

Environmental protection in armed conflicts

– overview of 50 years of legal development

I. General Overview

Armed conflict pollutes and destroys the environment, often leaving permanent scars on the landscape and biodiversity of affected countries. From the destruction of forests or protected area targets, to collateral damage from oil spills in marine or desert environments, toxic chemical contamination from abandoned munitions, the destruction of agricultural land, and the devastation of wildlife, armed conflict causes a great deal of harm to the natural world.

Accordingly, the World Commission on Environmental Law (WCEL) Group of Experts on Peace, Security and Conflict has been closely following the work of the International Law Commission (ILC) programme of work on the protection of the environment in relation to armed conflict.

In May 2022, the ILC adopted the final version of the 27 draft principles it had recommended, submitting them to the General Assembly for final consideration prior to adoption. Many of the draft principles were already rooted in international law, while some provided best practice guidance.

II. The view of the IOs (*notius* ICRC)

There is no doubt that the contribution of the Red Cross to the issue of environmental protection in armed conflict, on which this paper mainly focuses, has been remarkable.

i. Background of development of the Protection of Environment related to the Armed Conflicts

There are 3 phases of the PERAC:

A.) Vietnam War-the increased participation of States in the PERAC law-making process. There were ENMOD Convention, Stockholm Declaration on the Human Environment (but only about Nuclear) concentrating on the protection of environment in armed conflict, but obviously they are not well-developed and detailed.

B.) After the Cold War-PERAC soft law documents increased, international organizations and state-empowered entities are gradually asserting their own role within the PERAC-related international ,for example, 1992 Rio Declaration.

C.) After the 2000s, international courts and fact-finding missions are increasingly, more and more international organizations, such as the ICRC, became the main force driving the PERAC's development.

ii. The view of the ICRC about the PERAC

The instruments produced by the ILC and the ICRC aspire to clarify obligations pertaining to environmental protection in relation to armed conflicts, and thus enhance it. they are increasingly asserting an influential role in PERAC law-making.

The adapted Martens clause to furnish protection to the environment found its way into the first version of the ICRC Guidelines, which were published in 1994, while it was also proposed in connection with the 2000 IUCN World Congress.

In September 2020, the ICRC also published an updated version of its 1994 Guidelines for Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict.

The relevant informal law-making process is dominated by the ILC and the ICRC, whereas UNEP has assumed a leading role in the post-conflict period and the UNSC in its collective security operations.

In May 2022, the updated 2020 ICRC Guidelines on the Protection of the Natural Environment in Armed Conflict.

As part of its work on the environment and the climate crisis, and following the recommendations of an expert meeting organised by the United Nations Environment Programme and the International Committee of the Red Cross (ICRC) in 2009, the ICRC updated its 1994 Guidelines to reflect developments in treaty and customary international humanitarian law. The updated Guidelines for the Protection of the

Natural Environment in Armed Conflict (the 2020 Guidelines) bring together existing IHL rules and recommendations for the protection of the natural environment in armed conflict.

The first part of the 2020 Guidelines covers IHL rules that provide specific protection for the natural environment itself. Part II contains general IHL rules for the protection of the natural environment. Part III includes weapons-specific rules for the protection of the natural environment. Part IV includes IHL rules on respecting, implementing and disseminating rules on the protection of the natural environment.

On the eve of the 27th Conference of the Parties to the United Nations Framework Convention on Climate Change (COP27), the International Committee of the Red Cross (ICRC) urges Parties and the governing bodies of the Conference of the Parties (COP) to make three commitments to ensure that populations caught up in conflict situations are not forgotten: a.) to recognise that countries suffering from conflict are highly vulnerable to climate risks due to their limited adaptive capacity. b.) to honour international commitments to scale up climate action in countries that are particularly vulnerable to climate change and, inevitably, in countries suffering conflict and violence. c.) ensure that climate action is adequately supported by targeted financing.

Besides, together with the IFRC, the ICRC has led the development of a Climate and Environment Charter for Humanitarian Organizations to guide the sector as it responds to these crises and to rally collective action.

iii. Responsibility for Wartime Environmental Damage:

The 2020 ICRC Guidelines do not address issues of responsibility for wartime environmental damage, the 2005 ICRC Study on customary IHL affirms the applicability of the rule that ‘State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused’, in both international and non-international armed conflicts.’

The present Guidelines and their accompanying commentaries are based on rules of IHL; they do not analyse questions of application and interplay with other bodies of law and are without prejudice to existing obligations under other applicable bodies of

international law.

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