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Legal Regulation on Protection of Environment in Times of Non-international Armed Conflict: A Preliminary Study of the Classification of Armed Conflict

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I Introduction

There is no question that warfare can be seriously disruptive to the environment, and the environment continues to be ‘the silent victim of armed conflicts.’¹⁾ Considering that

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1) The United Nations Environment Programme (hereinafter, UNEP), *Protecting the Environment During*

most armed conflicts today are non-international or civil wars, much of the existing legal framework of international law does not necessarily apply. Despite growing concern on the issue, environmental harm in times of non-international armed conflicts is still an underestimated consequence of the hostilities.

It is obvious that many weapons have great potential to cause serious and lasting damage to the environment²⁾. Forests are most frequently targeted in armed conflict as they provide natural cover and camouflage for non-state armed groups in addition to ‘food, water, fuel, and medicine.’³⁾ Wildlife is also an important element of the natural environment that often faces danger in the context of non-international armed conflicts⁴⁾. It is clear that the exploitation of natural resources and related environmental stresses can become significant drivers of violence and non-international armed conflicts in the first place⁵⁾. However, resource exploitation *per se* is not the main concern that the laws of armed conflict were designed for⁶⁾.

Though some regulations of the laws of armed conflict apply to some situations, this does not always mean that the environment is protected during all categories of armed conflict⁷⁾. Not all rules applicable in relation to international armed conflict are considered applicable during non-international armed conflicts, even though the consequences of environmental harm remain the same in both cases⁸⁾. The environment itself was not even recognized in international documents regulating conduct in armed conflict until Additional Protocol I of the Geneva Conventions⁹⁾. Despite the realization of an urgent need to regulate protection of the environment during armed conflicts, however, it was left to a set of norms, such as Articles 35(3) and 55 of Additional Protocol I, and there was

Armed Conflict: An Inventory and Analysis of International Law (Switzerland: UNEP, 2009), 4.

2) *Ibid.*, 13.

3) Wil De Jong, Deanna Donovan and Ken-ichi Abe (eds), *Extreme Conflict and Tropical Forests* (Springer, 2007), 1.

4) Joseph P. Dudley and others, “Effects of War and Civil Strife on Wildlife and Wildlife Habitats,” *Conservation Biology*, Vol.16 (2002), 319. For example, the widespread placement of the land mines had threatened the lives of the mountain gorillas in the Rwandan Civil War: see Jessica C Lawrence & Kevin Jon Heller, “The Limits of Article 8(2)(b)(iv) of the Rome Statute: The First Ecocentric Environmental War Crime,” *Georgetown International Environmental Law Review*, Vol.20 (2007), 85.

5) UNEP, *From Conflict to Peacebuilding: The Role of Natural Resources and the Environment* (Nairobi: UNEP, 2009), 8.

6) In a certain situation, opportunistic looting and exploitation of resources in the context of an armed conflict may be covered by the prohibition against pillage.

7) For a comprehensive discussion on the classification of armed conflict, see Elizabeth Wilmshurst (ed.), *International Law and the Classification of Conflicts* (Oxford University Press, 2012).

8) Rogier Bartels, “Timelines, Borderlines and Conflicts: The Historical Evolution of the Legal Divide between International and Non-International Armed Conflicts,” *International Review of the Red Cross*, Vol.91, No.873 (2009), 35–67.

9) Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), adopted 8 June 1977.

criticism of the high threshold of applicability of Additional Protocol I¹⁰⁾. It is generally acknowledged by most commentators that legal regulation tends to be insufficient on this matter¹¹⁾.

Under Common Article 3 to the four Geneva Conventions of 12 August 1949¹²⁾, non-international armed conflicts are armed conflicts in which one or more non-state armed groups are involved. Depending on the situation, hostilities may occur between governmental armed forces and non-state armed groups or between such groups only. In the case of *Tadić*, the ICTY concluded that while an international conflict encompasses just about any amount of violence between two states, a non-international armed conflict consists in “protracted armed violence between governmental authorities and organized armed groups or between such groups within a State”¹³⁾. Environmental damage as a result of the conduct of hostilities in non-international armed conflicts has been less frequently highlighted. The purpose of this article is to reflect on the question of whether the current legal framework relevant to non-international armed conflicts is providing adequate protection of the environment by analysing if there are any explicit or implicit obligations dispersed in written or customary law that may contribute to this. The problems of the possible legal vacuum and the lack of an existing legal framework for the issue will be examined in terms of the direct and indirect regulation of the protection of the environment in non-international armed conflicts.

10) Michael Bothe, Carl Bruch, Jordan Diamond, and David Jensen, “International Law Protecting the Environment during Armed Conflict: Gaps and Opportunities,” *International Review of the Red Cross*, Vol.92 (2010), 576–578. Alexandre Kiss, “International Humanitarian Law and the Environment”, *Environmental Policy and Law*, Vol.31 (2001), 223–231.

11) Wil D. Verwey, “Protection of the Environment in Times of Armed Conflict: In Search of a New Legal Perspective,” *Leiden Journal of International Law*, Vol.29 (1995); Hans-Peter Gasser, “For Better Protection of Natural Environment in Armed Conflict: A Proposal for Action,” *American Journal of International Law*, Vol.89 (1995), 637–643; Carl E. Bruch, “Introduction,” *Environmental Consequences of War: Legal, Economic and Scientific Perspectives* (Cambridge: Cambridge University Press, 2000), 43.

12) Common Article 3 refers to Article 3, which is common to all four 1949 Geneva Conventions. See Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), 12 August 1949, 75 UNTS 31, Art 3; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), 12 August 1949, 75 UNTS 85, Art 3; Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), 12 August 1949, 75 UNTS 135 Art 3; Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287 Art 3.

13) *Prosecutor v Tadić*, ICTY Case No IT-94-1, Decision on Defense Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para 70.

II Treaty-based Laws of Non-international Armed Conflicts and Protection of the Environment

This chapter presents and discusses the existing available law that developed within International Law. The law of armed conflict is mostly concerned with conflicts between states. However, it is widely accepted that the law of armed conflicts applies, to some extent, to non-international armed conflicts as well. Regarding treaty law, Additional Protocol II¹⁴⁾ and Common Article 3 of the Geneva Conventions, which regulate non-international armed conflict, do not contain any provisions which offer direct protection of the environment.

1. 1949 Geneva Conventions and their protocols

1.1. Common Article 3

Common Article 3 was the first provision in the laws of armed conflict to identify non-international armed conflict as a category of armed conflict in its own right¹⁵⁾. Common Article 3 applies to all armed conflicts that are not covered by Common Article 2 of the four Geneva Conventions 1949. An armed conflict regulated by Common Article 3 may be a conflict between a state and a non-state armed group or, alternatively, a non-international armed conflict may arise between two non-state actors on the territory of a state. This provision has been suggested as a means of indirectly prohibiting environmental damage in non-international armed conflict¹⁶⁾. It contains ‘a set of minimum standards of humane treatment to be adhered to in all circumstances.’¹⁷⁾

Bruch has observed that certain instances of environmental warfare may cause violence to life and person, and this would violate Article 3(1)(a)¹⁸⁾. He argued that this is only to the extent that the anthropocentric standards apply, as Common Article 3 does not mention environmental damage in general.

1.2. Additional Protocol II

Additional Protocol II is generally regarded to be ‘a considerable improvement on Common Article 3’¹⁹⁾ as it has more detailed and specific provisions. Despite the absence

14) Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of War Victims of Non-International Armed Conflicts (Additional Protocol II), adopted 8 June 1977, 1125 UNTS 609.

15) Jelena Pejic, “The Protective Scope of Common Article 3: More than Meets the Eye,” *International Review of the Red Cross*, Vol.93 (2011), 189.

16) Aurelie Lopez, “Criminal Liability for Environmental Damage Occurring in Times of Non-International Armed Conflict: Rights and Remedies,” *Fordham Environmental Law Review*, Vol.18 (2006–2007), 240.

17) Anthony Cullen, *The Concept of Non-International Armed Conflict in International Humanitarian Law* (Cambridge University Press, 2010), 59.

18) Carl E. Bruch, “All’s Not Fair in (Civil) War: Criminal Liability for Environmental Damage in Internal Armed Conflict,” *Vermont Law Review*, Vol.25 (2000–2001), 709–710.

19) Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, “Minimum

of explicit rules of environmental protection in Additional Protocol II, there are some provisions available for the protection of the environment. Firstly, the provision of protection of 'property' of Additional Protocol II may contribute to the protection of the environment. Secondly, provisions existing to protect civilians may have a similar effect. It is difficult to include all the components of the environment, such as the atmosphere, ecological concepts, ecosystems and biological diversity, under this category of the protection of property as some elements of the environment can be classified as private property or public property²⁰. Nonetheless, indirect prohibitions on environmental damage may be ascertained by considering elements of the environment to be protected property.

The most promising provision in the Geneva Conventions, in terms of its scope of application to natural resource exploitation, may be the prohibition on pillage. Pillage was included as subject to prohibition in the context of international armed conflict. It was also included in Article 4(2)(g) of Additional Protocol II, ensuring its continued application in non-international armed conflict. By recognizing natural-resource exploitation as a property-based act of armed conflict, nonetheless, it can be forbidden by the prohibition on pillage in certain circumstances²¹.

Article 14 prohibits attacks against foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking-water installations and supplies and irrigation works, items that are indispensable to the survival of the civilian population²². In terms of the protection of the environment, this provision has the limitation that the protection of certain environmental elements has linkage to the ultimate result of the starvation of the civilian population.

Article 15 prohibits attacks against potentially dangerous installations, such as dams, dykes and nuclear electrical generating stations, if an attack may cause the release of dangerous forces that cause severe losses among the civilian population²³. Article 56 of Additional Protocol I has three military-exception clauses which permit the targeting of these installations²⁴, but no such exceptions in Article 15 of Additional Protocol II. This means that there is broader protection for these kinds of installations, thus greater protection for the environment in non-international armed conflict. These provisions are aimed at protecting the civilian population; nonetheless, the environmental impact of the provisions is also evident.

Humanitarian Standards," analytical report of the Secretary-General submitted pursuant to Commission on Human Rights resolution 1997/21, UN Doc E/CN.4/1998/87 5 January 1998, para 77.

20) Daniella Dam-de Jong, "International Law and Resource Plunder: The Protection of Natural Resources during Armed Conflict," *Yearbook of International Environmental Law*, Vol.19 (2008), footnotes 113.

21) Michael A. Lundberg, "The Plunder of Natural Resources During War: A War Crime (?)," *Georgetown Journal of International Law*, Vol.39 (2007-2008), 502.

22) Additional Protocol II, Art 14.

23) *Ibid.*, Art 15.

24) Additional Protocol I, Art 56.

The protection of cultural objects under Article 16⁽²⁵⁾ is considered to prohibit some environmental damage in non-international armed conflict. Nevertheless, the environment is only protected to the extent that it is, or forms part of, a cultural or historic place. Moreover, there are two provisions of interest in the protection of civilians: Article 13⁽²⁶⁾ on the protection of the civilian population and Article 17⁽²⁷⁾ on the prohibition of forced movement of civilians. Where the environment is destroyed with the aim of forcibly moving a civilian population, this could amount to a violation of Article 17.

Unfortunately, according to the scope of the Additional Protocol II, a non-international armed conflict has to meet high threshold requirements. Article 1(1) lays down an additional condition to the ones already present in Common Article 3: dissident armed forces or other organized groups have to be under responsible command and exercise control of part of the territory. It is difficult to find a non-international conflict meeting all of these requirements, as these are set up as cumulative.

2. Methods and Means of Warfare in Non-International Armed Conflict Limitations

There is no automatic application of the treaties which control the development and use of weapons to non-international armed conflict. Disarmament and weapons treaties are not designed specifically to protect the environment; nonetheless, it is possible to discern a critical mass of limitations on means of warfare that may apply in non-international armed conflict. In terms of this, environmental damage may be prohibited if it is caused by a weapon which itself is prohibited, or which is used outside of the bounds of the limitations placed upon it.

25) Additional Protocol II, Article 16, reads as follows:

‘Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort.’

26) The relevant provisions of Additional Protocol II, Article 13, are as follows:

‘1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations.

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.’

27) Additional Protocol II, Article 17, reads as follows:

‘1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.’

2.1. Biological Weapons Convention

The 1972 Biological Weapons Convention²⁸⁾ does not apply expressly to non-international armed conflict but may do so as a matter of customary international law. By banning the development, production and stockpiling of biological weapons, the Convention ‘protect[s] the environment in armed conflict from weapons that are likely to cause significant environmental degradation, particularly to the natural environment and to fauna and flora.’²⁹⁾

Article 2 of the Biological Weapons Convention requires each state party, in implementing the Convention, to observe all necessary safety precautions to protect populations and the environment. Although criticized because of its indeterminate language, such as the absence of quantities and parameters to determine when the substance is being used for peaceful purposes, which may give a ground for circumvention³⁰⁾, it does represent a contribution to environmental protection in non-international armed conflict.

2.2. Environmental Modification Convention

The Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD)³¹⁾ prohibits the use of environmental modification techniques as a method or means of warfare. It was drafted in response to the environmental modification techniques, such as cloud seeding and forest defoliation, used by the U.S. military during the Vietnam War, that have caused very severe environmental harm. This Convention prohibits the use of environmental modification techniques, rather than environmental damage in general. Since its adoption in 1976, ENMOD has been criticized as being ‘pregnant with limitations’³²⁾ to the extent that it has largely been irrelevant to most forms of environmental harm arising in the context of armed conflict³³⁾.

Article 1 of the Convention does not make the clear distinction between international armed conflicts and non-international armed conflicts. Furthermore, the ENMOD does not expressly apply in non-international armed conflict, and the extent to which it has become

28) Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (Biological Weapons Convention) (1972) 1015 UNTS 163.

29) UNEP, *supra* notes 1, 15.

30) G. D. Solis, *The Law of Armed Conflict, International Humanitarian Law in War* (Cambridge: Cambridge University Press, 2010), 607–611.

31) Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, 10 December 1976, 1108 UNTS 151.

32) Phoebe N. Okowa, ‘The Legal Framework for the Protection of Natural Resources in Situations of Armed Conflict’ in Willem J.M. Genugten, Michael P. Scharf and Sasha E. Radin (eds), *Criminal Jurisdiction 100 Years After the 1907 Hague Peace Conference: Proceedings of the Eighth Hague Joint Conference held In The Hague, The Netherlands, 28–30 June 2007* (T.M.C. Asser Press 2007), 249.

33) *Loc. cit.*

part of customary international law is questionable. Article 1(1) refers to a prohibition on states causing damage to other states by means of environmental modification in armed conflict. It may not be binding in state versus non-state armed conflict, or at least not binding on the non-state party. Article 1(2) of the ENMOD prohibits state parties from inducing ‘international organizations’ to engage in environmental modification techniques in armed conflict. An annex to the ENMOD, containing clarification of key terms, is silent as to the precise nature of the types of international organization envisioned by Article 1(2), and the extent to which this Convention applies to non-international armed conflict remains unclear.

2.3. Convention on Certain Conventional Weapons and its protocols

The 1980 Convention on Certain Conventional Weapons³⁴⁾ is expressly applicable to all non-international armed conflicts as a result of an amendment to Article 1³⁵⁾. The Convention has several protocols, some of which have the potential to lawfully prohibit environmental damage caused by the use of prohibited weapons. The preamble to the Convention recalls prohibition ‘to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.’³⁶⁾

Protocol V³⁷⁾ on unexploded ordinance requires parties using weapons that fall into either category to ‘facilitate substantial restoration to prior environmental conditions’³⁸⁾ and ‘indirectly protect the environment from post-conflict threats.’³⁹⁾ The preamble to Protocol III clearly prohibits targeting the environment with incendiary weapons, unless the environment itself under the circumstances is a military objective⁴⁰⁾. Therefore, there is a qualified prohibition on environmental damage in Protocol III to the Conventional Weapons Convention. It is unclear to what extent non-state actors can be bound by this. As the Convention was only made applicable to non-international armed conflict by an

34) Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (and Protocols) (As Amended on 21 December 2001), 10 October 1980, 1342 UNTS 137.

35) Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, Geneva, 10 October 1980, Amendment article 2, 21 December 2001, 1342 UNTS 137.

36) *Ibid.*, Preamble.

37) Protocol on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (Protocol V), Geneva 28 November 2003, 2399 UNTS 100.

38) UNEP, *supra* notes 1, 15.

39) *Loc. cit.*

40) Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III), Geneva, 10 October 1980, 1342 UNTS 137. Preamble: ‘It is prohibited to make forests or other kinds of plant cover the object of attack by incendiary weapons except when such natural elements are used to cover, conceal or camouflage combatants or other military objectives or are themselves military objectives.’

amendment in 2001, it is difficult to say that the Convention has become customary international law.

2.4. Chemical Weapons Convention

The 1993 Chemical Weapons Convention⁴¹⁾ ‘prohibits destroying chemical weapons by “dumping in any body of water, land burial and open pit burning” thereby ensuring that the human and environmental costs of disposal are minimised.’⁴²⁾ The Chemical Weapons Convention has an immediate bearing on the protection of the natural environment during armed conflict, as chemical substances may have particularly direct and severe impacts on the environment⁴³⁾. Indeed chemical components of certain material war remnants can have harmful effects on humans, animals, vegetation, water, land and the ecosystem as a whole⁴⁴⁾.

However, the extent to which the Convention applies in non-international armed conflict is unclear. The text of the Convention does not indicate application in non-international armed conflict, though it may apply as customary international law in these circumstances.

2.5. Cluster Munitions Convention

Cluster Munitions have been identified as posing human and environmental risks both within conflict and in the post-conflict setting⁴⁵⁾. Concerning the clearance and destruction of cluster-munition remnants, Article 4(6)(h) of the Cluster Munitions Convention⁴⁶⁾ mentions ‘the environment.’ This Convention is silent as to the categories of conflict that it applies to, referring only to restrictions prohibiting states party to the convention from using cluster munitions ‘under any circumstances.’⁴⁷⁾ This includes state engagement in non-international armed conflict against non-state actors. However, it may not involve a reciprocal obligation on non-state armed groups. Having only been adopted in 2008, it is unlikely to enter the realm of customary international law and therefore the extent to which it can bind non-state actors is questionable.

41) Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction 1993, 1974 U.N.T.S. 3.

42) UNEP, *supra* notes 1, 15.

43) *Loc. cit.*

44) Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Martinus Nijhoff Publishers 1987), 411.

45) UNEP, *supra* notes 1, 16.

46) Convention on Cluster Munitions, Dublin 30 May 2008, UN Doc C.N.776.2008.

47) *Ibid.*, Art 1(1).

3. The Rome Statute for the International Criminal Court

Article 8(2)(b)(iv) of the Rome Statute describes a prohibition against launching an attack causing ‘widespread, long-term, and severe damage to the environment that would be clearly excessive to [...] the military advantage anticipated.’⁴⁸⁾ However, this article does not favorably contribute to the protection of the environment due to its inapplicability in times of non-international armed conflicts. Articles 8(2)(c) and (e), which name crimes punishable within non-international armed conflicts, do not include environmental crimes in the list⁴⁹⁾.

4. Conclusion

This section began by recognising that the treaty-based laws of non-international armed conflict do not have direct provisions prohibiting environmental damage. It has been argued that Common Article 3, Additional Protocol II, and treaties regulating the use of certain weapons have potential as instruments to indirectly prohibit environmental damage in non-international armed conflict. While Common Article 3 is a fundamental source of regulations for non-international armed conflict, it is submitted that it cannot foreseeably result in the prohibition of environmental damage outside of very specific and highly nuanced circumstances. Additional Protocol II contains several provisions that have the potential to prohibit environmental damage in non-international armed conflict. The discussion on the Additional Protocol II provisions was divided into those provisions that apply to property and those that apply to the protection of civilians.

As mentioned above, these provisions prohibiting damage to ‘property’ are useful options for the protection of the environment in certain circumstances. It is submitted that the possible protection of environment under Additional Protocol II is achieved through the prohibition against pillage, the protection of objects indispensable to the survival of the civilian population, the protection of works and installations containing dangerous forces, and the protection of cultural objects. Protection of the environment is achieved to a much lesser extent in the civilian-protection provisions such as Articles 13 and 17.

This section also discussed relevant treaties that place limitations on the use of certain weapons, means and methods of warfare. In conclusion, limitations on weapons, means and methods of warfare can, in some instances, prohibit environmental damage in non-international armed conflict. However, the important limitation with these treaties is determining their applicability in non-international armed conflict and to non-state armed groups, as many of the relevant treaties are silent as to their application. While it is

48) The Rome Statute for the International Criminal Court (adopted 17 July 1998, entry into force 1 July 2003), 2187 U.N.T.S. 90, Art 8 (2)(b)(iv).

49) For the argument on the interpretation of the definition of non-international armed conflicts in the Rome Statute, see Anthony Cullen, “The Definition of Non-International Armed Conflict in the Rome Statute of the International Criminal Court: An Analysis of the Threshold of Application Contained in Article 8(2)(f),” *Journal of Conflict and Security Law*, Vol.12, No.3 (2008), 421-445.

worthwhile placing limitations on the use of environmentally harmful weapons, the extent to which this is achieved in non-international armed conflict under the current framework of treaties in place is questionable. Furthermore, while the Rome Statute has an article which regulates environmental harm as a war crime during international armed conflict, no equivalent provisions regulating war crimes committed in situations of non-international armed conflict exist.

III Customary Laws of Protection of the Environment applicable to Non-international Armed Conflict

1. Introduction

The applicability of customary international law to non-international armed conflicts has become a ‘general trend’⁵⁰⁾ in the field of laws of armed conflict. The extension of the list of customary law provisions relevant to non-international law is an ongoing process⁵¹⁾. In addition to the protection of the environment during armed conflict provided by the references in the conventions discussed above, customary international law also has the potential to protect the environment. In general, customary international law compliments the positive, treaty-based laws of armed conflict, and as such, all parties to an armed conflict must respect the principles of laws of armed conflict such as military necessity, proportionality, distinction, and the prohibition on unnecessary suffering.

It has been said that the customary rules do not apply to non-state actors but only to states⁵²⁾. Given the issue of methodology for the identification of customary international law, customary international law is based on state practice and does not represent non-state actors. In terms of the law-creation process, only states are considered as relevant subjects, and armed groups are not granted a role to attribute⁵³⁾. On the other hand, it is suggested that the key factor for the applicability of customary law is whether

50) Anne Dienelt and Britta Sjöstedt, “Is the ILC’s Work Enhancing Protection for the Environment in Relation to Warfare? A Reply to Stavros-Evdokimos Pantazopoulos and Karen Hulme,” *Questions of International Law*, Vol.34 (2016), 45.

51) Kyo Arai, “*Hikokusaiteki buryokuhunso-ni tekiyosareru kokusai-jindoho-no kansyuhokisoku: Sekizyuji kokusai-iinkai ‘Kanshu kokusai jindoho’ Kenkyu-no hihanteki kosastu* (Customary International Humanitarian Law of Non-International Armed Conflicts: A Critical Analysis of the ICRC Study),” *The Doshisha Hogaku* (The Doshisha Law Review), Vol.60, No.7 (2009), 4139–4163.

52) Heather A. Wilson, *International Law and the Use of Force by National Liberation Movements* (Oxford, Clarendon Press, 1990), 50.

53) Murry pointed out that International courts, such as the International Court of Justice and the European Court of Justice, have held that non-state entities are bound by customary international law, without commenting on any potential ability of these entities to contribute to the creation of such law. He also argues that an armed group only has international legal personality when it is the subject of direct cognition by the international legal order. Daragh Murray, “How International Humanitarian Law Treaties Bind Non-State Armed Groups,” *Journal of Conflict & Security Law*, Vol.20, No.1 (2015), 108.

the entity has legal personality or not⁵⁴). In the period after the Second World War, it became increasingly accepted that non-state entities can be subjects of international law. The ICJ confirmed this view by stating that ‘by their very nature customary law rules and obligations must have equal force for all members of the international community.’⁵⁵ If an armed group does possess international legal personality—arising from the treaty-based application of common Article 3, for example—it will then be bound by customary international law, resulting in the application of the entire body of customary international humanitarian law applicable to non-international armed conflict⁵⁶).

The Study on Customary International Humanitarian Law (hereinafter, the ICRC Study on Customary Law) by the ICRC has shown some implications of this law. It has asserted that some of the laws of international armed conflict may now apply so as to enhance environmental protection in non-international armed conflict⁵⁷). This section will also examine the customary laws of armed conflict that have been identified in the ICRC Study on Customary Law.

2. The principles of the Armed Conflict Law and the Protection of Environment

2.1. The Principle of Distinction

The principle of distinction is ‘the first test to be applied in warfare.’⁵⁸) Civilians and civilian objects can never be deliberately targeted. The ICTY in the *Tadić* case⁵⁹) recognized that it was necessary to apply ‘basic humanitarian principles in all armed conflict’⁶⁰) and as such they held that the principle of distinction did apply in non-international armed conflict. Nevertheless, as no clear distinction exists between combatant and civilian under the laws of non-international armed conflict, the application of this principle may be difficult in practice. Article 52(2) of the Additional Protocol I provides:

In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in

54) *Ibid.*

55) ICJ 20 February 1969, *North Sea Continental Shelf*, ICJ Reports 1969, Judgment, para. 63.

56) Murray, *op. cit.*, 109.

57) Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law Volume I: Rules* (ICRC ed, Cambridge University Press 2005); Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law Volume II: Practice* (ICRC ed, Cambridge University Press, 2005).

58) UNEP, *supra* notes 1, 13.

59) *Tadić* Case, *supra* notes 13, para 127.

60) UNGA Res 2444 (XXIII), Respect for Human Rights in Armed Conflicts, U.N. Doc. A/7218 (Dec. 19, 1968).

the circumstances ruling at the time, offers a definite military advantage⁶¹⁾.

The ICRC study on Customary Law observes that the definition of a military objective applies as a matter of custom in both international and non-international armed conflicts⁶²⁾. Paragraph 40 of the 1994 San Remo Manual on International Law Applicable to Armed Conflicts at Sea⁶³⁾ adopts the same definition of ‘military objectives’ as those of Article 52(2) of the Additional Protocol I.

The environment only benefits from the protection of the principle of distinction insofar as it qualifies as being a civilian objective. When it becomes a military objective, it loses protection under the principle of distinction, and then it may be legitimately targeted⁶⁴⁾. Determining whether the environment is a military objective or civilian object is a crucial issue in terms of protection of the environment. The assessment of the conditions needs to be done regarding the circumstances ruling at the time as there is no fixed borderline between civilian objects and military objects.

Under the test of the principle of precaution in attack, parties to an armed conflict must do their utmost to determine that an object is indeed a military objective before attacking. Hulme indicates that ‘[o]nce rivers, lakes, and trees are seen as *prima facie* civilian, they are no longer just a valueless part of the scenery in which a battle takes place.’⁶⁵⁾ While there are no clear provisions in the laws of armed conflict that ‘explicitly designate the environment as being civilian in nature, this is the prevailing view of the international community and undoubtedly the force behind the protection.’⁶⁶⁾

The 2006 San Remo Manual on the Law of Non-International Armed Conflict with Commentary⁶⁷⁾ indicates that it regards the natural environment to be a civilian objective by virtue of their nature, location, purpose or use⁶⁸⁾. Indeed, support for this assertion is widespread, to the extent that it may be ‘universally accepted that the environment is *prima facie* a civilian object, although terming the environment an object has always

61) Additional Protocol I, Art 52 (2). Article 19 and Article 4 Annex I of the 1949 Geneva Convention I and Article 18 and Article 4 Annex I of the 1949 Geneva Convention IV use the term ‘military objectives’ without, however, defining it.

62) Henckaerts and Doswald-Beck, *Volume I: Rules*, *supra* notes 52, Rule 8.

63) Louise Doswald-Beck ed., *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, 12 June 1994, para 40.

64) Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (3rd edn, Cambridge University, 2016), 238.

65) Karen Hulme, “Taking Care to Protect the Environment Against Damage: A Meaningless Obligation?” *International Review of the Red Cross*, Vol.92 (2010), 678.

66) *Ibid.*

67) International Institute of Humanitarian Law, *The Manual on the Law of Non-International Armed Conflict with Commentary*, San Remo, 2006.

68) *Ibid.*, 59.

appeared to be a little clumsy.⁶⁹⁾ There is a difference between civilian objects under the principle of distinction and civilian objects as defined by Article 14 of Additional Protocol II. Civilian objects in the context of Article 14 are those objects which would cause starvation amongst the civilian population if damaged or destroyed. There is no such qualification to the designation of civilian objects under the customary principle of distinction.

Where the natural environment, by reason of its nature, location, purpose or use, makes an effective contribution to military action, and the partial or total destruction, capture or neutralization of which, in the circumstances ruling at the time, offers a definite military advantage, it may be considered to be a military objective and as such can be lawfully targeted during the conduct of hostilities⁷⁰⁾. In the commentary to Rule 8 of the ICRC Study on Customary Law, it is recognised that this rule is ‘a wide one, which includes areas of land, objects screening other military objectives and war-supporting economic facilities.’⁷¹⁾

A civilian objective shall be presumed as civilian in case of doubt⁷²⁾. When in doubt as to civilian or military objective status, parties to the conflict must err on the side of caution, and a presumption of civilian protection must prevail⁷³⁾. As a military objective, it is up to the principles of necessity, proportionality and humanity, as well as treaty-based laws of armed conflict, to prohibit environmental damage in non-international armed conflicts. While the environment is treated as a dual-use object⁷⁴⁾, it is difficult to apply the principle of distinction, as the natural environment will often serve both military and civilian uses. In terms of strengthening the protection of the environment, if the environment is to be considered a dual-use object, there should be a presumption in favor of recognizing the environment as being a civilian object.

2.2. The Principle of Proportionality

The principle of proportionality is a fundamental concept in the laws of armed conflict.

69) Karen Hulme, ‘Natural Environment’ in Elizabeth Wilmshurst and Susan Breau (eds), *Perspectives on the ICRC Study on Customary International Humanitarian Law* (Cambridge University Press, 2007), 209.

70) UNEP has concerns about natural resources becoming military objectives and legitimate targets under the principle of distinction. It questions whether an area affected by the illegal exploitation of high-value natural resources (whether by rebels, government troops or foreign occupying forces) would be considered an acceptable target, considering that revenue from this illegal trade was contributing to the war effort (UNEP, *supra* notes 1, 13).

71) Henckaerts and Doswald-Beck, *Volume I: Rules*, *supra* notes 52, 31.

72) Additional Protocol I, Art. 52 (3).

73) Jann K. Kleffner, “From ‘Belligerents’ to ‘Fighters’ and Civilians Directly Participating in Hostilities—On the Principle of Distinction in Non-International Armed Conflicts One Hundred Years After the Second Hague Peace Conference,” *Netherlands International Law Review*, Vol.54 No.2 (2007), 335.

74) Gabriel Swiney, “Saving Lives: The Principle of Distinction and the Realities of Modern War,” *International Lawyer*, Vol.39 (2005), 750.

When attacking military objectives, belligerents must make sure that any collateral damage to civilians is not out of proportion to the military advantage anticipated⁷⁵). As Hulme indicates, proportionality does not guarantee absolute protection to civilians and civilian objects, including the environment, but it has a function of providing a method of balancing the values at stake⁷⁶). Nevertheless, the ICRC has identified a sufficient body of evidence to indicate that proportionality applies as a matter of custom in non-international armed conflicts⁷⁷), even though the principle of proportionality does not appear in any of the provisions in Additional Protocol II.

The extent of the damage that can be caused to the environment depends on how it is valued: the greater the value that is placed on the environment, the less the damage that can be proportionately caused⁷⁸). The principle of proportionality can prohibit disproportionate environmental damage in non-international armed conflicts. The degree to which environmental damage is considered to be disproportionate depends on the subjective value that is placed on the environment by the military commander or non-state armed groups at the time of the attack. It is unlikely that many military commanders or non-state armed groups may be able to value the environment appropriately. This subjectivity is the very weak point in the proportionality test.

2.3. Military Necessity

If military necessity is subordinate to the laws of armed conflict, then it can only provide exceptions to laws when permitted by that particular law. Environmental damage that would otherwise violate laws of armed conflict into which no military-necessity exception has been incorporated would not be justified by the customary doctrine of military necessity.

As Hulme argues, the doctrine of military necessity has become a limited one: It is meaningful only where sanctioned within the law itself⁷⁹). In this regard, military necessity does not significantly undermine existing treaty law, which provides indirect protection to the environment in non-international armed conflicts as the treaty-based rules in Common Article 3 and Additional Protocol II that have no associated military necessity clause. However, military necessity may have some implications for the application of the customary laws of armed conflict in non-international armed conflicts.

75) Antonio Cassese, *International Law* (2nd edn, Oxford University Press 2005), 417.

76) Karen Hulme, *War Torn Environment: Interpreting the Legal Threshold* (Martinus Nijhoff Publishers 2004), 126.

77) Henckaerts and Doswald-Beck, *Volume I: Rules*, *supra* notes 52, Rule 14; Henckaerts and Doswald-Beck, *Volume II: Practice*, *supra* notes 52, Chapter 4.

78) Michael N. Schmitt, "The Principle of Discrimination in 21st Century Warfare," *Yale Human Rights & Development Law Journal*, Vol.2 (1999), 151.

79) Hulme, *op. cit.*, 131.

2.4. The principle of Humanity

According to the ICRC, in armed conflict, the purpose of the principle of humanity is to protect life and health and to ensure respect for human beings. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples⁸⁰⁾. Thus a party cannot use starvation as a method of warfare, or attack, destroy, remove or render useless such objects indispensable to the survival of the civilian population. Therefore, the principle of humanity could prohibit environmental damage that would ultimately result in excessive human suffering.

The principle of humanity has the potential to prohibit inhumane environmental damage in non-international armed conflicts, in cases where environmental damage causes unnecessary suffering to animals, flora, fauna or the natural environment as a whole, as well as to human beings.

2.5. Precautions in attack

Precautions in attack describes the obligation to take constant care to spare the civilian population, civilians and civilian objects from damage, including taking precautions to avoid or at the very least minimize incidental damage to same⁸¹⁾. In terms of protection of the environment, minimizing damage through precautions in attack ensures that the natural environment does not get harmed to any greater degree than is absolutely necessary⁸²⁾. The ICRC have commented on this, stating that '[e]nvironmental considerations should lead to greater weight being given to the medium- and long-term consequences of an attack, including the long-term environmental consequences that will affect civilian life after the end of hostilities. Furthermore, these provisions point to possible precautionary measures that should be considered with a view to minimizing environmental damage *per se*.'⁸³⁾

3. ICRC Study on Customary Law

ICRC Customary Law Study Rules 43, 44 and 45 fall under the heading of customary rules protecting the 'Natural Environment.' The ICRC indicates that Rules 43 and 45 may apply in non-international armed conflicts. Firstly, Rule 43 contains general principles on the Conduct of Hostilities which do apply customarily in non-international armed conflicts. UNEP argues that this 'could clarify some of the outstanding questions and, in the process, create more definite measures to protect the environment in armed conflict.'⁸⁴⁾ Rule 43 as identified by the ICRC states that:

80) André Durand, *The International Committee of the Red Cross* (ICRC, Geneva 1981), 54.

81) Henckaerts and Doswald-Beck, *Volume I: Rules*, *supra* notes 52, 51.

82) Richard Desgagné, "The Prevention of Environmental Damage in Time of Armed Conflict: Proportionality and Precautionary Measures", *Yearbook of International Humanitarian Law*, Vol.3 (2000), 117.

83) *Ibid.*

84) UNEP, *supra* notes 1, 21.

The general principles on the conduct of hostilities apply to the natural environment:

- A. No part of the natural environment may be attacked, unless it is a military objective.
- B. Destruction of any part of the natural environment is prohibited, unless required by imperative military necessity.
- C. Launching an attack against a military objective which may be expected to cause incidental damage to the environment which would be excessive in relation to the concrete and direct military advantage anticipated is prohibited⁸⁵⁾.

The environment may only be attacked if it is a military objective, and if it satisfies the demands of proportionality. Nonetheless, these rules do apply customarily in non-international armed conflicts and to the extent to which the environment is protected through these general principles.

Secondly, ICRC Customary Law Rule 44, entitled ‘Due Regard for the Environment in Military Operations,’ states as follows:

Methods and means of warfare must be employed with due regard to the protection and preservation of the natural environment. In the conduct of military operations, all feasible precautions must be taken to avoid, and in any event to minimise, incidental damage to the environment. Lack of scientific certainty as to the effects on the environment of certain military operations does not absolve a party to the conflict from taking such precautions⁸⁶⁾.

The obligation to have due regard for the environment is derived from principles of precaution in attack. The customary obligation to take precaution in attack requires environmental information to be factored into assessments. It also requires precautions to be taken to minimise environmental damage during the conduct of hostilities. Due regard for the environment could be fulfilled through preparing environmental-impact assessments of an attack so that environmental effects can be factored into a proportionality test. However, it is difficult to get reliable and valid information on the environment within a limited time frame.

Thirdly, Customary Rule 45 indicates serious damage to the natural environment. Rule 45 states as follows:

The use of methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment is prohibited. Destruction of the natural environment may not be used as a weapon⁸⁷⁾.

85) Henckaerts and Doswald-Beck, *Volume I: Rules, supra* notes 52, 143.

86) *Ibid.*, 147.

87) *Ibid.*, 151.

This rule is an amalgamation of Articles 35(3) and 55 of Additional Protocol I. No equivalent provisions were included in Additional Protocol II. The ICRC asserts that Rule 45 applies as a matter of custom to all international armed conflicts and only arguably in non-international armed conflicts. However, the evidence presented to support its being a rule of customary law has been observed as being rather unconvincing⁸⁸⁾.

As the threshold requirements of ‘widespread, long-term and serious damage’ have been criticized as being inadequate and ineffective, to have these as the standards of permissible environmental damage in non-international armed conflicts, one would rarely expect any commensurate enhancement of environmental protection. As to the second sentence of Rule 45, prohibiting the use of the environment as a weapon in armed conflict, the justification provided by the ICRC is unconvincing⁸⁹⁾.

Finally, Rule 76 of the ICRC’s Study on Customary Law states that

[t]he use of herbicides as a method of warfare is prohibited if they:

- (a) are of a nature to be prohibited chemical weapons;
- (b) are of a nature to be prohibited biological weapons;
- (c) are aimed at vegetation that is not a military objective;
- (d) would cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which may be expected to be excessive in relation to the concrete and direct military advantage anticipated; or
- (e) would cause widespread, long-term and severe damage to the natural environment⁹⁰⁾.

This rule prohibits the use of herbicides in warfare under certain conditions, though the issue of defoliants in armed conflict is clearly the primary reason for the identification of this rule. It maintains that herbicides would be prohibited if their composition reached the level of chemical or biological weapons⁹¹⁾. It is identified as being a rule of customary international law in non-international armed conflicts. However, the ICRC admits that there is ‘less specific practice concerning the use of herbicides in non-international armed conflicts.’⁹²⁾

4. Conclusion

The customary rules of armed conflict do, in some respects, prohibit environmental damage in non-international armed conflicts. However, identifying customary law applicable in non-international armed conflicts is generally difficult in most cases. This

88) Dam-de Jong, *supra* notes 20, 19.

89) Henckaerts and Doswald-Beck, *Volume II: Practice, supra* notes 52, 876.

90) Henckaerts and Doswald-Beck, *Volume I: Rules, supra* notes 52, 265.

91) *Ibid.*

92) *Ibid.*, 267.

section shows that the principles of distinction, proportionality, necessity and humanity work, in a certain degree, to protect the environment in non-international armed conflicts. Moreover, some of the rules identified by the ICRC as being customary were less convincingly shown to apply to non-international armed conflicts and as such their enforcement would be dubious in terms of the rule of law.

Firstly, to the extent that the environment is classified as a civilian object, the principle of distinction protects the environment in non-international armed conflicts. The environment, as a civilian object, cannot be directly targeted at any time. Where it loses a civilian object, the protective shield of civilian exemption from attack is removed. Further difficulties arise where the environment has dual military and civilian uses.

Secondly, the principle of proportionality prohibits environmental damage that is excessive in relation to the overall military advantage achieved. The problem is the standard of valuing the environment against military targets. It is submitted that the principle of proportionality is of greatest use when the environment is highly valued. In terms of this, it is quite difficult to expect the high evaluation of the environment by non-state armed groups in reality.

Thirdly, military necessity prohibits environmental damage to the extent that it generally prohibits wanton destruction and damage. In other words, the environment may not be unnecessarily harmed. Unless there is a military-necessity exception clause to a specific provision of the treaty-based laws of armed conflict, then the principle of military necessity cannot circumvent or undermine the environmental protection generated from an indirect interpretation of treaty provisions.

Fourthly, it is possible that under certain circumstances, the principle of humanity or the prohibition on unnecessary suffering prohibits environmental damage that would otherwise be inhumane or cause unnecessary suffering to the human population. It has the potential, however, to be quite far-reaching, possibly also prohibiting unnecessary suffering caused to animals and the natural environment in general. The manner in which this would be applied in practice is unclear.

In addition, Customary Law Study by the ICRC has asserted several rules that may customarily apply in non-international armed conflicts to prohibit environmental damage. It was proposed here that the provisions in Rule 45 arguably do not apply in non-international armed conflicts. Even if it did, it would be of insignificant effect since Article 35(3) has been widely criticized to date as being ineffective, requiring an extremely high threshold.

IV Conclusion

As conflicts increasingly involve non-state entities and have transnational dimensions, they also challenge the classification between international and non-international armed conflict. However, it is often said that there is a huge gap between the applicable norms in

international armed conflicts and non-international armed conflicts. In light of some recent evolutions, the imbalance in regulations between non-international armed conflicts and international armed conflicts has been partially reduced. The applicability of customary rules fills the existing gap between non-international armed conflict and international armed conflict. As treaties contain articles concerning non-international armed conflict, it may expand the normative framework.

There are some provisions of the treaty-based laws of non-international armed conflict that are promising in terms of the indirect prohibition on environmental damage that they may represent. These rules may be ensuring a minimal level of protection. However, the discussion above has identified a number of important limitations to this approach. Customary international law is surrounded by ‘mystery and uncertainty,’⁹³⁾ thus bringing more uncertainty especially in the context of non-international armed conflict.

Taking into account the above analysis, in the current legal situation, regulating the environmental harm in non-international armed conflicts is more difficult in terms of environmental protection. Treaty-based laws which regulate non-international armed conflicts, such as Additional Protocol II and Common Article 3 of the Geneva Conventions, do not have any provisions which provide adequate protection of the environment. Concern for the quality of the environment is reflected in article 54 of Additional Protocol I and article 14 of Additional Protocol II, which prohibit damage to the natural environment that is indispensable for the survival of the local population. However, these provisions do not fundamentally aim at protecting the environment.

International customary law is expected to complement the lack of legal norms in non-international armed conflicts. It is clear that the fundamental principles, such as the principle of distinction and the principle of humanity, reflect customary law and are applicable in all types of armed conflict. These principles may provide protection of the environment in certain circumstances. However, there are difficulties in relying on the customary laws of armed conflict. As Tarasofsky indicates, it is difficult to provide sufficient guidance to a military commander because of the uncertainties of customary international laws⁹⁴⁾.

However, the international community is trying to change the current situation so as to provide sufficient environmental protection during non-international armed conflict. ILC put the topic “Protection of the Environment in Relation to Armed Conflicts” on its program of work at its sixty-fifth session in 2013⁹⁵⁾. The inclusion of this topic on the

93) Erik Koppe, *The Use of Nuclear Weapons and the Protection of the Environment during International Armed Conflict* (Hart Publishing, 2008), 214.

94) Richard G. Tarasofsky, “Protecting Specially Important Areas During International Armed Conflict: A Critique of the IUCN Draft Convention on the Prohibition of Hostile Military Activities in Protected Areas” in Jay E. Austin and Carl E. Bruch (eds), *The Environmental Consequences of War: Legal, Economic, and Scientific Perspectives* (Cambridge University Press 2000), 568.

95) International Law Commission, Report on its Sixty-Fifth Session (6 May to 7 June and 8 July to 9 August

agenda of the ILC, as well as UN Environment Assembly Resolution 15 in May 2016⁹⁶), indicates that the international community is willing to enhance the protection of the environment in relation to armed conflict.

It is interesting to note that the recent work of the ILC is emphasizing the needs of regulating environmental consequences during non-international armed conflict⁹⁷). The ILC has not made any differentiation between armed conflict of an international character and armed conflict of a non-international character in the text of the provisionally adopted draft principles. The ILC's work on this topic is not yet concluded, and several commissioners have expressed a desire for the issues of environmental damage caused in non-international armed conflicts to be addressed in this project⁹⁸). Some of the committee members express their reluctance at the ILC's work's including non-international armed conflicts in this project. This approach had received considerable critical attention and raised concerns about the status of the draft principles that will be included in the final text, given that the law of non-international armed conflict is under-developed in comparison to the law of international armed conflict⁹⁹). As Pantazopoulos evaluates, in terms of the classification of armed conflict, the position adopted by the ILC as 'progressive'¹⁰⁰)—that is, regulating environmental harm by the common principle—is somehow challenging.

Given that these issues about non-international armed conflict are of particular importance to protecting the environment, they are worth keeping in mind in future discussion. To regulate the conduct of hostilities in non-international armed conflict, many legal challenges arise. Achieving sufficient protection of the environment in relation to non-international armed conflict requires capturing the more complex reality of armed conflict and further elaboration of legal norms, such as questions on implementation and enforcement, as well as the responsibility and practice of non-state actors and organized armed groups in non-international armed conflict related to environmental harm. This is

2013), UN Doc. A/68/10, *Yearbook of the International Law Commission*, Volume II, Part Two (2013), para 19.

96) UN Environment Assembly of the UN Environment Programme Resolution 2/15 of 27 May 2016, "Protection of the Environment in Areas Affected by Armed Conflict," UN Doc. UNEP/EA. 2/Res. 15, 4 August 2016.

97) A/71/10, Official Records of the General Assembly, Seventy-first Session, Supplement No.10 (A/71/10), Chapter X, Protection of the environment in relation to armed conflict, C. Text of the draft principles on protection of the environment in relation to armed conflict provisionally adopted so far by the Commission, Commentary to Draft principle 1, para. 3.

98) *Ibid.*, paras 166 and 178.

99) Belarus (A/C.6/69/SR.26, para. 28); Iran (Islamic Republic of) (A/C.6/69/SR.27, para. 13); statement by Spain to the Sixth Committee, sixty-ninth session, 3 November 2014; and statement by France to the Sixth Committee, sixty-ninth session, 29 October 2014.

100) Stavros-Evdokimos Pantazopoulos, "Protection of the environment during armed conflicts: An appraisal of the ILC's work," *Questions of International Law*, Vol.34 (2016), 10.

particularly true for the problem of ensuring the effectiveness of the existing body of international law.

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