Translated from French

Swiss Confederation

Ministry of Foreign Affairs

Department of Public International Law

Comments and observations of Switzerland on the topic "Protection of the environment in relation to armed conflicts"

1. General remarks

Switzerland takes note of the text of the draft principles on protection of the environment in relation to armed conflicts, adopted by the International Law Commission (hereinafter referred to as "the Commission") on first reading and transmitted for comments and observations. Switzerland supports the general purpose of the draft principles, which is to enhance the protection of the environment in relation to armed conflicts.

International humanitarian law must be adequately reflected in the development of new specific protection regimes. Switzerland welcomes any clarification aimed at enhancing the protection of the natural environment in armed conflicts.

Overall, we recommend that the Commission indicate more clearly and more systematically whether a draft principle reflects *lex lata*, whether it is formulated *de lege ferenda,* or whether it is a recommendation. The protection of the environmental during armed conflicts should be enhanced in order to fill gaps on the subject without changing existing obligations, including those flowing from international humanitarian law. It should appear clearly that the draft principles do not affect treaty (or customary) obligations. While some of the draft principles refer to the applicable international law (for example "in accordance with their obligations under international law"), Switzerland believes that such reference should be more systematic. It would be preferable to introduce a general "without prejudice" clause in draft principle 1 or 2, specifying that the draft principles do not alter existing obligations.

Consideration should also be given to including more human rights wording in the draft principles, even if such wording already appears in the commentaries.

2. Specific observations on the draft principles

2.1 Principle 1: Scope

- In general, Switzerland welcomes the temporal approach adopted, which makes it possible to distinguish between the draft principles applicable before, during or after an armed conflict. However, it considers that these temporal phases cannot be clearly delineated in all cases and that they are interrelated. This observation calls for deeper reflection. It would be useful to further clarify the possible links and overlaps between the different parts of the draft principles, in particular between the principles applicable during an armed conflict and those applicable in situations of occupation. The linkages and overlaps between the draft principles applicable after an armed conflict should also be examined. The draft principles concerning remedial measures, for example, may apply not only after an armed conflict, but also immediately upon the cessation of active hostilities.
- We welcome the application of these draft principles to both international and non-international armed conflicts.
- Switzerland believes that it should be clarified whether the draft principles also apply to organized armed groups or to other non-State actors, such as private military and security companies. We welcome the discussion in the commentaries about non-State actors, in particular private sector actors, and corporate due diligence. We believe that the current draft principles should address in more detail the responsibility and accountability of non-State armed groups concerning damage to the environment.

2.2 Principle 2: Purpose

- Switzerland believes that the protection of the natural environment during armed conflicts is an issue that should be clarified and developed further with a view to its enhancement. The draft principles should be aimed at "avoiding, and in any event to minimizing"[1] incidental damage to all or parts of the natural environment in times of armed conflict, whether direct or indirect, and not only at minimizing it. The establishment of protected zones is an example of a measure designed to avoid such damage.
- We welcome the Commission's willingness to take action to protect the environment through

[1] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) of 8 June 1977.

preventive measures, the ideal objective being to avoid any damage.

2.3 Principle 3: Measures to enhance the protection of the environment

- Switzerland welcomes the measures to enhance the protection of the environment in relation to armed conflicts set out in the commentary to draft principle 3. It welcomes in particular the reference to common article 1 of the Geneva Conventions, in which the States parties undertake to "respect and ensure respect for"[2] international humanitarian law in all circumstances. Although there is a link between the obligation to disseminate international humanitarian law and common article 1 of the Geneva Conventions, common article 1 requires a broader range of (legal and practical) measures to ensure respect for international humanitarian law. It has both a domestic and an international dimension. At the domestic level, it requires States to take measures to ensure respect for international humanitarian law by their armed forces, other persons and groups acting on their behalf, and their population in general. At the international level, it requires States not to encourage or facilitate violations of international humanitarian law by the parties to an armed conflict. It also requires them to do everything reasonably within their power to prevent and stop violations of international humanitarian law.
- Switzerland also welcomes the reference to the obligation to conduct a "weapons review". That obligation can also be linked to the obligation of all States to "respect and ensure respect for" international humanitarian law and the prohibition of the use of means and methods of warfare that are contrary to international humanitarian law. Consequently, due application of international humanitarian law involves first verifying whether the use of means and methods of warfare is consistent with international humanitarian law, before such weapons can be employed in international and non-international armed conflicts.
- Many serious violations of international humanitarian law that have an impact on the protection of the environment in relation to armed conflicts violate rules applicable to both international and non-international armed conflicts. With regard to the obligation to prosecute war crimes, Switzerland wishes to point out that States have an obligation to investigate all war crimes, not only serious breaches allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, to prosecute the suspects.[3] They also have an

[2] Common article 1 of the Geneva Conventions.

[3] See inter alia art. 49 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Convention I), Geneva, 12 August 1949; art. 50 of the Geneva Convention for the Amelioration of

obligation to investigate other relevant war crimes over which they have jurisdiction and, if appropriate, to prosecute the suspects. Furthermore, States have the right to confer on their national courts universal jurisdiction over war crimes.

2.4 Principle 4: Designation of protected zones

- In general, Switzerland welcomes the inclusion of "protected zones" in the draft principles. However, the complementarity and possible overlapping of draft principle 4 with draft principle 17 should be further clarified.
- Switzerland considers that article 60 of Additional Protocol I, on demilitarized zones, governs the establishment of "protected zones", and therefore notes that any area could be the subject of a demilitarization agreement. As the Commission points out in the commentary to the draft principle, "particular weight should be given to the protection of areas of major environmental importance". In the view of Switzerland, while the priority is indeed to designate areas of "major" environmental importance as "protected zones", the two draft principles could also allow other areas, perhaps considered of lesser importance, to be designated as "protected zones".
- It might also be useful to clarify the possible extent of the protection, by indicating for example whether the protected zones encompass only the surface or other parts as well, such as the subsoil.
- Article 60 of Additional Protocol I requires that the status of demilitarized zone be conferred by an express agreement, which can also be concluded in peacetime. It seems important to conclude such an agreement in order to ensure the acceptance of these zones, and thus their protection. The draft principle provides for the possibility of designating protected zones other than by agreement. Switzerland encourages the Commission to clarify that form of designation and to establish the means of ensuring the effectiveness of such a protective measure. It would be useful in particular to clarify how and under what circumstances a zone can be unilaterally designated as protected, with binding effects on a third State or other parties to an armed conflict. In addition, the draft principle should better reflect the fact that agreements may be concluded with or between non-State actors.

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the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Convention II), Geneva, 12 August 1949; art. 129 of the Geneva Convention relative to the Treatment of Prisoners of War (Convention III), Geneva, 12 August 1949; and art. 146 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Convention IV), Geneva, 12 August 1949. See also Rule 158 of the ICRC study on customary international humanitarian law.

- Further clarification seems to be needed on the inclusion of the term "cultural", and on how to articulate the relationship between natural environment and cultural areas. While protection of the environment and the draft principles had to include some cultural issues, Switzerland is of the opinion that a draft principle containing a definition of these issues and a corresponding commentary should be added. In any event, the definition of the term "environment" should be included in the introductory draft principles.

2.5 Principle 5: Protection of the environment of indigenous peoples

2.6 Principle 6: Agreements concerning the presence of military forces in relation to armed conflict

2.7 Principle 7: Peace operations

- The Commission could consider further clarifying the legal basis for the obligations underlying draft principle 7.
- It would also seem appropriate to include a "without prejudice" clause with respect to other international obligations. As the Commission indicates in its commentary, this would be all the more appropriate in the light of the full range of "peace operations" that could be included in the draft principle.

2.8 Principle 8 Human displacement

- Draft principle 8, on human displacement, is important before, during and after an armed conflict. Human displacement is a phenomenon that needs to be addressed not only "during and after an armed conflict", but also before.[4] Switzerland believes that it is just as important to consider *ex ante* measures to reduce the environmental impact of conflict-related human displacement, as it is to address environmental issues during and after an armed conflict. This is indeed the inference than can be drawn from the wording used in draft principle 8 ("prevent and mitigate"). Past experiences should be taken into account in the adoption of these *ex ante* measures. These measures should also help to better anticipate conflict-related human displacements.

[4] Para. (11) of the commentary to draft principle 8, where the Commission refers only to the phases "during and after an armed conflict".

2.9 Principle 9: State responsibility

- Draft principle 9 addresses the specific case of damage to the environment. The Commission could clarify the added value of draft principle 9 in relation to the draft articles on responsibility of States for internationally wrongful acts.
- As the Commission indicates in its commentary to the draft principle, a State is responsible for "all acts committed by persons forming part of its armed forces".[5] This responsibility includes acts committed by its organs and by other persons or entities empowered to act on its behalf, even if those organs or persons exceed their powers or defy instructions. If this responsibility is to extend to other "private acts",[6] Switzerland would appreciate further clarification from the Commission.
- The Commission could clarify why it was necessary to introduce a "without prejudice" clause in paragraph 2 of draft principle 9. As mentioned earlier, it seems preferable to include a general "without prejudice" clause in the introductory draft principles.
- The Commission could consider further the circumstances precluding wrongfulness in connection with an armed conflict, the relationship between draft principle 1 (scope before, during and after the armed conflict) and draft principle 9, as well as the form of reparation for injury.[7]
- Switzerland seeks clarification as to a State's obligation to "make full reparation". In some cases, compensation or environmental remediation would not fully satisfy the needs of the victims. Full reparation, according to the concept of dealing with the past followed by Switzerland, takes into account other types of reparation, such as moral or symbolic reparations. The commentary to this draft principle is currently unclear as to what this obligation entails, especially in the case where remediation of the environment is wholly or partially impossible, or in the case of damage to protected areas of cultural importance.

2.10 Corporate due diligence

- Switzerland recommends that the scope of draft principles 10 and 11 be set out more precisely. In particular, the Commission could clarify which type of companies are concerned. We propose that the scope of these two draft principles is not extended to companies whose

[5] Art. 91 of Additional Protocol I and art. 3 of Convention (IV) respecting the laws and customs of war on land and its annex, Regulations respecting the laws and customs of war on land (the Hague Regulations), arts. 46 and 56.
[6] Para. 4 of the commentary to draft principle 9.
[7] Art. 34 of the draft articles on responsibility of States for internationally wrongful acts.

activities are not related to armed conflicts, and that the focus be placed on private military and security companies.

- Draft principles 10 and 11 should apply to private military and security companies. The Montreux Document identifies, inter alia, the relevant international legal obligations for private military and security companies as follows:
    - Private military and security companies are obliged to comply with international humanitarian law or human rights law imposed upon them by applicable national law, as well as other applicable national law such as criminal law, tax law, immigration law, labour law, and specific regulations on private militaryor security services.
    - The personnel of private military and security companies are obliged to respect the relevant national law, in particular the national criminal law, of the State in which they operate, and, as far as applicable, the law ofthe States of their nationality.[8]

Switzerland recommends that the Commission consider a separate draft principle on private military and security companies: "States and international organizations that use private military and security companies shall ensure that measures are taken to protect the environment, in accordance with their international obligations in relation to armed conflicts."

- Since certain obligations and certain normative frameworks, including international humanitarian law, may directly engage companies performing certain activities related to armed conflicts, such international obligations and normative frameworks should be taken into consideration, or at least not prejudiced, in the draft principle.
- Switzerland also recommends the inclusion in the draft principle of the idea of individual criminal responsibility for certain violations of international humanitarian law in relation to the environment.[9]

2.11 Principle 11: Corporate liability

- Switzerland notes that the Montreux Document reaffirms the obligations of States under international law with regard to the activities of private military and security companies. In the first part of the Document, a distinction is made between Contracting States, Territorial States, Home States and all other States. The relevant international legal obligations under

[8] Paras. 22 and 23 of the Montreux Document on pertinent legal obligations and good practices for States related to operations of private military and security companies during armed conflict.
[9] See in particular art. 8, para. 2 (b) of the Rome Statute of the International Criminal Court.

international humanitarian law and human rights law are set out for each of these categories.

2.12 Principle 12: Martens Clause with respect to the protection of the environment in relation to armed conflict

- Switzerland welcomes the reference to the Martens clause, which forms part of customary international law and provides considerable residual protection to the extent that the "laws of humanity and the requirements of the public conscience" serve as reference when international humanitarian law is not sufficiently precise or rigorous. If follows, therefore, that not everything that is not explicitly forbidden can be considered legal if that goes against the principles set out in the Martens Clause. Indeed, the Martens Clause can be seen as prescribing positive obligations when a proposed military action would have disastrous consequences for the environment.

2.13 Principle 13: General protection of the natural environment during armed conflict

- Switzerland believes that, in its commentary, the Commission does not need to elaborate on the distinction between the "law of armed conflict" and "international humanitarian law". In the commentary, it is clear that the Commission merely repeats the traditional distinction between "Hague law" and "Geneva law". Indeed, the rules and obligations relating to occupation are clearly part of international humanitarian law and "Geneva law".
- The Commission could, however, consider explaining the relationship between the law of armed conflict and international environmental law.
- With regard to paragraph 2 of draft principle 13, Switzerland believes that there is a more general obligation to take due account of the natural environment during military operations. Care shall be taken to protect the natural environment against widespread, long-term and severe damage. This approach coincides, for example, with the obligation that "in the conduct of military operations constant care shall be taken to spare the civilian population, civilians and civilian objects".[10] As Switzerland indicated in its comments for the sixty-eighth session of the Commission in 2016, the natural environment, consisting of its various parts, enjoys the general protection accorded to civilian objects under international humanitarian law.[11] In

[10] Art. 57, para.1 of Additional Protocol I.
[11] Observations on the practice and instruments of Switzerland to protect the environment in relation to an armed conflict, as well as the additional observations on the draft principles (hereinafter: observations of Switzerland 2016).

addition, those who plan or decide upon an attack must "take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects",[12] including damage to the environment.

- Switzerland would welcome an explicit reference to the customary prohibition to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.[13]
- Switzerland also reiterates its view that "the inclusion of a definition of the term 'armed conflict' is not necessary to clarify the scope of the draft principles and could even lead to an overlapping of different definitions and application thresholds".[14] Given their general nature, the draft principles should not impair either *lex lata* or existing case law.
- The draft principles applicable during armed conflicts are very much focused on "attacks". Although military necessity is invoked in draft principle 14, Switzerland wishes to point out that the destruction of any part of the natural environment is prohibited, except in cases of imperative necessity of war. We propose that this basic rule, which applies both during hostilities[15] and during an occupation,[16] be captured in the draft principle. This rule prohibits any destruction of an adversary's property, including the natural environment, whether the damage is extensive, long-lasting and severe or results from an "attack".

2.14 Principle 14: Application of the law of armed conflict to the natural environment

- Draft principle 14, as currently formulated, sets out the basic idea that international humanitarian law applies. It would therefore be preferable (for systematic reasons) to place it as an introduction to Part Three, on principles applicable during armed conflict (draft principle 12), thus before the Martens Clause. Alternatively, it could be placed before the current draft principle 13, on general protection of the natural environment during armed conflict.
- Switzerland also wishes to point out that "the inclusion of the principle of military necessity in draft principles 14 and 15 raises certain questions. It is important to note that the principle of military necessity does not allow for derogation from existing rules of international

[12] Art. 57, para. 2 (a), chap. ii, of Additional Protocol I.
[13] See arts. 35 para. 3 and 55, para. 1, of Additional Protocol I.
[14] Observations of Switzerland 2016.
[15] See in particular art. 23 (g) of Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the laws and customs of war on land (the Hague Regulations), The Hague, 18 October 1907.
[16] See in particular art. 53 of Geneva Convention IV.

humanitarian law. The rules of international humanitarian law balance military necessity against the principle of humanity. Thus, the principle of military necessity underlies and is embodied in many of the specific rules of international humanitarian law. On the other hand, this principle is explicitly included in specific rules in order to mitigate the obligations of the parties to an armed conflict in particular situations for which international humanitarian law sets out for exceptions on grounds of military necessity (e.g., incidental and unintentional destruction of civilian property). As a general principle of international humanitarian law, military necessity only permits the use of violence necessary to achieve a legitimate objective insofar as the relevant rules of international humanitarian law are otherwise respected. When the parties to an armed conflict encounter a formal prohibition contained in a rule of international humanitarian law, they can no longer invoke military necessity in order to derogate from the rule. Where such a possibility is expressly prescribed, they may invoke it only to the extent that it is prescribed".[17] It is also worth mentioning the principle of humanity, as international humanitarian law is based on a balance between military necessity and the requirements of humanity, which is specifically expressed in the fundamental rules and principles of international humanitarian law, such as the principle of proportionality.

2.15 Principle 15: Environmental considerations

- As noted in relation to the previous draft principle, international humanitarian law, including its rules and principles, must be applied to the natural environment. In the view of Switzerland, it follows that the environment and environmental considerations must be taken into account when applying the relevant rules and principles of international humanitarian law, in particular the principles of distinction, proportionality and precaution. Draft principle 15 could therefore be deleted or combined with the previous draft principle.
- As stated above, the principle of proportionality already includes considerations of military necessity. On a more general level, the Commission could examine in more detail the correlation between protection of the environment and the rules of international humanitarian law which contain exceptions related to imperative military necessity, such as the prohibition of the destruction of any part of the natural environment, except in cases of imperative military necessity.
- Environmental considerations are also an important issue to be taken into account when

[17] Observations of Switzerland 2016.

discharging the obligation to take all feasible precautions in the attack. This also applies to the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects.[18] Such considerations must also be taken into account when selecting military objectives.[19]

2.16 Principle 16: Prohibition of reprisals

- Switzerland welcomes the fact that this principle explicitly recognizes the prohibition of attacks against the natural environment as a form of reprisal, in both international and non-international armed conflicts. This corresponds not only to the explicit prohibition in article 55, paragraph 2, of Additional Protocol I, but also to other provisions prohibiting reprisals against certain protected objects, including civilian objects in general,[20] objects indispensable to the survival of the civilian population[21] and cultural objects.[22]

2.17 Principle 17: Protected zones

- Switzerland notes with interest the concept of "protected zone" proposed in the draft principles.
- The Geneva Conventions contain various concepts which have the effect of delimiting refuge areas, intended to protect the military or civilian wounded and sick,[23] as well as civilians not taking part in hostilities.[24] Additional Protocol I contains the complementary concepts of "non-defended localities"[25] and "demilitarized zones".[26] The relevant treaty provisions

[18] Art. 57, para. 2 (a), chap. ii, of Additional Protocol I.
[19] Art. 57, para. 3, of Additional Protocol I: "When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected shall be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects."
[20] Art. 52, para.1 of Additional Protocol I.
[21] Art. 54 of Additional Protocol I.
[22] Art. 53 of Additional Protocol I and art. 4, para. 4, of the Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, The Hague, 14 May 1954 (hereinafter the Hague Convention for the Protection of Cultural Property).
[23] Art. 23 of Geneva Convention I: "hospital zones and localities" to protect "the [military] wounded and sick [soldiers] as well as the personnel entrusted with the organization and administration of these zones and localities and with the care of the persons therein assembled; art. 14 of Geneva Convention IV: "hospital and safety zones and localities" to protect wounded, sick, disabled and aged persons, children under fifteen, expectant mothers and mothers of children under seven; Customary international humanitarian law, Rule 35.
[24] Art. 15 of Geneva Convention IV: "neutralized zones" established in regions where fighting is taking place to shelter wounded and sick combatants or non-combatants, and civilian persons who take no part in hostilities, and who, while they reside in the zones, perform no work of a military character; Customary international humanitarian law, Rule 35.
[25] Art. 59 of Additional Protocol I; Customary international humanitarian law, Rule 37.
[26] Art. 60 of Additional Protocol I; Customary international humanitarian law, Rule 36.

specify the unique characteristics of each of these zones, the conditions for their creation and the rights and obligations attached thereto. Although the above-mentioned provisions are primarily intended to protect war victims from the effects of hostilities, and experience shows that it is difficult to establish such zones once hostilities have started, these concepts could provide a valuable basis for the draft principles concerning "protected zones". Switzerland believes that it would be useful for the Commission to conduct a more in-depth analysis of how the rules concerning the various types of protected zones could be applied to enhance the protection of the natural environment. Guidance on how the establishment of such zones could be facilitated (in practice) would also be useful.

- Switzerland reiterates the comments made above concerning draft principle 4 with regard to the complementarity of the two draft principles, the focus on areas of "major" environmental importance, and the possibility of agreements on such areas being concluded with or between non-State actors.
- Switzerland also notes that the provision concerning demilitarized zones does not provide any particular reason for the conferring of the status of demilitarized zone, and that any area, regardless of its importance, could be the subject of a demilitarization agreement.
- With regard to the termination of the protection granted to the zone, Switzerland notes that a substantial violation of the agreement by which the zone was designated as protected is the decisive criterion and not the presence or absence of a military objective in the zone. For example, article 60 of Additional Protocol I provides that "the subject of such an agreement shall normally be any zone which fulfils the following conditions". This means that possible deviations or agreements on other conditions or on more detailed conditions are possible. In this regard, the International Committee of the Red Cross (ICRC) states as follows in its study on customary international humanitarian law, in relation to Rule 36: "Article 60 (3) of Additional Protocol I provides a blueprint for the terms of an agreement on a demilitarised zone, but any such agreement can be tailored to each specific situation [...] The protection afforded to a demilitarised zone ceases if one of the parties commits a material breach of the agreement establishing the zone." That said, in practice, the agreements are likely to contain provisions on the presence of (potential) military objectives in the area concerned.

2.18 Principle 18: Prohibition of pillage

- Switzerland welcomes the inclusion of this prohibition in the draft principles. It is one of the fundamental prohibitions applicable during hostilities and in situations of occupation.

- As for the definition of pillage, it seems to imply that the appropriation must be for private or personal use.

2.19 Principle 19: Environmental modification techniques

- The 1976 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques prohibits any environmental modification that causes damage to another State party to the Convention.[27] While the application of the Convention to non-international armed conflicts may be less clear, Switzerland believes that the Convention covers at least the use of environmental modification techniques for hostile purposes, which would meet the required threshold of damage in the territory of another State party. Indeed, the damage referred to in the Convention rarely seems to be limited just to the territory of the State party in whose territory a non-international armed conflict takes place.
- The use of the environment as a weapon is prohibited in international and non-international armed conflicts.
- Switzerland has recognized that a person commits a war crime, in the context of an international or non-international armed conflict, if he launches an attack although he knows or must assume that such an attack will cause loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.[28]

2.20 Principle 20: General obligations of an Occupying Power

- As already mentioned in relation to other definitions, such as that of armed conflict, we are of the opinion that a detailed definition of the concept of occupation should be avoided in the introduction to Part Four. At the very least, care should be taken to ensure that the commentary faithfully captures the wording of the relevant treaties, customary law and case law, in particular the Hague Regulations.[29]
- With regard to the general obligations of an Occupying Power, the Commission could, in its

[27] Art. 1 Convention on the Prohibition of Military or Any Hostile Use of Environmental Modification Techniques.
[28] Article 264g of the Swiss Criminal Code of 21 December 1937 (status as at 1 July 2020), RS 311.0.
[29] See inter alia arts. 42 and 43 of the advisory opinion of the International Court of Justice on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 9 July 2004.

commentary to draft principle 20, in paragraph (1) in particular, elaborate further on the role of the Occupying Power as administrator and usufructuary,[30] or on the protections against the destruction or seizure of an adversary's property.[31] As for paragraph 2 of the draft principle itself, the Commission might consider clarifying the limitation to "significant harm", for example, in the light of the general obligation to " restore, and ensure, as far as possible, public order and safety",[32] or on other obligations concerning public health or food supply.

- The Commission could also clarify the reference to the protection of "the population of the occupied territory" in draft principles 20 and 21, particularly with regard to the concept of "protected persons". Currently, it appears that different definitions are used in the commentaries. The Commission could also specify how the interests of the local population are to be taken into account, for example when introducing changes in the laws and institutions of the occupied territory or when using natural resources. In this respect, the rule of usufruct and the presumption in favour of maintaining the existing legal order are of vital importance.

2.21 Principle 21: Sustainable use of natural resources

2.22 Principle 22: Due diligence

- The Commission could clarify the application of the draft principle on the obligation of due diligence in situations other than that of occupation. It might be worthwhile for the Commission to extend that duty to situations other than those of occupation, modelled on its work on the draft articles on prevention of transboundary harm from hazardous activities, where that obligation is said to apply to activities carried out within the territory or otherwise under the jurisdiction or control of a State.

2.23 Principle 23: Peace processes

2.24 Principle 24: Sharing and granting access to information

- The draft principle contains important provisions concerning remedial measures. The Commission could consider describing in more detail the role of non-State actors expected to

[30] In particular, as set out in art. 55 Hague Regulations.
[31] In particular as contained in arts. 23 (g), 46, 52, 53 and 55 of the Hague Regulations and art. 53 Geneva Convention IV.
[32] Art. 43 of the Hague Regulations.

provide relevant information. For example, in accordance with Amended Protocol II annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, the parties to a conflict must record and retain all information concerning minefields, mined areas, mines, booby-traps and other devices. Amended Protocol II also provides for the granting of access to such information.[33] The Commission may also wish to examine the extent to which such information could already be provided before the end of an armed conflict, notably upon the cessation of active hostilities.

- Environmental challenges are transboundary challenges that can only be addressed through cooperation and therefore the granting of access to and sharing of information on the issue. The right of access to information in general derives from article 19 of the International Covenant on Civil and Political Rights[34] and is embodied in the Aarhus Convention.[35] The duty of States parties to grant access to environmental information should also play a role in armed conflicts.[36]

2.25 Principle 25: Post-armed conflict environmental assessments and remedial measures

2.26 Principle 26: Relief and assistance

- Switzerland invites the Commission to reflect further on this draft principle. It could, for example, examine in more detail the different obligations and modalities of relief or assistance towards individuals and victims or affected parts of the environment under the jurisdiction or control of a State. It would also be interesting to reflect on the obligations and modalities of relief or assistance that could be envisaged when the source of environmental damage is identified, as well as the obligations of the State concerned in cases where responsibility is attributed to a third State.
- The Commission could also examine in more detail possible obligations regarding international cooperation and assistance.

[33] Art. 9 of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II, as amended on 3 May 1996), annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects.

[34] International Covenant on Civil and Political Rights, of 16 December 1966, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI); entered into force on 23 March 1976, in accordance with the provisions of its article 49.

[35] Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, on 25 June 1998 (hereafter Aarhus Convention).

[36] Art. 4 of Aarhus Convention.

2.27 Principle 27: Remnants of war

- Switzerland welcomes the inclusion of a draft principle on remnants of war, which can have a significant ecological footprint, hinder the return of displaced persons, undermine sustainable development and affect human security.
- This is why Switzerland also welcomes the fact that the draft principle is not limited to explosive remnants of war. The draft principle should, however, better reflect the obligations attaching to explosive remnants of war under international law.
- The Commission could consider placing greater emphasis on the following issues:
    - Although the draft principle applies mainly to post-conflict situations, some activities may already take place upstream, for example, immediately upon the cessation of active hostilities.
    - The Commission could consider aiming the draft principle at "States and parties to a conflict", in order to cover different situations during and after an armed conflict.
    - The Commission could clarify the meaning of the obligation of parties to a conflict to "seek to remove or render harmless" toxic and hazardous remnants of war.
    - Depleted uranium also falls within the realm of arms control and could be included in the category of "hazardous remnants of war". The Commission could provide a more detailed description of the international commitments on the subject and of how depleted uranium should be handled, particularly in a post-conflict situation.

2.28 Remnants of war at sea