

Written comments by the Republic of Cyprus on the International Law Commission's draft principles on the 'Protection of the environment in relation to armed conflicts'

Introduction

The Republic of Cyprus welcomes the commendable work of the International Law Commission (ILC) on the protection of the environment in relation to armed conflicts and the adoption of draft conclusions on first reading at the Commission's seventy-first session, and appreciates the opportunity to submit its comments and observations on the topic.

It is noteworthy that this set of draft conclusions has been elaborated in an era where the implementation of measures aiming at the protection of the environment is of utmost necessity in light of rapid developments causing deterioration of our planet's natural environment.

The draft principles address many pressing issues, such as the designation of significant environmental and cultural areas as protected zones, the protection of the environment of indigenous peoples, the prevention and mitigation of environmental degradation in areas where persons displaced by armed conflict are located, corporate due diligence and liability, as well as the environmental obligations of an occupying power. We underline the structural organization of the Draft Principles into parts arranged by the type of phase of conflict: those which apply in all circumstances, those which apply during armed conflict, during occupation and post-conflict.

The Republic of Cyprus is of the view that the environment requires enhanced protection in times of armed conflicts given that it is put under heavy stress owing to the use of an array of weapons and ammunition. Bearing in mind the above, the Republic of Cyprus supports the work of the ILC on this topic and pledges to contribute to the further development of the draft principles under discussion.

By way of general comment, the Republic of Cyprus agrees with the inclusion of non-international armed conflicts within the scope of the Draft Principles given that hostilities in a non-international

context may also have a detrimental effect on the environment, thus they require regulation. Moreover, we welcome and strongly support the application of these Draft Principles in situations of belligerent occupation (especially Draft Principles 9, 12, 18, 20-22), which is an aspect of and signifies the existence of an ongoing armed conflict.

Moreover, it should be made clear that under no circumstances should any discussion concerning the responsibilities of an occupying power concerning the natural environment of the territory it occupies, be construed as legitimising the illegal use of force or any form of occupation, or recognise or legalise any effect thereof.

Comments

1. The Republic of Cyprus deems the call for the establishment of protected zones envisaged in Draft Principles 4 and 17 essential for the enhancement of the protection afforded to areas of environmental and cultural importance. However, we believe that additional examples should be given with respect to the scope of the term ‘areas of cultural importance’ (Draft Principle 4 / Commentary, para 8). For instance, the term could include local population, such as enclaved people residing in illegally occupied areas and depending on the environment for their livelihood (see also comment on Draft Principle 20).
2. We welcome the exhortation to include provisions on environmental protection in agreements governing the presence of military forces in relation to armed conflict (Draft Principle 6). Nevertheless, it is the position of the Republic of Cyprus that clauses on the protection of the environment should be incorporated in agreements/arrangements regulating the presence of foreign armed forces in a country for the purposes of military drills, training or any other conduct not necessarily related to an armed conflict (Commentary, paras 3-4). As a matter of fact, it is the intention of the Republic of Cyprus to include environmental provisions in future status of forces agreements concluded with allied States.

3. The Republic of Cyprus shares and supports the view that State responsibility can be triggered in cases of environmental harm within the context of belligerent occupation on the basis of several legal frameworks, including the law of armed conflict and the law of international human rights (Draft Principle 9 / Commentary, para 4).
4. On Draft Principle 11 regarding corporate liability, the Republic of Cyprus recommends the inclusion of “affiliate entities” in addition to subsidiaries, to the extent that any such affiliate acts under the direction or control of another affiliate entity. That is, if a corporation is acting at the direction or control of another, its position in the corporation organisational structure is not important. This is consistent with legal regimes recognising circumstances of piercing the corporate veil may extent to affiliate entities as opposed to only parent and subsidiary entities. Moreover, an entity may act under the direction of another without necessarily being controlled by that entity. Thus, we propose the following amendment: “*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 [addition: and any other affiliate entity] under its [addition: direction or control] ~~de facto control~~*”. Of course, this is without prejudice to the rights of the territorial State to pass laws and issue decisions with respect of acts or omissions of corporations operating in an occupied territory that have an effect on the territorial State.
5. The Republic of Cyprus attaches great importance to the prohibition of pillage of natural resources (Draft Principle 18), especially in situations of belligerent occupation (Draft Principle 21). We would like to point out the absolute prohibition of pillage in occupied areas and the serious nature of such acts under the law of armed conflict, international criminal law and other legal regimes. We do agree with the position that there should not be any distinction between public or private property. Moreover, we stress the increased environmental risk engendered from operations carried out in occupied areas with a view to exploiting natural resources (*i.e.* hydrocarbon activities either inland or within the territorial sea).
6. We also express our serious apprehension in respect of the adverse effects that environmental harm may have on population in occupied areas (Draft Principle 20).

Therefore, special attention should be given to the protection of the environment in occupied areas in order to, among others, safeguard the health and well-being of individuals residing therein.

7. As regards Draft Principle 21, a statement should be made that to the extent that an occupier State administers and uses the natural resources in an occupied territory, this is with no prejudice to the permanent sovereignty of a State over its natural resources, according to customary international law and as repeatedly affirmed by the United Nations.
8. Lastly, the Republic of Cyprus agrees with the reference to the terms ‘jurisdiction or control’ in order to ensure the application of such principles in areas outside of a State’s territory over which a State exercises control, irrespective of its legality (Draft Principle 27). The recognition of extraterritorial jurisdiction or control leading to the broadening of the geographical scope of these draft principles is crucial so as to ensure the protection of the environment where a State exercises jurisdiction or control in areas beyond its territory (either in another State’s territory or at sea) whether done lawfully or unlawfully.
9. Finally, the Republic of Cyprus would like to thank the International Law Commission and the Special Rapporteur, Ms. Marja Lehto for her excellent work on such a significant topic, and we reiterate our readiness to contribute to the further elaboration of the matter.