



Statement im 6. Ausschuss der VNGV zum ILC-Projekt „Protection of the environment in relation to armed conflicts“

The general outcome of the project:

1. Germany expresses great appreciation for the Commission's work in adopting at first reading of the draft principles and comments on the complex issue of "protection of the environment in relation to armed conflict". For the first time, comprehensive principles and concepts have been compiled at international level with respect to this elusive topic.
2. The biggest challenge of this project is the identification of norms for the protection of the environment in different legal regimes and their interpretation in order to develop a comprehensive approach for the formulation of general rules and principles. I commend the Commission for its preparatory work formulating the draft principles and its commentary.
3. We welcome the fact that the two special rapporteurs have shed light on the subject from many different angles in their reports and that they have included complex issues such as the role of non-state actors, the extraction of raw materials in areas of armed conflict and the environmental impact of camps of displaced people. They have thus addressed the particular challenges and complexities of today's armed conflicts and their impact on and threat to the environment.
4. The division of the draft principles into temporal phases, before, during and after an armed conflict, is appropriate from our point of view, since different legal regimes, such as international humanitarian law, the law of occupation,



international environmental law and/or human rights law, can come into play in the different phases of a conflict.

5. These draft principles are, to a large extent, not a codification of existing law, but aim to develop it further. The international community should promote legal development in this area in order to prevent future environmental disasters resulting from armed conflicts. We appreciate the Commission's transparent communication about its intention to further develop the law.

6. We also appreciate the Commission's effort to make a distinction between those principles that are a reflection of established international law and those which apply *lege ferenda*. In this regard, the commentaries are certainly useful. However, we deem it important that the principles themselves are formulated in an unambiguous manner.

On the content of the draft principles in detail:

7. Germany takes note of the adoption of Draft Principle 12, which refers to the Martens clause. It is indeed necessary to confirm the existence of rules on the protection of the environment in times of armed conflict that transcend explicit treaty provisions. With the inclusion of the term "principles of humanity", however, the concepts of humanity and nature might become blurred. It might be useful to clarify (e.g. in the commentary) that the inclusion of the principle of humanity shall not lead to a humanization of the concept of "nature", but also cover cases where the destruction of the environment endangers vital human needs.

8. At the same time, we appreciate that Draft Principles 13 and 16 imply an intrinsic value of the natural environment in and of itself, recognizing that



attacks against the natural environment are prohibited unless it has become a military objective, as are reprisals against the natural environment. However, as we understand it, this prohibition is not based on Art. 55 para. 2 of the first Additional Protocol to the Geneva Conventions, despite the use of the same wording in Draft Principle 16, because Art. 55 provides for the protection of the environment in order to protect the health and survival of the civilian population. However, it is Art. 35 para. 3 of Additional Protocol I, which supports the view that environmental protection in international humanitarian law has an intrinsic value. Furthermore, this is without prejudice to recognizing an intrinsic value of the natural environment or nature in legal regimes other than IHL.

9. We welcome the call to establish protected areas in Draft Principles 4 and 17. These principles provide encouragement to work together on this issue in the future. As pointed out by the Commission, a multilateral treaty on the designation of protected areas would be necessary to have binding effect on all parties under international law. Such a treaty should, in our opinion, be modeled on the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict rather than being considered in the context of protected emblems.

10. Lastly, we support and welcome the intention conveyed in Draft Principles 27 and 28 to eliminate remnants of war that could have harmful effects on the environment. However, para. 1 of Draft Principle 27 could be read as entailing an obligation to act in any case where remnants of war are identified, including in the territorial sea and, with respect to warships and other state-owned vessels,



Permanent Mission
of the Federal Republic of Germany
to the United Nations
New York

even outside territorial waters, which would place an inappropriate burden on many States. It would therefore seem advisable to reword Draft Principle 27 in order to make it clear that an obligation to act only arises after an environmental impact assessment has concluded that action is viable, necessary and appropriate in order to minimize environmental harm.

11. Finally, Germany would like to thank the Commission for its excellent work on a difficult, but timely and very important topic. We will continue following this project with great interest.