflict (Article 5 (5) (b) International Crimes Act (*Wet Internationale Misdrijven*, hereinafter. ICA))

c. Case law in which environmental law was applied to disputes in relation to armed conflict

The Kingdom of the Netherlands regrets to inform the ILC that the Kingdom is not aware, and therefore unable to provide any examples, of decisions of Dutch courts in which environmental law was applied to disputes in relation to armed conflict.

d. Instruments aimed at protecting the environment in relation to armed conflict

With respect to instruments aimed at protecting the environment, reference is made to protection of the environment in a number of documents used by the armed forces. Both in the military manual (for all military personnel) and in the manual for military law (used at the military academy) protection of the environment is mentioned as part of the protected elements during armed conflict. The protection of the environment as part of International Humanitarian Law (IHL) is discussed in more detail in the 'Manual on International Humanitarian Law' (a generic manual specifically addressing IHL). This focuses on specific rules of IHL, rather than on preventive and remedial measures. Environmental considerations are also taken into consideration as part of the procedure for determining whether new weapons or means or methods of warfare are in conformity with IHL in accordance with Article 36 of Additional Protocol I to the Geneva Conventions of 1949 In the doctrine of the armed forces of the Kingdom of the Netherlands, Rules of Engagement are not an appropriate tool for addressing prohibitions under IHL as such. There are no Status of Forces Agreements to which the Kingdom of the Netherlands is a party that specifically include rules on the protection of the environment in relation to armed conflict Protection of the environment in the context of IHL is considered not to be an appropriate subject for this kind of treaties.