

**Comments by Ireland on the International Law Commission's draft principles on  
protection of the environment in relation to armed conflicts**

1. Ireland supports the Commission's elaboration of draft principles on protection of the environment in relation to armed conflicts, which is a very welcome exercise on an important topic. Ireland notes that some of the draft principles are presented as codifying applicable law while others are recommendatory and intended to contribute to the progressive development of the law. Ireland supports strongly the efforts of the Commission to distinguish clearly between these two elements in this exercise and also more generally. Ireland particularly appreciates the broad scope of the exercise, in covering the protection of the environment before, during and after armed conflict.
2. Ireland particularly welcomes the Commission's analysis of how certain aspects of international humanitarian law (IHL) apply in relation to the protection of the environment, and of how other areas of international law, including international human rights and environmental law, complement IHL in relation to the protection of the environment in situations of armed conflict and occupation. While recognising that the draft principles set out in Parts Three and Four are presented as customary international law, Ireland believes that certain aspects of these draft principles and their accompanying commentaries would benefit from further consideration and explanation by the Commission. In particular:
  - (1) The commentary on draft principle 13(2) does not in our view demonstrate that the obligation to take care to "*protect the natural environment against widespread, long-term and severe damage*" is applicable in situations of non-international as well as international armed conflict; Ireland therefore suggests that the Commission consider whether this obligation applies in situations of non-international armed conflict and provide further information in the commentary.
  - (2) Ireland also suggests, in relation to draft principle 13(2), that the Commission consider and explain how the "*widespread, long-term and severe*" threshold is to be interpreted and applied, and particularly whether relevant scientific knowledge and/or areas of international law other than IHL are relevant in this respect.
  - (3) Ireland welcomes the way in which draft principle 14 affirms the application of IHL to the natural environment, but suggests that the Commission further explain what is meant by "*with a view to its protection*", and particularly whether this phrase is intended to progressively develop the law.
  - (4) Ireland suggests referring simply to "precautions", rather than "precautions in attack", in draft principle 14, so as to encompass both precautions in attack and precautions against the effects of attacks.
  - (5) Proper application of draft principle 14 may in Ireland's view obviate any need for draft principle 15 from a strictly legal perspective, but Ireland sees the potential operational value in expressly confirming the need to take environmental considerations into account and therefore supports the retention of this draft principle.
  - (6) Ireland welcomes the Commission's acknowledgment that it may be engaging in progressive development of the law in elaborating draft principle 16, and supports this development.

- (7) Ireland suggests that the Commission further consider and explain the legal basis of draft principle 20(2), including by explaining in further detail how international human rights law (and any other applicable law) combines with Article 55(1) of the First Additional Protocol to the Geneva Conventions to provide the basis for draft principle 20(2).
3. As for those of the draft principles applicable outside situations of armed conflict and occupation (Parts Two and Five) that are expressed as binding rules of international law, it is not clear from the commentaries on draft principles 7 and 27 that these draft principles have the status of customary international law. Ireland therefore suggests that further consideration be given to whether these are in fact binding rules of international law and to amending the wording of these draft principles and/or updating the accompanying commentaries as appropriate. Ireland understands that draft principle 24 does not assert a general obligation under customary international law to share and grant access to information, but rather confirms that states and international organisations must comply with any relevant obligations that they may have under international law; Ireland suggests that the Commission confirm this to be the case in the commentary.
  4. As for the draft principles of a recommendatory nature, Ireland supports draft principles 6, 8, 23, 25, 26 and 28. Ireland does not at this stage take a position in relation to any of the remaining recommendatory draft principles.