

Draft principles on protection of the environment in relation to armed conflicts

2022

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Protection of the environment in relation to armed conflicts

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Recalling the urgent need and common objectives to reinforce and advance the conservation, restoration and sustainable use of the environment for present and future generations,

Recalling also that Principle 24 of the Rio Declaration on Environment and Development provides, *inter alia*, that States shall respect international law providing protection for the environment in times of armed conflict and cooperate in its further development,

Recognizing that environmental consequences of armed conflicts may be severe and have the potential to exacerbate global environmental challenges, such as climate change and biodiversity loss,

Aware of the importance of the environment for livelihoods, food and water security, maintenance of traditions and cultures, and the enjoyment of human rights,

Emphasizing that environmental factors are to be taken into account in the context of the implementation of the principles and rules of the law applicable in armed conflict,

Conscious of the need to enhance the protection of the environment in relation to both international and non-international armed conflicts, including in situations of occupation,

Considering that effective protection of the environment in relation to armed conflicts requires that measures are taken by States, international organizations and other relevant actors to prevent, mitigate and remediate harm to the environment before, during and after an armed conflict,

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Part One Introduction

Principle 1 Scope

The present draft principles apply to the protection of the environment before, during or after an armed conflict, including in situations of occupation.

Principle 2 Purpose

The present draft principles are aimed at enhancing the protection of the environment in relation to armed conflicts, including through measures to prevent, mitigate and remediate harm to the environment.

Part Two Principles of general application

Principle 3 Measures to enhance the protection of the environment

1. States shall, pursuant to their obligations under international law, take effective legislative, administrative, judicial and other measures to enhance the protection of the environment in relation to armed conflicts.
2. In addition, States should take further measures, as appropriate, to enhance the protection of the environment in relation to armed conflicts.

Principle 4 Designation of protected zones

States should designate, by agreement or otherwise, areas of environmental importance as protected zones in the event of an armed conflict, including where those areas are of cultural importance.

Principle 5

Protection of the environment of indigenous peoples

1. States, international organizations and other relevant actors shall take appropriate measures, in the event of an armed conflict, to protect the environment of the lands and territories that indigenous peoples inhabit or traditionally use.
2. When an armed conflict has adversely affected the environment of the lands and territories that indigenous peoples inhabit or traditionally use, States shall undertake appropriate and effective consultations and cooperation with the indigenous peoples concerned, through appropriate procedures and in particular through their own representative institutions, for the purpose of taking remedial measures.

Principle 6

Agreements concerning the presence of military forces

States and international organizations should, as appropriate, include provisions on environmental protection in relation to armed conflict in agreements concerning the presence of military forces. Such provisions should address measures to prevent, mitigate and remediate harm to the environment.

Principle 7

Peace operations

States and international organizations involved in peace operations established in relation to armed conflicts shall consider the impact of such operations on the environment and take, as appropriate, measures to prevent, mitigate and remediate the harm to the environment resulting from those operations.

Principle 8

Human displacement

States, international organizations and other relevant actors should take appropriate measures to prevent, mitigate and remediate harm to the environment in areas where persons displaced by armed conflict are located, or through which they transit, while providing relief and assistance for such persons and local communities.

Principle 9

State responsibility

1. An internationally wrongful act of a State, in relation to an armed conflict, that causes damage to the environment entails the international responsibility of that State, which is under an obligation to make full reparation for such damage, including damage to the environment in and of itself.
2. The present draft principles are without prejudice to the rules on the responsibility of States or of international organizations for internationally wrongful acts.
3. The present draft principles are also without prejudice to:
 - (a) the rules on the responsibility of non-State armed groups;
 - (b) the rules on individual criminal responsibility.

Principle 10
Due diligence by business enterprises

States should take appropriate measures aimed at ensuring that business enterprises operating in or from their territories, or territories under their jurisdiction, exercise due diligence with respect to the protection of the environment, including in relation to human health, when acting in an area affected by an armed conflict. Such measures include those aimed at ensuring that natural resources are purchased or otherwise obtained in an environmentally sustainable manner.

Principle 11
Liability of business enterprises

States should take appropriate measures aimed at ensuring that business enterprises operating in or from their territories, or territories under their jurisdiction, can be held liable for harm caused by them to the environment, including in relation to human health, in an area affected by an armed conflict. Such measures should, as appropriate, include those aimed at ensuring that a business enterprise can be held liable to the extent that such harm is caused by its subsidiary acting under its *de facto* control. To this end, as appropriate, States should provide adequate and effective procedures and remedies, in particular for the victims of such harm.

Part Three
Principles applicable during armed conflict

Principle 12
Martens Clause with respect to the protection of the environment in relation to armed conflicts

In cases not covered by international agreements, the environment remains under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.

Principle 13
General protection of the environment during armed conflict

1. The environment shall be respected and protected in accordance with applicable international law and, in particular, the law of armed conflict.
2. Subject to applicable international law:
 - (a) care shall be taken to protect the environment against widespread, long-term and severe damage;
 - (b) the use of methods and means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the environment is prohibited.
3. No part of the environment may be attacked, unless it has become a military objective.

Principle 14
Application of the law of armed conflict to the environment

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

Principle 15
Prohibition of reprisals

Attacks against the environment by way of reprisals are prohibited.

Principle 16
Prohibition of pillage

Pillage of natural resources is prohibited.

Principle 17

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.

Principle 18

Protected zones

An area of environmental importance, including where that area is of cultural importance, designated by agreement as a protected zone shall be protected against any attack, except insofar as it contains a military objective. Such protected zone shall benefit from any additional agreed protections.

Part Four

Principles applicable in situations of occupation

Principle 19

General environmental obligations of an Occupying Power

1. An Occupying Power shall respect and protect the environment of the occupied territory in accordance with applicable international law and take environmental considerations into account in the administration of such territory.
2. An Occupying Power shall take appropriate measures to prevent significant harm to the environment of the occupied territory, including harm that is likely to prejudice the health and well-being of protected persons of the occupied territory or otherwise violate their rights.
3. An Occupying Power shall respect the law and institutions of the occupied territory concerning the protection of the environment and may only introduce changes within the limits provided by the law of armed conflict.

Principle 20

Sustainable use of natural resources

To the extent that an Occupying Power is permitted to administer and use the natural resources in an occupied territory, for the benefit of the protected population of the occupied territory and for other lawful purposes under the law of armed conflict, it shall do so in a way that ensures their sustainable use and minimizes harm to the environment.

Principle 21

Prevention of transboundary harm

An Occupying Power shall take appropriate measures to ensure that activities in the occupied territory do not cause significant harm to the environment of other States or areas beyond national jurisdiction, or any area of the occupied State beyond the occupied territory.

Part Five

Principles applicable after armed conflict

Principle 22

Peace processes

1. Parties to an armed conflict should, as part of the peace process, including where appropriate in peace agreements, address matters relating to the restoration and protection of the environment damaged as a result of the conflict.
2. Relevant international organizations should, where appropriate, play a facilitating role in this regard.

Principle 23**Sharing and granting access to information**

1. To facilitate measures to remediate harm to the environment resulting from an armed conflict, States and relevant international organizations shall share and grant access to relevant information in accordance with their obligations under applicable international law.
2. Nothing in paragraph 1 affects the right to invoke the grounds for refusal to share or grant access to information provided for in applicable international law. Nevertheless, States and international organizations shall cooperate in good faith with a view to providing as much information as possible under the circumstances.

Principle 24**Post-armed conflict environmental assessments and remedial measures**

Relevant actors, including States and international organizations, should cooperate with respect to post-armed conflict environmental assessments and remedial measures.

Principle 25**Relief and assistance**

When, in relation to an armed conflict, the source of environmental damage is unidentified, or reparation is unavailable, States and relevant international organizations should 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.

Principle 26**Remnants of war**

1. Parties to an armed conflict shall seek, as soon as possible, to remove or render harmless toxic or other 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 or other 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.

Principle 27**Remnants of war at sea**

States and relevant international organizations should cooperate to ensure that remnants of war at sea do not constitute a danger to the environment.