



Protecting the Environment During Armed Conflict



An Inventory and Analysis
of International Law

United Nations Environment Programme

About UNEP's Disasters and Conflicts Programme

The United Nations Environment Programme (UNEP) seeks to minimize environmental threats to human well-being from the environmental causes and consequences of conflicts and disasters. Through its Disasters and Conflicts programme, it conducts field-based environmental assessments and strengthens national environmental management capacity in countries affected by conflicts and disasters. Using state-of-the-art science and technology, UNEP deploys teams of environmental experts to assess environmental damage and determine risks for human health, livelihoods and security. Since 1999, UNEP has operated in more than thirty-five countries and published twenty environmental assessment reports. Based on this expertise, UNEP is providing technical assistance to a number of UN and international actors, including the Peacebuilding Support Office (PBSO), the Department of Peacekeeping Operations (DPKO), the Department of Field Support (DFS), the UN Development Programme (UNDP) and the European Commission, in assessing the role of natural resources and the environment in conflict and peacebuilding. The main objective of this technical cooperation is to prevent natural resources and environmental stress from undermining the peacebuilding process while at the same time using environment as a platform for dialogue, cooperation and confidence-building. For more information, see: <http://www.unep.org/conflictsanddisasters>

About this report

This report inventories and analyses the range of international laws that protect the environment during armed conflict. With a view to identifying the current gaps and weaknesses in this system, the authors examine the relevant provisions within four bodies of international law – international humanitarian law (IHL), international criminal law (ICL), international environmental law (IEL), and international human rights law (HRL). The report concludes with twelve concrete recommendations on ways to strengthen this legal framework and its enforcement.

The launch of this report coincides with the **International Day for Preventing the Exploitation of the Environment in War and Armed Conflict**, which is observed annually on 6 November (see <http://www.un.org/en/events/environmentconflictday/>). This day aims to raise awareness of the fact that damage to the environment during armed conflict impairs ecosystems and natural resources long after the period of the conflict, and extends beyond the limits of national territories and the present generation. Because the environment and natural resources are crucial for building and consolidating peace, it is urgent that their protection in times of armed conflict be strengthened. There can be no durable peace if the natural resources that sustain livelihoods are damaged or destroyed. This report provides a basis upon which Member States can draw upon to clarify, expand and enforce international law on environmental protection in times of war.

A joint product of UNEP and the Environmental Law Institute, this report was co-authored by Elizabeth Maruma Mrema of UNEP's Division of Environmental Law and Conventions, together with Carl Bruch and Jordan Diamond of the Environmental Law Institute. It is also based on the outcomes of an expert meeting of 20 leading international legal specialists held by UNEP and the International Committee of the Red Cross in March 2009 in Nairobi, Kenya (see Annex 5). The report was produced and coordinated by the Post-Conflict and Disaster Management Branch (PCDMB) of UNEP's Disasters and Conflicts Programme, and co-financed by the Government of Finland.

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international law

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Executive summary

Despite the protection afforded by several important legal instruments, the environment continues to be the silent victim of armed conflicts worldwide. The United Nations Environment Programme (UNEP) has conducted over twenty post-conflict assessments since 1999, using state-of-the-art science to determine the environmental impacts of war. From Kosovo to Afghanistan, Sudan and the Gaza Strip, UNEP has found that armed conflict causes significant harm to the environment and the communities that depend on natural resources. Direct and indirect environmental damage, coupled with the collapse of institutions, lead to environmental risks that can threaten people's health, livelihoods and security, and ultimately undermine post-conflict peacebuilding.

Findings from these assessments also show that the exploitation and illegal trade of natural resources frequently fuel and prolong armed conflict, particularly in countries where laws and institutions have been weakened or have collapsed. As peacebuilding often addresses the allocation, access and ownership of natural resources, there is an urgent need to strengthen their protection during armed conflict. There can be no durable peace if the natural resources that sustain livelihoods are damaged, degraded, and destroyed.

The existing international legal framework contains many provisions that either directly or indirectly protect the environment and govern the use of natural resources during armed conflict. In practice, however, these provisions have not always been effectively implemented or enforced. Where the international community has sought to hold States and individuals responsible for environmental harm caused during armed conflict, results have largely been poor, with one notable exception: holding Iraq accountable for damages caused during the 1990-1991 Gulf War, including for billions of dollars worth of compensation for environmental damage.

With a view to identifying the current gaps and weaknesses within the existing legal framework and making recommendations on how they can be addressed, this report reviews the provisions within the four main bodies of international law that provide protection for environment during armed conflict. These include international humanitarian law (IHL), international criminal law (ICL), international environmental law (IEL), and international human rights law (HRL). Each body of law is inventoried and analysed as per the treaties, customary law, soft law and case law it contains on the topic

This legal assessment was jointly conducted by experts from UNEP and the Environmental Law Institute (ELI). It is also based on the outcomes of an expert meeting of twenty leading specialists in international law that was held by UNEP and the International Committee of the Red Cross (ICRC) in March 2009. The report culminates in a number of key findings and recommendations explaining why the environment continues to lack effective protection during armed conflict, and how

these challenges can be addressed to ensure that the legal framework is strengthened and better enforced.

Findings

- Articles 35 and 55 of Additional Protocol I to the 1949 Geneva Conventions do not effectively protect the environment during armed conflict due to the stringent and imprecise threshold required to demonstrate damage:** While these two articles prohibit “widespread, long-term and severe” damage to the environment, all three conditions must be proven for a violation to occur. In practice, this triple cumulative standard is nearly impossible to achieve, particularly given the imprecise definitions for the terms “widespread,” “long-term” and “severe.”
- Provisions in humanitarian law that regulate the means and methods of warfare or protect civilian property and objects provide indirect protection of the environment:** Restrictions on the means of warfare (in particular weapons) and the methods of warfare (such as military tactics) provide indirect protection to the environment, although new technologies, such as the use of depleted uranium, are not yet addressed – except by the general principles of the law of war. Provisions that protect civilian property and objects, including industrial installations and cultural/natural sites, also provide indirect protection to the environment. However, these protections have rarely been effectively implemented or enforced.
- The majority of international legal provisions protecting the environment during armed conflict were designed for international armed conflicts and do not necessarily apply to internal conflicts:** Given that most armed conflicts today are non-international or civil wars, much of the existing legal framework does not necessarily apply. This legal vacuum is a major obstacle for preventing the often serious environmental damage inflicted during internal conflicts. There are also no institutionalized mechanisms to prevent the looting of natural resources during armed conflict or to restrict the granting of concessions by combatants that may lack legitimacy or legal authority. In addition, there are no systematic mechanisms to prevent States or corporations from aiding and abetting civil war parties in causing environmental damage or looting natural resources.
- There is a lack of case law on protecting the environment during armed conflict because of the limited number of cases brought before the courts:** The provisions for protecting the environment during conflict under the four bodies of international law have not yet been seriously applied in international or national jurisdictions. To date, only a very limited number of cases have been brought before national, regional, and international courts and tribunals in this context. Moreover, in cases where decisions were handed down, procedural rather than merit-based reasoning has predominated. This lack of case law contributes to the sense that there is a reluctance or difficulties in enforcing the applicable law.

5. **There is no permanent international mechanism to monitor legal infringements and address compensation claims for environmental damage sustained during international armed conflicts:** The international community is inadequately equipped to monitor legal violations, determine liability and support compensation processes on a systematic basis for environmental damage caused by international armed conflicts. The existence and implementation of such a mechanism could act as a standing deterrent to prevent environmental damage, as well as redress wartime infringements. While an investigative body exists for violations of Additional Protocol I to the 1949 Geneva Conventions, investigations can only be carried out with the consent of countries, are not systematic and do not address violations of other instruments.
6. **The general humanitarian principles of distinction, necessity, and proportionality may not be sufficient to limit damage to the environment:** The practical difficulty of establishing the threshold of these principles, which lack internationally agreed standards, makes it easier to justify almost any environmental damage if the military necessity is considered to be sufficiently high. This limits the practical effectiveness of these principles for preventing damage to the environment. The ICRC emphasizes the importance of taking a precautionary approach in the absence of scientific certainty about the likely effects of a particular weapon on the environment.
7. **Environmental damage that contributes to war crimes, crimes against humanity and genocide is a criminal offence under international law:** Destruction of the environment and depletion of natural resources may be a material element or underlying act of other crimes contained within the Rome Statute. It is therefore subject to criminal liability and prosecution by the International Criminal Court (ICC) and national criminal jurisdictions of Parties to the ICC. This applies to both internal armed conflicts within State Parties and international conflicts between State Parties. Acts of pillage as a war crime are of particular interest and could be used to prosecute the practice of looting natural resources during conflicts.
8. **Unless otherwise stated, international environmental law continues to apply during armed conflicts and could be used as a basis for protection:** The provisions of multilateral environment agreements (MEAs) should be regarded as continuing to apply during both international and non-international armed conflict, unless they specifically stipulate otherwise. The notion that international humanitarian law replaces international environmental law as the operational body of law during armed conflict is no longer the prevailing opinion of legal experts, including the International Law Commission. In addition, international environmental law could be used in the interpretation of incomplete or insufficiently clear norms of international humanitarian law.
9. **Human rights law, commissions and tribunals can be used to investigate and sanction environmental damage caused during international and non-international armed conflicts:** Linking environmental damage to the violation of fundamental human rights offers a new way to investigate and sanction environmental damages, particularly in the context of non-international armed conflicts. A variety of human rights fact-finding missions, including that led by Judge Goldstone in the Gaza Strip in 2009, have investigated environmental damages that have contributed to human rights violations. This approach could provide an interim solution to address environmental damages until international humanitarian law and associated enforcement institutions are strengthened.
10. **There is no standard UN definition of what constitutes a “conflict resource” and when sanctions should be applied to stop illegal exploitation and trade of such resources:** Considering the frequent role of high-value natural resources, such as diamonds, oil and timber, in providing revenue streams for the purchase of weapons and hiring of combatants, a standard definition by the UN is required for identifying “conflict resources.” Such a definition would facilitate a more consistent and effective international approach to sanctions.

Recommendations

1. **The terms *widespread*, *long-term* and *severe* within Articles 35 and 55 of Additional Protocol I to the 1949 Geneva Conventions should be clearly defined:** To improve the effectiveness of Articles 35 and 55, clear definitions are needed for “widespread,” “long-term,” and “severe.” As a starting point in developing these definitions, the precedents set by the 1976 ENMOD convention should serve as the minimum basis, namely that “widespread” encompasses an area on the scale of several hundred square kilometers; “long-term” is for a period of months, or approximately a season; and “severe” involves serious or significant disruption or harm to human life, natural economic resources or other assets.
2. **The ICRC *Guidelines on the Protection of the Environment during Armed Conflict* (1994) require updating and subsequent consideration by the UN General Assembly for adoption, as appropriate:** In view of the rapid transformations in the methods and means of warfare, as well as the increase in non-international armed conflicts, updating of the 1994 ICRC *Guidelines* is necessary. In particular, the guidelines should define key terms in Additional Protocol I, address the continued application of international environmental law during armed conflict, explain how damage to the environment can be a criminal offence, and examine protection of the environment during non-international armed conflicts. States would be in a position to adopt and reflect these guidelines in national legislation and

military manuals, as well as to integrate them into the training of their armed forces.

3. **The International Law Commission (ILC) should examine the existing international law for protecting the environment during armed conflict and recommend how it can be clarified, codified and expanded:** As the leading UN body with expertise in international law, the International Law Commission (ILC) should be called upon to examine the effectiveness of the legal framework, to identify the gaps and barriers to enforcement, and to explore possibilities for clarifying and codifying this body of law. Clarification is urgently needed, for example, for extending applicable rules to non-international armed conflicts, as well as for the applicability of MEAs during armed conflict. Definitions for the terms “widespread,” “long-term,” and “severe” should also be addressed. The ILC should also consider how international environmental law could be used to help clarify gaps and ambiguities in international humanitarian law.
4. **International legal practitioners should be trained on enforcing the existing international law protecting the environment during armed conflict:** In order to enrich the corpus of case law available, international judges, prosecutors and legal practitioners should be trained on the content of the international law that can be used to prosecute environmental violations during armed conflict. The subsequent development of case law would help bring clarity to existing provisions and increase deterrence by adding a credible threat of prosecution for violations.
5. **Countries that wish to protect the environment during armed conflict should consider reflecting the relevant provisions of international law in national legislation:** In order to ensure that environmental violations committed during warfare are prosecuted, the provisions of international law that protect the environment in times of conflict should be fully reflected at the national level. This will require targeted capacity-building programmes for legal drafters and practitioners. The content

violations of international law during international and non-international armed conflicts, as well as handle and process compensation claims related to environmental damage and loss of economic opportunities.

7. **The international community should consider strengthening the role of the Permanent Court of Arbitration (PCA) to address disputes related to environmental damage during armed conflict:** In 2002, the PCA adopted the “Optional Rules for Conciliation of Disputes Relating to the Environment and/or Natural Resources.” These rules provide the most comprehensive set of environmentally tailored dispute resolution procedural rules presently available and could be extended to disputes arising from environmental damage during armed conflict.
8. **The United Nations should define “conflict resources,” articulate triggers for sanctions and monitor their enforcement:** The UN should consider defining “conflict resources” and articulating the extent to which the misuse of certain natural resources (e.g. for financing conflict) constitutes a “threat to peace and security.” Conflict resources could be defined as natural resources whose systematic exploitation and trade in a context of conflict contribute to, benefit from or result in the commission of serious violations of human rights, violations of international humanitarian law, or violations amounting to crimes under international law. Once conflict resources are identified and international sanctions are issued, a new mechanism will be needed for monitoring and enforcement. One option could be to review and expand as appropriate the mandate of peacekeeping operations for monitoring the illegal exploitation and trade of natural resources fuelling conflict as well as protecting sensitive areas covered by international environmental conventions.
9. **A new legal instrument is needed for place-based protection of critical natural resources and areas of ecological importance during armed conflicts:**

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