

Interactive session/ILC Special rapporteurs and the Sixth Committee
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Remarks by Marja Lehto

Thank you Mr Chair,

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This was the third time in row that an open Security Council debate was organized on conflicts and the environment. A further event was organized in the General Assembly during the UN High Level Week in September.

All these events, as well as the active participation of States in them is a testimony of the importance and topicality of the issue of protection of the environment in and in relation to armed conflicts, and of the commitment of States to find ways to address it.

- New case law and other developments

There has also been new case law at the national and regional levels addressing various issues relevant to the topic. For instance, the Inter-American Court of Human Rights issued in February a landmark judgment in which it analyzed the rights to a healthy environment, adequate food, water and cultural identity. The Court also ordered specific measures of reparation for the restitution of those rights, including actions for access to water and food, for the recovery of forest resources and for the recovery of indigenous culture.

(This was the case of *Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina* (2020)).

Regarding the issues of corporate due diligence and corporate liability, there has also been new case law, for instance on the question of establishing *de facto* control over a subsidiary, and what providing an effective forum means, both questions of relevance to the draft principles.

I should also mention in this regard the negotiations on the “Legally Binding Instrument to regulate, under international human rights law, the activities of transnational corporations and other business enterprises” that are ongoing in the working group established under the Human Rights Council. The Second Revised Draft issued in July includes a number of references to the protection of the environment as well as to armed conflicts.

The Commission of the European Union has furthermore made clear its commitment to legislate mandatory human rights and environmental obligations for companies domicile in the EU area.

While these are ongoing developments of which no more can be said for the time being, they, too, are a sign of the importance attached to the environmental responsibilities of corporations.

- The updated ICRC Guidelines

By far the most important recent development has been the publication by the International Committee of the Red Cross of the updated iteration of the Guidelines on the Protection of the Natural Environment in Armed Conflict.

As you may know, the new ICRC Guidelines have the same background as the Commission's topic on the Protection of the environment in relation to armed conflicts.

In 2009, a report of the UN Environment Programme recommended that the ICRC should update its 1994 Guidelines and that the ILC should include a corresponding new topic on its agenda. More specifically, the Commission was asked to examine the existing international law for protecting the environment during armed conflict and recommend how it could be clarified, codified and expanded.⁷

Now that both projects have borne fruit – even though the draft principles are still work in progress until the second reading – I would like to say a few words of what they have in common and how they differ from each other.

Both documents share the same fundamental aim of clarifying the international law applicable to the protection of the environment and to the remediation of conflict-related environmental harm.

The preventive measures to be taken before an armed conflict, or the measures to be taken in post-conflict situations *inter alia*

This was notably the case of the rules based on articles 35(3) and 55 of Additional Protocol I regarding the natural environment.

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practice clearly establishes as rules of customary international law in both
international armed conflicts and non-international armed conflicts. Example 6c