State responses to the announcement of the proposed ILC study methodology on protection of the environment before, during and after armed conflict, UN Sixth Committee, December 2013.

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<td>105. Concerning the topic of protection of the environment in relation to armed conflict, her delegation reaffirmed the doubts expressed earlier on the feasibility of work on such an issue, the objective of which was not apparent. It seemed neither desirable nor achievable to draw up guidelines or reach conclusions on the subject at the current stage.</td>
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|         | 44. The topic of protection of the environment in relation to armed conflicts was a logical continuation of the Commission’s recent work on the closely related topics of effects of armed conflicts on treaties and fragmentation of international law. A natural starting point for the work would therefore be that the existence of an armed conflict did not ipso facto terminate or suspend the operation of treaties. The effects of warfare on the natural environment could be severe and have a lasting impact. Not only might the actual force applied in a combat situation lead to the physical destruction of vulnerable natural environments and the killing of wildlife, but related military activities, including large-scale transportation and operations, could also cause pollution, destruction of plant life and disruption of water flows, leaving ecosystems out of balance. The use of certain types of weapons might also lead to the contamination of large areas. The resulting harmful effects on the environment might have a serious impact on the civilian population living in the affected areas, an impact that might continue to be felt for decades after the conflict had ended. More emphasis should therefore be placed on environmental matters in post-conflict situations.  
45. It was important to recognize, however, that existing legal rules, notably in the areas of international humanitarian law, international environmental law and international human rights law, already established significant legal obligations that had a direct or indirect bearing on the protection of the environment during armed conflict. Those obligations might need to be further developed, however. In order to decide whether that was the case, several issues needed to be clarified, in particular the legal scope of the existing obligations and how they should be interpreted and the relationship between the various applicable legal frameworks. It should also be determined whether legal instruments in the field of international environmental law continued to apply in situations of armed conflict.  
46. Another important question was whether the severe damage inflicted on the natural environment during armed conflict was primarily a result of a lack of clear legal obligations to protect the natural environment, a lack of effective implementation of existing obligations or a combination of the two. An assessment of that question would be of paramount importance when discussing how to improve the protection of the natural environment in relation to armed conflicts. If it was found that existing obligations were not being properly fulfilled, it would need to be determined whether measures could be taken to enhance their implementation. During the 31st International Conference of the Red Cross and Red Crescent in 2011, the Governments of Denmark, Finland, Norway and Sweden and the National Red Cross Societies of those States had made a joint pledge to conduct an empirical study of those two issues, drawing on experience gained from a select number of recent armed conflicts. The report resulting from the study would form the basis for an international expert meeting to discuss possible further steps to be taken to improve the protection of the natural environment during armed conflicts. |

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<td>54. The topic of protection of the environment in relation to armed conflicts was</td>
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of great importance, given the deleterious effects that armed conflict had on the natural environment. The United States military had long made it a priority to protect the environment, not only to ensure the availability of the land, water and airspace needed to sustain military readiness, but also to preserve irreplaceable resources for future generations. Protection of the environment during armed conflict was desirable as a matter of policy for a broad range of military, civilian, health and economic reasons, in addition to purely environmental reasons. Nevertheless, his delegation was concerned that the topic encompassed broad and potentially controversial issues that could have far-reaching ramifications. One such issue was that of concurrent application of bodies of law other than the law of armed conflict during armed conflict. Any effort to come to conclusions about lex specialis in general or the applicability of environmental law in relation to armed conflict in particular, especially in the abstract, was likely to be difficult and controversial.

55. His delegation therefore concurred with the Special Rapporteur’s view that the topic was not suited to a draft convention and welcomed her decision to focus on identifying existing rules and principles of the law of armed conflict related to the protection of the environment. Under the principle of distinction, for example, parts of the natural environment could not be made the object of attack unless they constituted military objectives as traditionally defined, nor could they be destroyed unless required by military necessity. Certain treaty provisions relating to the protection of the environment during armed conflict, however, had not gained universal acceptance among States as a matter of either treaty law or customary international law. The Commission should also bear in mind that, as the Special Rapporteur had pointed out, it was not its task to modify existing legal regimes, in particular the law of war.

61. With regard to the topic of protection of the environment in relation to armed conflicts, his delegation would appreciate further information on what was understood by “obligations of relevance to a potential armed conflict”, which was to be the focus of the first phase of the work on the topic, and in particular whether the Commission’s objective was to develop new obligations or only to draw up a set of guidelines. Within the framework of consultations conducted by the International Committee of the Red Cross in connection with the 31st International Conference of the Red Cross and Red Crescent, Switzerland had expressed a special interest in the idea of establishing a form of territorial protection that would apply to zones of major ecological importance, both in peacetime and in wartime. During an armed conflict — the second phase — the natural environment was covered under the general protections that international humanitarian law provided to civilian property, which applied in both international and non-international armed conflicts. Moreover, Additional Protocol I to the 1949 Geneva Conventions, articles 35 and 55, provided for special protection of the natural environment in international conflicts and prohibited the causing of widespread, long-term and severe damage to the natural environment. That special protection might need to be clarified or enhanced, as the terms were imprecise, and the question of whether the general rules governing the protection of civilian property were adequate to ensure effective protection of the natural environment in practice should be considered. If no specific rule protected the environment in non-international armed conflicts, customary international law provided some rules whose scope could be made more precise or suitably developed. In addition, it would be interesting to clarify the contribution that other bodies of law, in particular human rights law and international environmental law, might make with regard to the protection of the environment in relation to armed conflicts.

68. His delegation had taken note with interest of the Commission’s decision to place the topic of protection of the environment in relation to armed conflicts on its
agenda and commended the Special Rapporteur’s broad approach to the topic, which would encompass not only the phase during the armed conflict, but also the phases prior and subsequent to it. It also supported the inclusion of non-international armed conflicts in the work on the topic. Nevertheless, the question remained whether riots and internal disturbances should also be included.

69. As the phase during an armed conflict (phase II) was already subject to certain treaty regimes, the Commission’s work on the topic would need to be coordinated with the International Committee of the Red Cross in order to avoid duplication of work or different results. His delegation welcomed the decision to start with phase I, the pre-conflict period, which had not yet been addressed; in considering phase I, the effects on phase II and III would have to be taken into account. It was his understanding that in phase I the question of protection of the environment would be addressed only insofar as the potential for armed conflict required special measures of environmental protection. His delegation shared the Special Rapporteur’s view that the effects of certain weapons should not be addressed, since such work would require major technical advice and would be subject to further technical development.

Japan

74. With regard to the topic of protection of the environment in relation to armed conflicts, the 1949 Geneva Conventions and the Additional Protocols thereto contained some articles relevant to protection of the environment in the second temporal phase identified by the Special Rapporteur, namely the period during an armed conflict. There were, however, some important issues to be discussed in relation to that phase, such as whether those articles could be considered customary law, whether there were any norms for protection of the environment in non-international armed conflicts and whether peacetime environmental law would apply during armed conflicts.

Portugal

81. With regard to the topic of protection of the environment in relation to armed conflicts, such conflicts, by their nature, had negative impacts on the lives of people and on the ecosystem in which they lived, and the impact on the environment was often lasting and difficult to reverse. Warfare also had a negative impact on sustainable development. While preservation of the environment in the event of armed conflicts was the primary aim, it went hand in hand with disarmament, non-proliferation, conflict prevention and the progressive restriction, legally and politically, of recourse to armed conflict. His delegation agreed with the Special Rapporteur’s proposal to approach the topic in three phases: before, during and after the armed conflict. However, that distinction should be made only for analytical purposes, to facilitate the identification of obligations and effects in relation to protection of the environment.

82. Without prejudice to an integrated approach, the most important phase was the second one — protection of the environment during an armed conflict — since it was during the conflict that the environmental damage was produced. Destruction of the environment during an armed conflict should not be viewed as inevitable from an international law perspective, however. If existing international legal obligations did not offer sufficient protection, the Commission should embark upon a progressive development exercise. Moreover, since the impact of armed conflicts on the environment depended largely on the type of weapons used, the issue of weapons must necessarily be addressed. The International Court of Justice, in its advisory opinion on the Legality of the Threat or Use of Nuclear Weapons, had stated that there existed a general obligation to prohibit methods and means of warfare that were intended, or might be expected, to cause environmental damage. The issue would not be easy to deal with, for both technical and legal reasons, but it was key for the development of the topic, which should be approached without any reservations.

UK

89. With regard to the topic of protection of the environment in relation to armed
conflicts, her delegation supported the Special Rapporteur’s proposal to concentrate on the pre- and post-conflict phases (phases I and III) and to give less attention to the actual conflict phase (phase II) because, although obligations applicable during armed conflict were arguably the most important issue in relation to the topic, a great deal of law relevant to phase II already existed. Her delegation also welcomed the Special Rapporteur’s proposal not to address the effects of certain weapons on the environment and shared her view that the topic was more suitable for the preparation of non-binding guidelines than a convention.

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**Italy**

2. **Mr. Politi** (Italy) said that his delegation supported the inclusion of the topic of protection of the environment in relation to armed conflicts in the Commission’s programme of work. In that connection, he noted that rules pertaining to different areas of international law, including international environmental law, the law of armed conflict, and norms for the protection of cultural property were by their very nature complex and interdependent. As a result, dealing with the protection of the environment in relation to armed conflicts required a thorough and comprehensive examination of those bodies of law. The Special Rapporteur had suggested considering the topic in a temporal perspective. In substance, the Commission would be called upon to address “legal measures taken to protect the environment before, during and after an armed conflict”; to identify legal issues relating to each stage of an armed conflict; and to develop concrete conclusions or guidelines. However, his delegation was not convinced that a strict dividing line between temporal phases of the conflict was required. It might be preferable to examine the interrelationship between the different bodies of law concerned, bearing in mind existing legislation and trends in further development.

3. For example, it had already been noted that the law of armed conflict, including international humanitarian law, consisted of rules which were applicable before, during and after an armed conflict, with some principles (in particular, the protection of the civilian population) representing a common element in all phases. The same applied to international environmental law, where leading features such as the precautionary principle, the principle of mutual assistance in case of massive environmental damage and the “polluter pays” principle often needed to be considered together in order to assess their effectiveness for the purposes of the topic.

4. The concept of protection of the environment should be understood in a broad sense that included areas such as the protection of cultural property, which was at grave risk during international and internal conflicts. Recent examples of destruction, looting and illegal trafficking in cultural goods during or after conflicts had shown how important it was for the international community to focus its attention on that phenomenon and its lasting negative effects, both economic and spiritual, on the communities concerned.

5. His delegation agreed with the Special Rapporteur’s suggestion that the topic was more suited to the development of non-binding guidelines. The Commission should not attempt to elaborate a draft convention. Rather, it would useful to provide a handbook to reflect existing basic norms in the relevant fields of law and elements indicating a possible evolution of State practice.

**South Africa**

24. With regard to the topic of protection of the environment in relation to armed conflicts, his delegation noted that damage to the environment in war-torn societies was not limited to immediate effects, but also had an adverse impact on post-conflict reconstruction and development. In southern Africa, landmines continued
to make large areas uninhabitable. That explained why South Africa was such a strong supporter of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction. His delegation welcomed the inclusion of the topic on Commission’s current agenda. A sound foundation existed for building on, namely articles 35 and 55 of the First Additional Protocol to the 1949 Geneva Conventions, which contained specific provisions on the protection of the environment in international armed conflicts. The effect of warfare on the environment had also been acknowledged in the 1992 Rio Declaration on Environment and Development, which recognized that warfare was inherently destructive of sustainable development and called upon States to respect international law providing protection for the environment in times of armed conflict and to cooperate in its further development.

25. Other work in that area had been done by the International Committee of the Red Cross, the United Nations Environment Programme (UNEP), the Environmental Law Institute, the International Law Association, the International Union for Conservation of Nature and other civil society groups. The most important conclusions drawn from the Commission’s preparatory work was that, although considerable progress had been made through the implementation of a number of instruments on international humanitarian law, other bodies of law were also applicable. The 2009 UNEP report entitled Protecting the Environment During Armed Conflict — An Inventory and Analysis of International Law had found that international criminal law, international environmental law and human rights law were also applicable. The Rome Statute of the International Criminal Court had criminalized the disproportionate causing of widespread, long-term and severe damage to the environment as a war crime and had concluded, in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, that international humanitarian law might be applicable in situations of armed conflict as lex specialis and that human rights law might also be applicable. It was therefore to be welcomed that the topic referred to the protection of the environment in relation to, and not only during, armed conflict.

26. Some authors argued that since the early 1990s a new rule of customary international law had developed which specifically prohibited excessive collateral damage to the environment during international armed conflict. That rule was a positive development, given that some commentators were of the view that the threshold requirement of widespread, long-term and severe damage to the natural environment under articles 35 and 55 of the First Additional Protocol was too vague and too high. The relationship between those treaty provisions and a possible rule of customary international law might require further investigation.

27. Some commentators believed that rules of customary international law were developing which required the means and methods of warfare to be employed with due regard for the environment, and that there was an emerging legal obligation to cooperate in the post-conflict restoration of elements of the environment damaged by warfare.

28. In addition to the Special Rapporteur’s proposal on aspects on which the Commission should focus in further work on the topic, it would also be useful to consider refugee law and the law applicable to internally displaced persons, individual criminal responsibility and non-international armed conflict.

**Greece**

46. While topics such as the protection of cultural property in times of war or the applicability of human rights norms in case of armed conflict had been given particular attention in case law, both international and domestic, as well as in legal theory, that had
not been true for the topic of protection of the environment in relation to armed conflicts, despite the increasing number of normative instruments aiming to protect the environment in peacetime. Thus, the Commission’s decision to consider the topic responded to a real need, at a time when both international and non-international armed conflicts often raised questions in public opinion about their adverse impact on the environment and natural resources. Her delegation endorsed the Special Rapporteur’s proposal to avoid an approach to the subject consisting of a successive consideration of the various fields of international law, such as environmental law, the law of armed conflict or human rights law, because any other course of action would result in a fragmented and incomplete picture of applicable norms. Instead, the proposed temporal perspective, which favoured a pragmatic identification of the issues raised before the legal responses to them were examined, allowed for a unified approach to the principles concerned, taking also into consideration the possible interactions among them.

**Romania**

87. On the topic of protection of the environment in relation to armed conflicts, the Special Rapporteur’s temporal perspective was a useful methodological approach that would make the topic more manageable and easier to delineate, but environmental issues could not be easily divided into clear-cut categories. Nor did Romania see a need to address the effects of certain weapons on the environment separately. Her delegation would undertake to identify bilateral or multilateral agreements or national legislation and case law of relevance to the topic.

**New Zealand**

102. She was pleased that the Commission had decided to include the topic of protection of the environment in relation to armed conflicts in its programme of work. There was a growing need to focus on the topic in the light of continuing technological developments, which placed the environment at greater risk from weapons of mass destruction as well as from conventional methods and means of warfare. Her delegation supported the Special Rapporteur’s temporal approach to the examination of the topic as a practical way of isolating the legal issues concerned. The division of the phases should be flexible, since some rules would apply to more than one phase.

103. The Special Rapporteur should take into account the harm caused to the environment of the State or States where the conflict occurred, to third States and to areas beyond national jurisdiction. Consideration should also be given to Principle 13 of the Rio Declaration on Environment and Development, regarding liability and compensation for adverse effects of environmental damage caused by activities within States’ jurisdiction or control, and also to the Madrid Protocol on Environmental Protection to the Antarctic Treaty, specifically annex VI on liability arising from environmental emergencies, which included important concepts such as preventative measures, contingency plans and emergency response actions.

**A/C.6/68/SR.25**

**Spain**

2. Although his delegation welcomed the Commission’s decision to include the topic of protection of the environment in relation to armed conflicts in its programme of work, its consideration would give rise to a number of major difficulties. In particular, it would not be easy to delimit the purpose of the topic or establish the dividing line between the three temporal phases proposed by the Special Rapporteur; the proposed timetable was also likely to prove too ambitious. It was therefore premature to decide what form the final outcome of work should take; however, prima facie it seemed clear that a draft convention was unlikely to be appropriate.

**Mexico**

17. His delegation welcomed the inclusion of the topic of protection of the environment in relation to armed conflicts in the Commission’s programme of work. In view of the frequent violations of article 35, paragraph 3, of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of
international armed conflicts (Additional Protocol I), which prohibited the employment of methods or means of warfare intended to cause widespread, long-term and severe damage to the natural environment, it was important to promote the adoption of legal measures to protect the environment before, during and after an armed conflict. His delegation was therefore in agreement with the three-phase temporal perspective proposed by the Special Rapporteur for addressing the topic. As a State party to the main instruments of international humanitarian, human rights and environmental law, Mexico underscored the importance of taking into account in the three phases of the study the obligations under each of those fields of international law, some of which would be applicable to more than one phase. It would be valuable to gather information on best practices from a variety of sources, including States, other United Nations organs and international organizations specialized in the protection of the environment, as a foundation for the Commission’s work on the topic.

Malaysia  
29. On the topic of protection of the environment in relation to armed conflicts, her delegation noted with concern the ongoing and widespread environmental damage caused during warfare, which could continue to impair natural resources and extend beyond national borders long after the end of an armed conflict. It was time for a detailed analysis of the topic, leading to progressive development of the law and effective regulation. As highlighted in annex E to the report of the Commission on the work of its sixty-third session (A/66/10), the Commission’s work should be based on international humanitarian law, international criminal law, international environmental law and international human rights law, in order to provide a holistic assessment of the topic. Malaysia was a party to various multilateral instruments that indirectly addressed the issue of the protection of the environment in relation to armed conflicts, including the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction and, at the regional level, the Treaty on the Southeast Asia Nuclear Weapon-Free Zone, which promoted protection of the region from environmental pollution and the hazards posed by radioactive wastes and other radioactive material.

30. Her delegation generally agreed with the Special Rapporteur’s proposal to approach the topic from a temporal perspective. However, in addition to producing recommendations for concrete measures to protect the environment at the different stages relating to an armed conflict, the Commission should identify the gaps in the relevant bodies of law; a broad analysis of the extent of the protection of the environment under existing international humanitarian law rules was required. While the Special Rapporteur had proposed that the effect of particular weapons on the environment should not be the focus of the topic, her delegation believed that the issue should nonetheless be addressed, since the various instruments regulating the matter were integral to the corpus of international humanitarian law.

Russia  
47. …On the topic of protection of the environment in relation to armed conflicts, sufficient regulation already existed under international humanitarian law, since the period before and after an armed conflict was considered to be peacetime, during which the general rules applicable to the protection of the environment were fully applicable. The Special Rapporteur should therefore not seek to draft comprehensive rules in that area.

Indonesia  
65. With regard to the topic of the protection of the environment in relation to armed conflicts, his delegation welcomed the Special Rapporteur’s proposal to approach the topic in temporal phases, which would examine the legal measures taken
to protect the environment before, during and after an armed conflict. However, there could not be a strict dividing line between the different temporal phases. His delegation agreed that the topic was more suited to the development of non-binding draft guidelines than to a draft convention.

Cuba

70. Her delegation welcomed the inclusion of the topic of protection of the environment in relation to armed conflicts in the Commission’s programme of work. A study of the effects of all types of weapons on the environment would be useful; her delegation was particularly interested in the effects of the use, development and storage of nuclear weapons. In that regard, the Special Rapporteur on the topic should consider the possibility of developing a regime of responsibility that would address reparation of the harm, reconstruction, responsibility for the illegal act and compensation for the damage caused to the environment.

Czech Republic

95. With regard to the topic of protection of the environment in relation to armed conflicts, her delegation agreed with the Special Rapporteur that the issue was relevant to contemporary international law and supported her proposed methodology, which would approach the topic from a temporal perspective. Draft articles would be an appropriate outcome.

Singapore

114. On the topic of protection of the environment in relation to armed conflicts, her delegation agreed with the Special Rapporteur that the study should not delve into the possible effects of particular types of weapons on the environment. It also agreed that non-binding draft guidelines would be an appropriate outcome on the topic, as there were existing legal regimes on the matter and the work of the Commission should not undermine those regimes.

Ireland

121. Lastly, his delegation welcomed the inclusion of the topic of protection of the environment in relation to armed conflicts in the Commission’s programme of work and endorsed the proposal to divide the work into temporal phases which would address the legal measures taken to protect the environment before, during and after an armed conflict.

Belgium

3. With regard to the protection of the environment in relation to armed conflicts, his delegation was of the view that very often environmental protection treaties provided for obligations of means and not of result, so that they should be interpreted differently in a conflict situation than they would be in peacetime. However, Belgium had no recent practice in that area. His delegation intended to ask the Belgian Interdepartmental Commission on Humanitarian Law to consider the matter and would in due course provide the Commission with a more thorough answer in writing.

Iran

8. His delegation welcomed the Commission’s decision to include the topic “Protection of the environment in relation to armed conflicts” in its work and supported the Special Rapporteur’s proposal to address the topic from a temporal perspective rather than from the perspective of international humanitarian law. While the rules of international humanitarian law concerning the protection of the environment during international armed conflict were sufficiently developed, that was not the case for the rules applicable in peacetime to prevent environmental disasters in the event of a possible outbreak of armed conflict. For example, provisions might be envisaged to encourage States to move military objectives, to the extent possible, far from ecologically fragile zones.

9. The Commission should focus in particular on the measures that States needed to take once hostile activity had ceased in order to rehabilitate the environment. The question of the environmental consequences of war had interested States since the First World War, but no real steps had been taken to resolve the problem. Vast parts of the
territory of his country still bore environmental scars as a result of operations carried out by an aggressor. Among other things, the Commission should address issues related to demining. It was the duty of the States or non-State actors that had done the mining to communicate, within the framework of ceasefire agreements, the information they possessed on the position of planted mines. Moreover, solutions should be sought to rehabilitate the areas of refugee camps, which sometimes had a very negative impact on the environment.