

*Translated from Spanish*

Permanent Mission of El Salvador to the United Nations

Report of the International Law Commission on the work of its seventy-first session

Report of the Republic of El Salvador submitted pursuant to General Assembly resolution 75/135

30 June 2021

The Republic of El Salvador is submitting the present report pursuant to General Assembly resolution 75/135, entitled “Report of the International Law Commission on the work of its seventy-second session”. In paragraph 6 of the resolution, the Assembly draws the attention of Governments to the importance of communicating to the International Law Commission their comments and observations on the draft principles on the protection of the environment in relation to armed conflicts adopted on first reading by the Commission.

Armed conflicts cause direct and indirect harm to the environment that can endanger health and quality of life to such an extent that it threatens the survival of humankind, since the effects endure beyond the end of the conflict. In that regard, the international community needs a framework of principles that will help to strengthen existing instruments in order to ensure that victims receive reparations and to promote the necessary measures in the areas of environmental prevention, conservation and restoration in the context of hostilities.

In the light of the foregoing, the Republic of El Salvador wishes to make the following comments regarding the draft principles:

- Principle 5: “Protection of the environment of indigenous peoples”. Given that this principle is founded on protection of the environment and of indigenous peoples, El Salvador considers it necessary to establish that States have an obligation to direct efforts and financial resources towards the promotion of cultural and ecological restoration, understanding the cultural dimension with respect to indigenous peoples to be a central and inseparable element between culture and the environment.
- Principle 9: “State responsibility”. A contemporary approach should be taken when explaining the conditions in which an act or omission attributable to a State is wrongful. In the area of environmental protection, verification of environmental harm is not the sole factor, since, in accordance with the general principles of international environmental law, responsibility may

be engaged even when acts are not prohibited, if those acts have the potential to cause harm to third parties. The sense of prevention should be retained here, in addition to due fulfilment of the principle of intergenerational equity, by virtue of which environmental sustainability must be preserved.

- Principle 13: “General protection of the natural environment during armed conflict”. With regard to paragraph 3 of the draft principle, El Salvador considers that, in order to ensure that the purpose of the draft principles is not lost, it is important to establish that only conventional weapons may be used against military objectives in a natural environment. Such weapons must not be of a biological or chemical nature, since they have the capacity to cause biological and ecological imbalance in the natural environment.

As pointed out on previous occasions, the nature of the environment as a transnational and even universal public good must not be forgotten. The same scope must therefore be applied to its protection.

- Principle 14: “Application of the law of armed conflict to the natural environment”. El Salvador proposes incorporating the prohibition on acts that modify ecosystems with the aim of gaining an advantage over an adversary, such as indiscriminate burning or the use of methods that reduce the cover of forests or natural spaces.
- Principle 20: “General obligations of an Occupying Power”. The draft principles should include a definition of the term “occupation” and its respective relationship with the term “belligerent occupation”, in order to provide greater legal certainty in the interpretation of the text. Regardless of the form of the occupation or the circumstances in which it originated, the obligation related to the protection of the environment is an imperative that must be maintained and in the various temporal phases of conflict, since it is part of the substantive content of human rights.

In that regard, the definitions and characteristics established in the existing legal framework on the topic could be used, including article 43 of the Regulations on the Laws and Customs of War on Land, and the Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949).

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