

Written comments on behalf of the Nordic countries Denmark, Finland, Iceland, Norway and Sweden on the topic **Protection of the environment in relation to armed conflicts.**

1. The Nordic countries would once again like to express appreciation for the speed and quality with which the Commission has advanced the work on this important and timely topic. We would like to use this opportunity to thank again the Special Rapporteur, Ambassador Marja Lehto, for her outstanding work. We also reiterate our deep appreciation for the excellent contribution of the previous Special Rapporteur, Ambassador Marie Jacobsson, to the work on this topic.
2. We are pleased with the broad temporal scope of the draft principles. The Commission has not limited its focus to conflict situations, but has adopted an all-encompassing approach, covering the whole conflict cycle, including the protection of environment before, during and after armed conflicts. This methodology seems particularly well suited for management and systematization of rules and principles pertaining to the protection of environment in relation to armed conflicts. The broad temporal scope of the draft principles means that their focus is not solely on the obligations of the warring parties but that they also seek to clarify what other, non-belligerent States, or other actors could and should do to enhance environmental protection in relation to armed conflicts.
3. We are content to note that the draft principles recognize a strong link between the protection of civilians and the protection of the environment. This connection is essential in understanding how international humanitarian law protects the environment. We also agree with the material scope of the draft principles, that they apply, in principle, to both international and non-international armed conflicts, which is logical as both types of conflict can have equally severe environmental consequences. Importantly, the draft principles address the conduct of not only states, but also that of secondary international legal subjects, such as international organizations as well as other ‘relevant actors’, including non-state armed groups, corporations and civil society organizations.
4. We note that the draft principles largely reflect, but are not limited to, existing international law. In addition, they are wide-ranging, covering, for example, corporate due diligence and corporate liability for environmental damage in a conflict area. The draft principles draw on other areas of international law in addition to IHL, particularly international human rights law and international environmental law. Both these areas of law are obviously relevant in pre- and post-conflict phases and retain relevance during armed conflict.
5. We note that the draft principles have different normative value under international law, reflecting a range from legally binding rules to recommendations. Thus, in addition to systematizing existing international law in the area, the principles also contain many recommendations for the purpose of the progressive development of international law. The language of each provision gives an indication of the normative value attached to it. The commentaries add clarity and explain where a principle is based on existing international law and where it is *lex ferenda*. Many delegations have called for clarity from the Commission regarding under which part of its mandate – codification or progressive

development – it operates. Against this background, we are particularly pleased with the Commission’s transparent and forward-looking approach in this respect.

6. Regarding terminology we note that the Commission has left open the question whether to use the term ‘environment’ with or without the qualifier ‘natural’. Given the broad temporal scope of the draft principles it would seem to make sense to use consistently the broader term ‘environment’ throughout the draft principles. In the commentaries, however, whenever reference is made to the Additional Protocol I, the use of the term with the qualifier ‘natural’ seems warranted.
7. We suggest adding a draft principle that underlines that environmental damage in relation to armed conflicts may have profoundly different impact on women and men, boys and girls, due to biological factors and their societal role. Effective responses to such environmental damage should consider the different needs and capacities of women and men, boys and girls, where a gender-analysis is a useful tool to designing gender-responsive measures to effective response.
8. We encourage the Commission to consider including a new draft principle that recommends the establishment of an international mechanism to monitor the implementation of the draft principles.
9. We further recommend strengthening the language of the principles on remedial measures. Cooperation, assistance and relief are crucial in order to establish an effective legal framework. There is strong precedent in disarmament treaties for requiring cooperation in remedial measures. We therefore suggest stronger language than ‘is encouraged’ in draft principle 25. We also recommend an explicit reference to assistance.

In the following, we would like to comment briefly on some of the draft principles in more detail.

10. Draft principle 4 (and its corresponding draft principle 17) have a great potential to enhance environmental protection. With regard to the designation of protected zones in draft principle 4 we encourage the Commission to consider rephrasing the provision to avoid the impression that an area should be both of major environmental and cultural importance in order to be designated as a protected zone. However, this should be done without compromising protection of the environment of the indigenous peoples, as reflected in Principle 5.
11. We agree that the protection of the environment of the indigenous peoples merits its own draft principle (5) due to the special relationship of the indigenous peoples with their environment. Indigenous peoples have a particular internationally recognized legal status and rights that flow from that status. The Nordic countries emphasize in particular the participatory rights of indigenous peoples relating to their lands, territories, and resources, which means that consultations shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent, before adopting measures that may affect them directly. This right to be consulted is well reflected in paragraph 2 of this draft principle with regards to the post conflict stage, and is

also generally applicable at other stages. As the rights of indigenous peoples have a larger temporal application than the post-conflict stage, we would suggest including, in the commentary to this draft principle, a reference to paragraph (9) of the commentary to draft principle 5.

12. Draft principle 8 (Human displacement) is a provision that is addressed to States, international organizations and other ‘relevant actors’. Paragraph 7 lists, in a non-exhaustive manner, what the ‘relevant actors’ could be. We suggest considering mentioning non-state armed groups in that paragraph.
13. Draft principle 9 (State responsibility) is in line with the general law on State responsibility, allowing, however, room for development regarding, for instance the channeling of reparations to the affected individuals and communities.
14. Draft principle 10 (Corporate due diligence) and 11 (Corporate liability) belong to the area of law that is under rapid development. We welcome the inclusion of these provisions that may serve as catalysts for legislative measures and good practices. We wonder whether it would make sense to use the term ‘business enterprises’ instead of ‘corporations and other business enterprises’, in line with the United Nations Guiding Principles on Business and Human Rights.
15. We appreciate the confirmation by the Commission in principle 12 that the Martens Clause applies to the protection of the environment as well.
16. We are pleased that the commentary (5) to draft principle 13 lays out that in addition to international humanitarian law, which is the *lex specialis* in armed conflicts, other rules of international law, such as international environmental law and international human rights law remain relevant.
17. We agree that specific provisions regarding situations of occupation (20-22) have their place among the draft principles. The detail and depth of the analysis in the commentaries will be useful for those called upon to apply the principles.
18. Draft principle 27 (Remnants of war) and 28 (Remnants of war at sea) belong to the provisions applicable after the armed conflict. Draft principle 28 that is addressed to States generally complements the broader draft principle 27, addressed to the parties to conflict. This is a particularly challenging area to regulate and we feel that the Commission has found the right balance that does not undermine existing international legal obligations, but leaves room for the development of law. Regarding paragraphs 1 and 2 in draft principle 27 we wonder whether the conjunctive ‘and’ in “toxic and hazardous” could be replaced by the disjunctive ‘or’.
19. The Nordic countries welcome the adoption by the Commission of the 28 draft principles and commentaries on the protection of the environment in relation to armed conflicts on first reading. We hope that this will lead to the completion of the work on the draft principles on second reading in 2022. It can already be said that these draft principles are a major step forward in the systematization of the law relating to the protection of

environment in armed conflicts. In addition, the draft principles complement the important work of the United Nations Environment Programme (UNEP) and the International Committee of the Red Cross and Red Crescent (ICRC) in this area, including the new ICRC Guidelines on the Protection of the Natural Environment in Armed Conflict. The environmental consequences during and after an armed conflict have become even more clear to the international community as is shown by the work done by non-governmental organisations *such as* the Conflict and Environment Observatory and the Geneva Water Hub. We believe that because of the high quality of the principles and their all-encompassing nature and because they have been developed in close consultations with States and relevant international and expert organizations, the principles will become a legal instrument of reference in the protection of environment in armed conflicts.