



ICRC

United Nations General Assembly, 77th session, Sixth Committee

**Report of the International Law Commission on the work of its
seventy-third session (A/77/10), April-August 2022**

Statement by the International Committee of the Red Cross

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26 October 2022

[Madame, Mr] Chair,

The ICRC welcomes, with appreciation, the report of the International Law Commission's seventy-third session and congratulates its members for their work.

Turning to the protection of the environment in relation to armed conflicts, the ICRC congratulates the Commission for its adoption, on second reading, of a draft preamble and 27 draft principles, with commentaries thereto. We commend Special Rapporteur, Ms. Marja Lehto, for her dedication and commitment to the topic as well as the valuable contribution of the previous Special Rapporteur, Ms. Marie Jacobsson.

Today's armed conflicts largely unfold across the epicentres of our global environmental and climate crises. The natural environment is frequently damaged by warring parties, affecting the well-being, health and survival of dependent communities – and this reality is now exacerbated by climate risks. The need to clarify and strengthen the legal framework applicable to conflict-related environmental harm is abundantly clear. The Commission's draft principles are a historic contribution in this regard, in line with its leading role in the codification and progressive development of contemporary international law.

The ICRC notes, with appreciation, the Commission's careful consideration of the ICRC's comments. The ICRC views the draft principles as complementary to its efforts to enhance respect for international humanitarian law (IHL) protecting the natural environment in armed conflict and to its updated [Guidelines](#) on this topic. The draft principles are broader, both in terms of temporal scope and in regard to the branches of public international law on which they draw. They also address important legal issues beyond IHL's scope. With respect to IHL, the draft principles focus on some of its most relevant rules and principles providing protection to the environment. Several commentaries also reference other rules, while clearly stating that all other IHL rules remain applicable and cannot be disregarded.

The ICRC recalls in this regard that the draft principles and their commentaries must not be interpreted as restricting or impairing applicable rules of international law. As has been reiterated by the Special Rapporteur, the topic was developed consistent with the point of departure that the Commission has no intention, and is not in the position, to change the law of armed conflict. Although a general “without prejudice” clause was not integrated, the clarifications introduced to this effect in some of the draft principles’ commentaries are welcome. For instance, the commentary to draft principle 8 explains that the provision of relief and assistance for displaced persons and local communities must be provided in accordance with international obligations. These include IHL’s detailed rules aimed at ensuring that the basic needs of the population concerned are met.

As an important point of synergy, draft principle 14 reaffirms the applicability of IHL principles and rules on distinction, proportionality, and precautions to the environment. The commentary notes that this draft principle does not elaborate on how these well-established IHL principles and rules are to be interpreted. In a complementary manner, the ICRC’s Guidelines on the Protection of the Natural Environment do provide commentary elaborating on these principles. Furthermore, draft principle 13 restates that no part of the environment may be attacked, unless it has become a military objective. Its commentary recalls that this principle is based on the fundamental rule of distinction between military objectives and civilian objects in IHL. The commentaries to both these draft principles reiterate the environment’s inherently civilian nature.

The draft principles also address other IHL rules, including the prohibition of using methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment, which in the ICRC’s view has been established as a norm of customary international law in international, and arguably also in non-international, armed conflicts. As noted in draft principle 13’s commentary, this prohibition establishes a high threshold, but it must be interpreted considering current scientific knowledge of ecological processes. In the ICRC’s view, other specific elements that should inform a contemporary understanding of these terms include the UN Environment Programme’s recommendation to use the terms used in the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques. The ICRC in its Guidelines also make this recommendation, and further set out our view on the threshold’s interpretation.

Regarding some of its other comments, the ICRC welcomes the modifications that have been made to the draft principles on protected zones. The protection of areas of particular environmental significance or fragility has long been promoted by the ICRC. We also welcome clarifications on the draft principles’ temporal and personal scopes – in particular, that several commentaries affirm the application of relevant draft principles to all parties to armed conflicts.

We hope that the draft principles will generate renewed momentum to improve how environmental damage is minimized throughout conflict cycles. The ICRC stands ready to support efforts to accelerate respect for IHL.

Thank you very much, [Madame, Mr] Chair.