

## **Protection of the environment in relation to armed conflicts**

[Observations on the draft principles by the secretariat of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), 22 November 2019]

After a thorough analysis of the draft principles and commentaries on the protection of the environment in relation to armed conflicts, as adopted by the International Law Commission (ILC) on first reading at its seventy-first session (A/74/10), ESCAP would like to share the following observations for potential consideration and assessment:

### **Preamble**

We applaud the efforts of ILC to contribute to the protection of the environment even in the least desirable situations, like in armed conflicts. Building on the Geneva Conventions and subsequent protocols, we suggest adding a preamble stating the spirit of these principles, considering that albeit undesirable and harmful, armed conflicts may also be able to minimize environmental damage. In line with the Universal Declaration of Human Rights, one of the goals of the United Nations is to work towards building an arms-free and peaceful world; in the meantime, it is important to take immediate action to minimize the damages, including environmental impacts that may hinder post-conflict recovery work.

A preamble may also include references to the importance of the environment for livelihoods, food and nutrition security and maintaining the traditions and cultures, which is many times intangible and irreplaceable, and enables various aspects of human rights.

### **Principle 1 - Scope**

While the scope successfully encompasses the temporal dimension *ratione temporis*, we consider it would be helpful to include the *ratione materiae* element as elaborated in the commentaries, with explicit mention to both international and non-international armed conflict, by recognized States or others. Consequently, these principles should be applicable and enforceable within the territories of all signatories, even if the armed conflict has been engaged by third parties.

### **Definitions**

For the eventual effective application of these principles, we observe a lack of definition of the concept “environment”, as shall be safeguarded in armed conflicts. Ideally, a definition should include the biosphere, geosphere, atmosphere, cryosphere and hydrosphere, and potentially the troposphere envisaging potential participation of aircraft. Likewise, it should be clear that the term environment, as construed by these principles, is an overarching construct that includes the marine environment.

#### **Principle 4 – Designation of Protected Areas**

As suggested by this principle, States should designate areas of major environmental and cultural zones. We believe it is important that States recognize UNESCO's World Heritage sites, as well as Marine Protected Areas, whose biodiversity and ecosystems may be invaluable, under the premise they should simultaneously be "demilitarizes zones" within the law of armed conflict.

#### **Principle 7 – Peace operations**

Immediately after the conflict has ended, during a cease-fire and at the beginning of peace operations, the integrity of environmental experts should be guaranteed to allow environmental fact-finding missions (in line with par. 8 in the commentary) to determine whether any environmental damage has occurred and assess the course of action.

#### **Principle 13 -General protection of the natural environment during armed conflict**

In addition to the three proposed paragraphs in this principle, we believe is it fundamental to include a provision to "4. Avoid whenever possible, or minimize, any form of pollution on land or marine pollution, including chemicals and other bio-hazards." While recognizing the balance of these principles (commentary, par.13), the explicit action of polluting and avoiding pollution are fundamental for the protection of the environment, as they may denote motive and intent.

#### **Principle 24 – Sharing and granting access to information**

Effective environmental justice demands access to information. In this regard, States should disclose and enforce the disclosure by other parties, of any environmental information that can help determine relief and remedy, but also, any vital information that secures the integrity of the affected communities by armed conflict. This is crucial for communities that have been displaced, so that they can determine the feasibility of returning to the conflict areas. This information should include any potential biohazards, reporting pollution and structural damages that may jeopardize the health, nutrition, safety and security of these populations (beyond the current obligations "under international law", as the case of landmines highlighted in the commentary). This should occur before any decisions on reconstruction and reintegration post-displacement.

#### **Principle 26 - Relief and Assistance**

When States are involved in the armed conflict, it is important to engage neutral third parties and international organization for the assessment of damages and to determine appropriate compensation and remedy in an objective manner. As elaborated in the commentary (par. 5), States may channel relief and assistance through international organizations. However, the assessment of the due damages should be performed by a third party, as States involved may be subjective.

**Additional provision - Respect for wildlife**

While these comprehensive principles address the protection of the environment in relation to human life, we strongly believe there should be a principle or an additional provision within one of the principles (i.e. Principle 1, scope/ definitions, Principle 13) regarding the respect for wildlife. Animal life is important per se, and also considering the role it plays within an ecosystem as an integral part of the environment. These principles should explicitly embrace the protection of wildlife and minimize any animal casualties during armed conflict. This is of particular importance for endangered species near extinction, including forms of life below water.

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