

## **Comments and observations on the International Law Commission draft principles on the protection of the environment in relation to armed conflicts**

### **Office for Disarmament Affairs**

#### **Principle 13**

##### **General protection of the natural environment during armed conflict**

1. The natural environment shall be respected and protected in accordance with applicable international law and, in particular, the law of armed conflict.
2. Care shall be taken to protect the natural environment against widespread, long-term and severe damage.
3. No part of the natural environment may be attacked, unless it has become a military objective.

#### **ODA comments on principle 13**

1. ODA notes the general nature of draft principle 13, as explained in paragraph 9 of the commentary, in light of Article 55 of Additional Protocol I to the 1949 Geneva Conventions.<sup>1</sup> This approach provides space for consideration of policies and practices, short of legal prohibitions, applicable to certain methods or means of warfare which may cause widespread, long-term and severe damage to the natural environment apart from the prohibition contained in Article 55.

2. In this connection, ODA considers that the effects of the use of armaments and ammunitions containing depleted uranium are relevant. ODA notes, in this connection, the observation of the United Nations Environment Programme, as contained in A/65/129/Add.1, that there are major scientific uncertainties on the long-term environmental impacts of depleted uranium, particularly with respect to long-term groundwater contamination. For this reason, ODA supports a call for a precautionary approach to the use of armaments and ammunitions containing depleted uranium as well as a recommendation for action to be taken to clean up and decontaminate polluted sites, includes sites polluted during armed conflict. In light of the ubiquitous manner in which ammunition containing depleted uranium may be used, it is possible that their environmental impacts could be widespread. Due to the uncertainties regarding their long-term impacts, the possible severity of such impacts is at present difficult to qualify.

#### **Principle 14**

##### **Application of the law of armed conflict to the natural environment**

The law of armed conflict, including the principles and rules on distinction, proportionality, military necessity and precautions in attack, shall be applied to the natural environment, with a view to its protection.

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<sup>1</sup> Article 55 – Protection of the natural environment reads:

“1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.

## **ODA comments on principle 14**

1. ODA notes that the preamble to the Treaty on the Prohibition of Nuclear Weapons includes references to the environmental impact of nuclear weapons, including in the context of the law of armed conflict:

*Cognizant* that the catastrophic consequences of nuclear weapons cannot be adequately addressed, transcend national borders, pose grave implications for human survival, the environment, socioeconomic development, the global economy, food security and the health of current and future generations, and have a disproportionate impact on women and girls, including as a result of ionizing radiation;

*Basing themselves* on the principles and rules of international humanitarian law, in particular the principle that the right of parties to an armed conflict to choose methods or means of warfare is not unlimited, the rule of distinction, the prohibition against indiscriminate attacks, the rules on proportionality and precautions in attack, the prohibition on the use of weapons of a nature to cause superfluous injury or unnecessary suffering, and the rules for the protection of the natural environment;

2. ODA notes that the States Parties to the Treaty are prohibited from, inter alia, using or threatening to use nuclear weapons or other nuclear explosive devices.

## **Principle 19**

### **Environmental modification techniques**

In accordance with their international obligations, States shall not engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State.

## **ODA comments on principle 19**

1. ODA supports the inclusion of this principle, which is modelled on the 1976 Convention on the Prohibition of Military or Any Hostile Use of Environmental Modification Techniques. ODA supports the view attributed to the International Committee of the Red Cross that the destruction of the natural environment as a weapon is a norm of customary international law “applicable in international armed conflicts and arguably also in non-international armed conflicts”, as contained in paragraph 4 of the commentary for this principle.

## **Principle 25**

### **Post-armed conflict environmental assessments and remedial measures**

Cooperation among relevant actors, including international organizations, is encouraged with respect to post-armed conflict environmental assessments and remedial measures.

## **ODA comments on principle 25**

1. ODA notes that the Treaty on the Prohibition of Nuclear Weapons requires each State Party, with respect to areas under its jurisdiction or control contaminated as a result of activities related to the testing or use of nuclear weapons or other nuclear explosive devices, shall take necessary and appropriate measures towards the environmental remediation of

areas so contaminated. The Treaty will also establish a right of each State Party to seek and receive assistance, where feasible, from other States Parties. Each State Party in a position to do so shall provide technical, material and financial assistance to States Parties affected by nuclear-weapons use or testing, to further the implementation of this Treaty.

### **Principle 26**

#### **Relief and assistance**

When, in relation to an armed conflict, the source of environmental damage is unidentified, or reparation is unavailable, States are encouraged to take appropriate measures so that the damage does not remain unrepaired or uncompensated, and may consider establishing special compensation funds or providing other forms of relief or assistance.

#### **ODA comments on principle 26**

1. ODA notes that the provisions on environmental remediation and international cooperation contained in the Treaty on the Prohibition of Nuclear Weapons will be applicable in situations in which the source of environmental damage resulting from the use of a nuclear weapon is unidentified, or reparation is unavailable.

### **Principle 27**

#### **Remnants of war**

1. After an armed conflict, parties to the conflict shall seek to remove or render harmless toxic and hazardous remnants of war under their jurisdiction or control that are causing or risk causing damage to the environment. Such measures shall be taken subject to the applicable rules of international law.

2. The parties shall also endeavour to reach agreement, among themselves and, where appropriate, with other States and with international organizations, on technical and material assistance, including, in appropriate circumstances, the undertaking of joint operations to remove or render harmless such toxic and hazardous remnants of war.

3. Paragraphs 1 and 2 are without prejudice to any rights or obligations under international law to clear, remove, destroy or maintain minefields, mined areas, mines, booby-traps, explosive ordnance and other devices.

#### **ODA comments on principle 27**

1. ODA notes the explanations in the commentary that explosive remnants of war are one form of potentially toxic and hazardous remnants of war as well as that some remnants of war are not dangerous to the environment at all or may be less dangerous if they remain where they are after the conflict is over.

2. The objective of draft principle 27, as specified in the commentary, to strengthen the protection of the environment in a post-conflict situation, may conflict in certain situations with the objective of Protocol V of the Convention on Certain Conventional Weapons.

3. In particular, pursuant to Protocol V of the Convention, a High Contracting Party and party to an armed conflict has a duty to mark and clear, remove or destroy explosive

remnants of war in affected territories under its control. This obligation applies even in situations where removal may pose a higher environmental risk than leaving the remnants where they are. In such a situation, a High Contracting Party to Protocol V would not have recourse to the environmentally appropriate option to “do nothing”, in accordance with its obligations under that Protocol.

4. It is important, in this connection, that paragraph 3 of principle 27 specifies that paragraphs 1 and 2 are without prejudice to any rights or obligations under international law to clear, remove, destroy or maintain minefields, mined areas, mines, booby-traps, explosive ordnance and other devices.