

## **ICRC comments on the ILC draft principles**

### **on protection of the environment in relation to armed conflicts**

The International Committee of the Red Cross (ICRC) thanks the International Law Commission (ILC) for having transmitted, for comments and observations, the draft principles on protection of the environment in relation to armed conflicts and their commentaries.

The ICRC commends the International Law Commission for the work on these draft principles and their commentaries, understanding that the latter form an integral part of the former. Armed conflicts continue to cause environmental degradation and destruction, affecting the well-being, health and survival of people across the globe, and underscores the need to consolidate the legal framework governing the protection of the environment in relation to armed conflicts. In this regard, the ICRC has no doubt that the draft principles will constitute an important contribution to contemporary international law in line with the leading role played by the International Law Commission in its codification and progressive development.

The International Law Commission's draft principles complement the ICRC's efforts to enhance respect for international humanitarian law rules protecting the natural environment in armed conflict. They are complementary to the ICRC's updated 2020 [Guidelines on the Protection of the Natural Environment in Armed Conflict](#) (ICRC Guidelines). First, the Commission's scope is broader, both in terms of temporal scope and in regard to the branches of public international law on which they draw. Secondly, the draft principles reflect and affirm that the IHL principles and rules on distinction, proportionality and precautions shall be applied to the natural environment, and finally, there are other draft principles that are based on IHL.

Following the International Law Commission's invitation, the ICRC has carefully studied the draft principles and their commentaries and would like to share with the Commission the following general observations. The ICRC comments set out below are not meant to be exhaustive but focus on the main issues raised by the draft principles of particular interest to the ICRC. They are therefore a summary of more detailed comments provided to the ILC on a confidential basis, as per the ICRC's usual practice.

The ICRC wishes to inform the International Law Commission that it may share proactively or reactively these comments on the draft principles and their commentaries in their current form or otherwise with other relevant stakeholders, in particular States and International Organizations.

The ICRC stands ready to further discuss the issue with the International Law Commission, be it in Geneva, New York or elsewhere.

#### **Relationship between the Draft Principles and IHL**

As they explain, the draft principles are general in nature and must be read together with draft principle 14, which specifically references the application of the law of armed conflict rules to the natural environment. In turn, draft principle 14 lists some specific principles and rules of the law of armed conflict but, as mentioned in the commentary, does not elaborate on these or on how they should be interpreted. Furthermore, the commentary notes that the list provided should not be seen as a closed one, as all other rules of the law of armed conflict which relate to the protection of the environment in relation to armed conflict remain applicable and cannot be disregarded. This is an important assertion and one that the ICRC welcomes. Indeed, there are many other existing rules and

recommendations relating to the protection of the natural environment under IHL. These are set out in the [ICRC Guidelines](#), which also contain commentaries to aid understanding and to clarify the source and applicability of the rules therein.

Based on the above, and to ensure that the draft principles and their commentaries are not interpreted as restricting or impairing IHL rules, the ICRC recommends that a “without prejudice” clause be included in a second paragraph in draft principle 1 (or in a separate draft principle), as follows: *“The present draft principles shall not be interpreted as restricting or impairing applicable rules of international law, in particular the law of armed conflict.”*

### **Draft Principle 1**

As noted in this principle, the draft principles apply to the protection of the environment before, during or after an armed conflict. The ICRC welcomes this temporal approach. However, a division is then made in the draft principles between those applicable during armed conflict and those applicable in situations of occupation. As occupation is regarded as a type or part of international armed conflict and treated as such by relevant instruments in IHL, particularly the Hague Regulations of 1907 and the Geneva Conventions of 1949, this approach can lead to some confusion. As a result, the ICRC recommends that occupation be explicitly mentioned as a type of armed conflict in this draft principle, and that this be further clarified in the commentary.

Furthermore, although the focus of the draft principles is on States, non-State armed groups that are parties to a non-international armed conflict are also bound by IHL. It would be important to further clarify the scope *ratione personae* of the draft principles in the commentary on draft principle 1.

### **Draft Principle 2**

The ICRC welcomes draft principle 2 and the references to preventive and remedial measures to enhance the protection of the environment in relation to armed conflict. As IHL contains relevant obligations to avoid damage from occurring in the first place, see for instance Rule 8 of the [ICRC Guidelines](#), we recommend that a reference be added to “avoiding” in addition to “minimizing” damage to the environment.

### **Draft Principle 3**

The ICRC strongly welcomes draft principle 3 and its formulation. As mentioned in the commentary, the law of armed conflict imposes several obligations on States. This includes an obligation to act in accordance with their obligations to adopt domestic legislation and other measures at the national level to ensure that IHL rules, including those protecting the natural environment, are put into practice (see [ICRC Guidelines](#) Rule 27). As some of these obligations are mentioned in the commentary while others are not, the ICRC recommends that a caveat be included to emphasize the non-exhaustive nature of the list provided in the commentary. Furthermore, the ICRC has provided more specific comments on some of the obligations, including those related to the dissemination of IHL to the armed forces and among the civilian population (see [ICRC Guidelines](#) Rules 29 and 30) and on legal review of new weapons, means or methods of warfare (see [ICRC Guidelines](#) Rule 32). For instance, on obligations related to the repression of war crimes, the ICRC recommends that the commentary to the draft principle be complemented to include other serious violations of IHL relevant to the protection of the natural environment beyond the grave breaches rules (see [ICRC Guidelines](#) Rule 28).

#### **Draft Principle 4**

We recommend that this principle be reformulated such that it does not exclude the overlap in meaning between “environmental” and “cultural” importance that is set out in the commentary, without requiring the overlap. While we share the view that areas of major environmental importance will most often have cultural significance (particularly in the meaning of, for example, the Convention on Biodiversity preamble), this should not be a requisite definitional element. We note that regardless of this change, the commentary that follows could largely stay the same, because its remarks regarding the relationship between environmental importance and cultural importance remain relevant and accurate, in our view.

This reformulation could be as follows: “States should designate, by agreement or otherwise, areas of major environmental importance as protected zones, including where those areas are of major cultural importance.”

We recommend this for two reasons. First, because under IHL the establishment of demilitarized zones or non-defended localities is not limited to areas of cultural importance; a wide variety of agreements are permitted under IHL (see [ICRC Guidelines](#) para. 202). Recommendation 17 of the [ICRC Guidelines](#) is thus worded with a broad focus on environmental protection: “parties to a conflict should endeavour to conclude agreements providing additional protection to the natural environment in situations of armed conflict”. See further paras 202-213 thereof.

Second, several of the conventions, non-binding instruments, and legislation examples described in the commentary refer to culture as a disjunctive element of the environment or environmental importance (i.e. using “or”), rather than as a definitional requirement.

#### **Draft Principle 5**

In general, while it goes beyond our area of expertise, we welcome this draft principle and its commentary. We wonder, however, if the reference to “in the event of an armed conflict” does not unduly restrict the draft principle to the “during” phase and whether “in relation to” would not more adequately cover the intended scope of this draft principle as per paragraph (1) of the commentary. On a related note, we would also question the limitation in paragraph 2 of the draft principle to “after an armed conflict”; although remediation may be difficult during an armed conflict, it would be welcome for these measures to be taken already during armed conflict, to the extent possible and as required by international law, especially in light of the long duration of contemporary armed conflicts. For instance, we note that international law contains certain rules that require action before the end of an armed conflict, such as the clearance of landmines. Finally, as the draft principle is focused on States, the ICRC would welcome a reference in the commentary to clarify that non-State armed groups also have obligations under IHL.

#### **Draft Principle 7**

As the draft principle on peace operations covers all temporal phases and is thus also applicable during armed conflict, the ICRC recommends that the commentary distinguish clearly between peace operations deployed in armed conflict from those that are deployed in armed conflict **and** are party to the armed conflict, as the latter have obligations under IHL. In this regard, there are elements in the commentary that could be read as falling below existing obligations under IHL and that should be amended: see in particular the references to “should” in paragraph (4) and in paragraph (7).

Furthermore, the commentary could also clarify that States and international organizations that form part of peace operations also have an obligation to ensure respect for IHL rules protecting the natural

environment in relation to the (other) belligerents over which they may have some degree of influence (see [ICRC Guidelines](#) Rule 16, see also para. 167 of the [ICRC updated commentary on Common Article 1 to the Geneva Conventions](#)).

### **Draft Principle 8**

The ICRC welcomes this draft principle. Indeed, the [ICRC Guidelines](#) (see paras. 3 and 151-2) and the ICRC report, *When Rain Turns to Dust*, both recognize the environmental effects of conflict-related displacement. While we agree with its formulation, the ICRC wishes to emphasize that there are relevant obligations of States and non-state armed groups parties to armed conflict under IHL related to displacement and to the provision of relief and assistance for such persons and local communities. As a result, it is important to ensure that the draft principle (formulated as “should”) not be understood as falling below these existing obligations in situations of armed conflict. Based on this, the ICRC recommends that the commentary clarify that the draft principle goes beyond existing obligations, which are not restricted or impaired.

### **Draft Principles 10 and 11**

We welcome draft principles 10 and 11. This being said, the ICRC recommends that the commentaries to these draft principles clarify that there are existing obligations under IHL that are not restricted or impaired by these draft principles, as their formulation could indicate. For instance, IHL contains obligations related to respect for, implementation and dissemination of IHL rules, including those protecting the natural environment (see [ICRC Guidelines](#) Part IV). This is particularly relevant taking into account that private military security companies (PMSCs), for instance, may be empowered to exercise elements of governmental authority in situations of armed conflict and they may themselves become parties to an armed conflict (see [Montreux Document](#)). These obligations are not reflected in the draft principle itself nor in the commentary.

The ICRC recommends clarifying that States have obligations under IHL in relation to the activities of corporate and other business enterprises, in particular PMSCs, and that these draft principles in no way impair or restrict these. For instance, paragraph (3) of draft principle 11 recommends measures aimed at ensuring that a corporation or other business enterprise can be held liable. With regard to PMSCs, for instance, the Montreux Document specifically refers to taking measures to prevent, investigate and provide effective penal sanctions for persons committing grave breaches and to investigate and, as appropriate, prosecute persons suspected of other crimes under international law. While reference is made to the Montreux Document in paragraph (9) of the commentary, it is only done with regard to obligations of home States under international human rights law.

### **Draft Principle 12**

We welcome this draft principle and its formulation. Rule 16 of the [ICRC Guidelines](#) replicates this formulation, which was also contained in the 1994 ICRC Guidelines for Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict. We strongly encourage the Commission to retain this formulation.

### **Draft Principle 13**

We welcome this draft principle and the inclusion of the reference to the obligation that care shall be taken to protect the natural environment against widespread, long-term and severe damage. This being said, the ICRC strongly recommends that the draft principle also include the obligation, based on Articles 35(3) and 55(1) of Additional Protocol I and established as a rule of customary international law, prohibiting the use of methods or means of warfare that are intended, or may be expected, to

cause widespread, long-term and severe damage to the natural environment (see ICRC customary IHL Study, first sentence of Rule 45). As reiterated in the [ICRC Guidelines](#) (see para. 48), it appears that the United States is a “persistent objector” to the customary rule, and France, the United Kingdom and the United States are persistent objectors with regard to the application of the customary rule to the use of nuclear weapons. The [ICRC Guidelines](#) further note that there is a certain amount of practice contrary to this rule and there are diverging views on its customary nature.

Based on the above, the ICRC suggests the following formulation, following the care obligation already included in the draft principle: *“The use of methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment is prohibited”*. Furthermore, the commentary of this draft principle could also be redrafted to include a discussion on this rule. First, we would recommend deletion of paragraph (9) of this commentary. Second, in drafting the commentary reference could be made to elements that should inform a contemporary understanding of “widespread”, long-term” and “severe” (see [ICRC Guidelines](#) Rule 2 and commentary thereto).

For instance, the [ICRC Guidelines](#) note the following:

- What is certain is that in assessing the degree to which damage meets the threshold, current knowledge, including on the connectedness and interrelationships of different parts of the natural environment as well as on the effects of the harm caused, must be considered (para 54). Those employing methods or means of warfare must inform themselves of the potential detrimental effects of their planned actions and refrain from those intended or expected to cause the prohibited damage (para 55).
- Other specific elements that should inform a contemporary understanding of these terms include [UNEP’s recommendation](#) to use the ENMOD precedents as a starting point. The [ICRC Guidelines](#) commentary states:
  - **‘Widespread’** should be understood as referring to damage extending to ‘several hundred square kilometers’ (para 60). This is based on several factors, including the meaning that should be given to the ‘area affected’ (para 57) and knowledge of the transregional nature of the effects of damage, which can go beyond the area directly affected by the use of a method or means of warfare (para 58).
  - **‘Long-term’** would cover damage somewhere between the range of that not considered to be short term or temporary, such as artillery bombardment, and that with impacts in the range of years (possibly a scale of 10 to 30 years) (para 63). But additional precision is needed if this rule is to provide protection where damage falls outside of the clearly accepted higher limits and a number of touchstones should inform this. For instance, the duration of the indirect – not only direct – effects of the use of a given method or means of warfare, such as the ability of certain substances to persist in particular natural environments, should be considered (paras 64-66).
  - **‘Severe’** should be understood to cover the disruption or damage to an ecosystem or harm to the health or survival of the population on a large scale, with normal damage caused by troop movements and artillery fire in conventional warfare generally falling outside the scope of this prohibition (para 72). In further determining what type of damage could be covered, effects ‘involving serious or significant disruption or harm to human life’ or ‘natural resources’ should be considered. At least to the extent that effects on ‘economic resources or other assets’ also result in disruption or damage to the ecosystem or harm to the health or survival of the population, these should also be considered.

Paragraph 3: Principle 13(3) is critical, and we welcome its inclusion as well as the commentary paras 10-12, aside from the handful of comments we have submitted on certain detail in the commentary text.

#### **Draft Principle 14**

The ICRC considers it important to undertake the following three reformulations:

Remove the reference to “military necessity”. While military necessity is an essential component and principle of IHL (its counter-balance being considerations of humanity), its inclusion here alongside more specific rules may lend credence to the understanding that military necessity can be invoked as a general exception to IHL. It is well-established that no such exception exists, unless expressly stated by a given rule. It is not included here in connection to a specific rule. (This is explained in, *inter alia*, [ICRC International Expert Meeting Report: The Principle of Proportionality](#), p. 28; [ICRC Guidelines](#), paras 176 and 180.) If military necessity is included as a general principle, its counter-balance, “considerations of humanity,” would also have been needed, but this is not advised as it is likely to create confusion – hence our recommendation to remove the reference altogether ([ICRC Guidelines](#), paras 176 and 180).

Refer to the principles and rules of “precautions” rather than “precautions in attack.” Obligations of precautions also apply to military operations, i.e. more broadly than to attacks. This is explained in [ICRC Guidelines](#) paras 125-128. It is also already explained, accurately, in para. 10 of the commentary on this draft principle. The relevant law includes:

- [Rule 44](#) of the ICRC study on customary IHL: *Methods and means of warfare must be employed with due regard to the protection and preservation of the natural environment. In the conduct of military operations, all feasible precautions must be taken to avoid, and in any event to minimize, incidental damage to the environment. Lack of scientific certainty as to the effects on the environment of certain military operations does not absolve a party to the conflict from taking such precautions.*
- Rule 8 of the [ICRC Guidelines: Precautions](#). *In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects, including the natural environment. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects, including the natural environment.*
- In addition, there is the obligation of “passive precaution,” applicable in both international and non-international armed conflict, see [ICRC Guidelines](#) Rule 9, reflecting Art 58 of Additional Protocol I and [Rule 22](#) of the ICRC study on customary IHL.

Remove “with a view to its protection.” As the formulation of “with a view to” is not legal terminology, its meaning may not be clear. It may therefore be read to have the effect of conditioning, and therefore potentially weakening, the protection that it inherent in the application of the rules already mentioned in the principle. The rules should simply be applied.

#### **Draft Principle 15**

We understand the rationale underpinning the Commission’s decision to include this draft principle separately from draft principle 14. We nevertheless strongly recommend to consider deleting this draft principle, and its commentary moved to the explanation of the principle of proportionality already contained under draft principle 14 (commentary paras 5-8). There are several reasons for our recommendation:



**Draft principle 15 adds no further protection** beyond the principle of proportionality already included expressly in draft principle 14. It appears to us that the added value identified in para. 3 of the commentary of draft principle 15 – i.e. specificity – would be better achieved in the commentary on principle 14. Most concerningly, this principle **raises a risk** that the rule of proportionality would be applied to the environment with a caveat, because the reference to “environmental considerations” is vague and subject to interpretation. We invite you to consider paras 117-122 of the [ICRC Guidelines](#), which set out the ICRC view on how the rule of proportionality must be applied to the natural environment.

**Draft principle 15 raises a risk of fragmentation** of the international law governing proportionality as applied to the natural environment. Three different formulations would now exist regarding the application of proportionality to the natural environment: [Rule 43.B](#) of the ICRC study on customary IHL, draft principle 14, and draft principle 15.

**Draft principle 15 refers to the notion of “rules of military necessity”, which do not exist as such under IHL.** As explained in previous comments, while military necessity is an essential component and principle of IHL (its counter-balance being considerations of humanity), it is not a “rule” in and of itself. This reference will lend credence to the inaccurate understanding that military necessity can be invoked as a general exception to IHL, and it is well-established that no such exception exists, unless expressly stated by a given more specific rule. (This is explained in [ICRC International Expert Meeting Report: The Principle of Proportionality](#), p. 28; [ICRC Guidelines](#), paras 176 and 180.) The ICJ Advisory Opinion referred to in the commentary does not refer to “rules of military necessity”.

**Implications for the commentary:** Para. 5 of the commentary to draft principle 15 adds new information on proportionality beyond what is already referenced in paras 5-8 of draft principle 14. We therefore propose that para. 5 be retained and added to the commentary on draft principle 14 regarding proportionality. The other paras, in our view, aim to justify a relationship with principle 14 that does not add value, and could be read as a caveat to the protection of draft principle 14.

## Draft Principle 16

We welcome this draft principle and its inclusion and strongly recommend it be maintained. While we agree with the formulation of the draft principle itself, the ICRC recommends that its commentary address more clearly the relationship of this draft principle with other customary and treaty rules related to reprisals more generally, notably against protected objects, as it is not always clear that – regardless of the existence of a specific rule prohibiting reprisals against the natural environment – there are other relevant rules of IHL that would bind States (see [ICRC Guidelines](#) Rule 4). Furthermore, according to the ICRC customary IHL study, parties to non-international armed conflicts may not resort to belligerent reprisals (ICRC Customary IHL Study, [Rule 148](#); see also [ICRC Guidelines](#) para. 94). This rule is not reflected in the commentary of the draft principles and we recommend that it should be addressed in order to ensure that the commentary does not fall below existing obligations.

## Draft Principle 17

While we welcome this draft principle, we strongly suggest its reformulation as follows: “Including when they are areas of major cultural importance, an area of major environmental importance designated by agreement as a protected zone shall be protected against any attack, as long as it does not contain a military objective, and shall benefit from any additional agreed protections.”

If this draft principle is to provide guidance beyond existing draft principles 4 and draft principle 13(3) – and avoid weakening the protections therein – it should be reformulated.

First, the current formulation of the principle does not reflect the additional protection that paras 2 and 5 of the commentary convey (*"principle 17 seeks to enhance the protection established in draft principle 13, paragraph 3"*). To do so, we recommend acknowledging the possibility of "additional agreed protections" such as those foreseen in para. 5 of the commentary. If protection beyond protection from attack is not included in this draft principle, we recommend **deleting** the principle to avoid generating confusion about the scope of principle 13(3); principle 13(3) already covers principle 17 in its current formulation. If draft principle 17 is deleted, the commentary currently included in para. 5 could be included instead under draft principle 4, as it adds important value.

Second, our comment on the formulation of draft principle 4 also applies here; we recommend that the formulation of this draft principle be changed to avoid the requirement that an area of major environmental importance can only be protected by this principle if it is also an area of cultural importance. Please see the rationale in our comment on draft principle 4, as well as Recommendation 17 of the [ICRC Guidelines](#).

### **Draft Principle 18**

We welcome the inclusion of this draft principle and the formulation of the principle itself. We have suggested minor reformulations and additions in the commentary to this draft principle, for instance to include ICRC's views on how this rule applies to the protection of the natural environment and on the prohibition of pillage itself (see [ICRC Guidelines](#) Rule 14). Notably, we would suggest referring more clearly in the commentary to the exceptions under which appropriation of property is lawful under IHL (see [ICRC Guidelines](#) para. 184).

### **Draft Principle 19**

We welcome inclusion of this draft principle which is based on the Convention on the Prohibition of Military or Any Hostile Use of Environmental Modification Techniques. The obligation set down in this draft principle is also included in the [ICRC Guidelines](#) in Rule 3.B; if considered helpful, the commentary to that rule could also be referred to (for instance, para. 85 provides examples of techniques that are or could be covered by this prohibition; paras 87-88 refer to the requirement that States parties to ENMOD inform themselves as far as possible of the potential effects of their planned military or hostile actions).

Although the draft principle focuses on the ENMOD obligations, the ICRC would have a preference to see the commentary to the draft principle address in more detail the customary IHL rule that *"Destruction of the natural environment may not be used as a weapon"* (ICRC Customary IHL Study, second sentence of [Rule 45](#); see also [ICRC Guidelines](#) Rule 3.A).

Furthermore, additional clarity could be provided on the relationship between these two rules (see [ICRC Guidelines](#) para. 83). Finally, the ICRC recommends that paragraph (3) of the commentary clarify that to the extent that the ENMOD obligation overlaps with other customary obligations (other than the one mentioned above), the draft principle would also be an obligation under customary international law.

### **Draft Principles 20-22**

In general, we welcome the draft principles on occupation and the formulation of these and their commentaries.



In the **introduction** to these draft principles, the ICRC recommends that the references to occupation not typically being characterized by active hostilities and to a stable occupation sharing characteristics with a post-conflict situation in [paragraph \(1\)](#) be nuanced, as occupation carries with it the condition of military dominion of the Occupying Power over the Occupied Territory through military means and methods. Furthermore, the ICRC provided a few other minor comments on this commentary to more accurately reflect the law of occupation.

On **draft principle 20**, the ICRC recommends the title be amended to add “in relation to the protection of the environment” in the title itself as there are other general obligations of Occupying Powers than those listed. Furthermore, in **paragraph 3 of the draft principle**, the ICRC recommends adding “unless absolutely prevented” after “shall respect” to more accurately reflect Article 43 of the Hague Regulations. In general, the ICRC agrees with what is reflected in paragraph (3) of the commentary on the relationship between different bodies of law, but recommends that the commentary also mention that the exact relationship between these is more complex (see [ICRC Guidelines](#) paras. 25-41 for a full discussion on other bodies of law).

On **draft principle 21**, the ICRC recommends that the commentary address more clearly the exceptions expressly authorized by applicable IHL provisions to the rule that immovable public property must be administered according to the rules of usufruct (see [ICRC Guidelines](#) para. 197). More generally, reference could be made to [ICRC Guidelines](#) Rule 15, including B. “immovable public property, including objects forming part of the natural environment, must be administered according to the rule of usufruct”. In paragraph (8) of the commentary, the ICRC considers that the last sentence suggests excessive flexibility in the application of an obligation under occupation and therefore we suggest “shall” be used instead.

On **draft principle 22**, the ICRC wonders why it is limited to the occupation context. If maintained in the occupation section, the ICRC recommends that the commentary clarify that this draft principle applies to all temporal phases, except for those parts of the commentary that focus on situations of occupation.

### **Draft Principle 23**

In general, the ICRC has some questions on the formulation of the commentary of this draft principle, as in some cases references to the end of an armed conflict are not always fully in line with what is provided in IHL, as well as on the temporal (and personal) scope of this draft principle. More specifically, the ICRC recommends that paragraph (3) of the commentary clarifies that the expression “parties to an armed conflict” includes former parties to an armed conflict in the event that an armed conflict has ended.

### **Draft Principle 24**

The ICRC welcomes this draft principle and the references in the commentary to relevant obligations under IHL. It recommends that, while the draft principle focuses on States and international organizations, the commentary should more clearly address the relevance of this draft principle also for non-state armed groups parties to non-international armed conflicts, particularly given that there are obligations under IHL that would also apply to them. For instance, we suggest further clarity in paragraph (1) of the commentary, which should clarify that even if the draft principle does not apply as such to non-state armed groups, this does not restrict or impair the relevant obligations of non-state armed groups parties to a conflict under IHL.

**Draft Principle 25**

From an IHL perspective, there are relevant obligations that impose requirements regarding cooperation. The term “encouraged” used in this draft principle could be read to fall below these. For instance, there are obligations regarding international cooperation for mine clearance, environmental remediation (e.g. Treaty on the Prohibition of Nuclear Weapons) and victim assistance.

IHL also contains relevant and detailed rules regulating humanitarian access that impose certain constraints on governments’ discretion to refuse and control outside humanitarian assistance. As this draft principle is focused on cooperation (and formulated as an encouragement) it could leave out such humanitarian activities (e.g. related to mine clearance, explosive remnants of war) or fall below what is required.

We therefore propose a “without prejudice” paragraph be added to the commentary. This could read, for example: “States have specific obligations related to the survey, clearance, removal, and facilitation of removal of remnants of war under international law. Compliance with these can contribute to the remediation encouraged by this Principle. Principle 25 is without prejudice to these existing obligations.”

**Draft Principle 27**

We suggest two reformulations to the text of this draft principle.

First, we propose that paragraph 1 of Principle 27 be reformulated to “at the end of active hostilities” or “after the cessation of active hostilities,” in place of “after an armed conflict.” This is because the actions contained in the draft principle can begin before the end of a conflict, and in practice do. This would also more closely reflect the temporal scope of the following obligations: Rule 83 of the ICRC customary law study; Anti-personnel Mine Ban Convention, Art. 5(1); Protocol II CCW, Art. 10(2); Protocol V CCW, Art. 4; CCM, Art. 4(1).

Second, we suggest that the reference to “toxic and hazardous” substances is changed to “toxic or hazardous substances.” This is because the definition of “hazardous” given in para. 3 of the commentary indicates that “toxic” is by definition “hazardous” (“...forms a hazard to humans and ecosystems”), but is more narrow such that it places a condition on “hazardous”. It would therefore be preferable to ensure that the meaning here is widened to included non-toxic hazardous remnants. This disjunctive use of “or” is particularly merited by the fact that principle 27 aims to strengthen the protection of the environment, as stated in para. 1.

**Draft Principle 28**

The ICRC suggests that the commentary to this draft principle clarify whether the meaning of “remnants of war” used is understood in the same manner as in draft principle 27 and is also limited to “toxic or hazardous remnants of war”. As recommended for draft principle 27, this draft principle should also apply before the end of an armed conflict and this could be clarified in paragraph (1) of the commentary.