

*How can we define the “natural environment”? Is it protected under IHL? How? Is the protection of the environment only relevant during hostilities? Are there other rules protecting the natural environment in armed conflict? Armed conflicts largely result in environmental damage and degradation whose consequences may last for years with a profound impact on the lives of many affected persons. International humanitarian law (IHL), along with other branches of international law, provides a legal framework for the protection of the natural environment in armed conflict, both during the conduct of hostilities and when under the control of a party to the conflict.*

*VERSION FRANCAISE (PDF) => CLIQUEZ SUR LE LIEN SUIVANT: Coup de projecteur sur La protection de l'environnement naturel en période de conflit armé disponible sur le site du blog Quid Justitiae de la Clinique de droit pénal et humanitaire (traduction de l'Université Laval).*

## **Defining the “natural environment”**

The notion of “natural environment” is not defined in IHL. The natural environment is considered to constitute the natural world, including the general hydrosphere, biosphere, geosphere and atmosphere (including fauna, flora, oceans and other bodies of water, soil and rocks) and natural elements that are product of human intervention, together with the system of inextricable interrelations between living organisms and their inanimate environment, in the widest sense possible.

## **Specific protection**

Specific treaty and customary IHL rules protect the environment during armed conflict. They provide that it is prohibited to use methods or means of warfare which are intended or may be expected to cause widespread, long-term, and severe damage to the natural environment (Article 35(3) of the 1977 Additional Protocol I to the 1949 Geneva Conventions; Rule 45 of the ICRC’s Customary IHL Study). Furthermore, they establish that due regard must be given to the protection and preservation of the natural environment in warfare. This rule also prohibits using the destruction of the natural environment as a weapon of warfare (see Rule 45 of the ICRC’s Customary IHL Study). Further, attacks against the natural environment by way of reprisals are also prohibited (Article 55 AP I). Even if the treaty provisions specifically protecting the natural environment are envisaged for situations of international armed conflicts, most of the rules have also been considered as applicable to non-international armed conflicts under customary IHL, although some States deny such customary law character of parts of those rules.

In addition, under the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental

Modification Techniques (ENMOD), the military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State Party is prohibited. The ENMOD Convention's three criteria of "widespread, long-lasting or severe" are alternative rather than cumulative.

## **General protection**

Moreover, given that civilian objects are defined by Article 52(2) of the 1977 Additional Protocol I to the 1949 Geneva Conventions (Rule 9 of the ICRC's Customary IHL Study), the natural environment is protected under general principles of IHL governing civilian objects, unless it becomes a military objective. Therefore, all the principles governing the conduct of hostilities, such as distinction, proportionality, and precautions fully apply to the natural environment. Furthermore, the general rules on objects under the control of a party to an armed conflict, including enemy property in occupied territory, also apply to objects which form part of the natural environment, including natural resources.

Obligations under international environmental law, along with international human rights law and other relevant branches of international law, continue applying during armed conflicts.

Protection of the natural environment is also provided under IHL rules on other specially protected objects. This is the case for objects indispensable to the survival of the civilian population, which frequently constitute part of the natural environment, and whose attacks, destruction, removal, or rendering useless, are prohibited. This rule is clearly set up in both treaty and customary law and applies to international and non-international armed conflicts (Article 54(2) of AP I and Article 14 of AP II; Rule 54 of the ICRC's Customary IHL Study). These objects include for example foodstuff, agricultural areas, crops, livestock, drinking water installations, supplies and irrigation works.

Furthermore, the protection of cultural property under IHL, both in the conduct of hostilities and under the control of a party to the conflict, also provides for an applicable framework, when such property constitutes part of the natural environment (see Article 53 AP I, Article 16 AP II; Rules 38, 39 and 40 of the ICRC's Customary IHL Study)

Indirect protection of the natural environment is also provided by other rules, for example those on the protection of works and installations containing dangerous forces. This is because of the severe effects the release of such dangerous forces can have on the surrounding natural environment and civilian population.

## **Protection by rules on specific weapons**

Protection of the natural environment is also afforded by rules on specific weapons, such as the use of poison or poisoned weapons, biological and chemical weapons, the use of herbicides, incendiary weapons, landmines, or nuclear weapons.

## Implementing protection of the natural environment

Parties to armed conflicts have the obligation to respect and ensure respect of the rules protecting the natural environment and adopt all necessary measures to implement such protections (Common Article 1 of the Four Geneva Conventions; Rules 139 and 140 of the ICRC's Customary IHL Study). These measures include criminal repression of war crimes and measures against other IHL violations (Articles 49, 50, 129 and 146 of the Four Geneva Conventions respectively; Article 85 AP I; Rule 158 of the ICRC's Customary IHL Study). The Rome Statute of the International Criminal Court criminalizes as a war crime in international armed conflict the intentional launch of an attack in the knowledge that it will cause widespread, long-term, and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated (Rome Statute, Article 8(2) b) iv). Several States have implemented in their national legislation the criminalization of this specific war crime or other crimes related to the protection of the natural environment in armed conflict.

Moreover, the ICRC recommends that parties to an armed conflict conclude special agreements to provide additional protection to the natural environment. The identification of areas of particular environmental importance or fragility (such as national parks, natural reserves, key biodiversity areas, etc.) and their designation as demilitarized zones, in Main rules and interpretations on the protection of the environment in armed conflict: peacetime or during armed conflict, have been particularly highlighted (ICRC's Guidelines, paras 138 and ff).

## Protecting the natural environment in armed conflict: a key message to pass across

Today's armed conflicts largely display in biodiversity hotspots and other epicenters of environmental and climate crisis. In this context, the need to raise awareness of the ways the law protects the environment from the effects of conflict has become key. Damage caused to the natural environment by armed conflict can have a severe and lasting impact on people's life, and thus must be thoroughly addressed by all parties to an armed conflict.

## Teaching resources

### *The Law*

A detailed overview of the IHL framework on specially protected objects during the conduct of hostilities, in particular the natural environment, can be found in "The Law" chapter on the [Conduct of Hostilities](#).

### *The Practice*

A selection of related case studies from [The Practice](#) illustrates:

Main rules and interpretations on the protection of the environment in armed conflict:

- [The Environment and IHL](#)

- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 [para. 296]

The protection of the environment in the conduct of hostilities:

- Iraq, IHL and Environmental protection
- Federal Republic of Yugoslavia, NATO Intervention
- ICJ, Nuclear Weapons Advisory Opinion
- Israel/Lebanon/Hezbollah, Conflict in 2006 [Part I, paras 209-220]
- Iran/Iraq, UN Security Council Assessing Violations of International Humanitarian Law
- ICRC, New Weapons (environment – related considerations)

Protection of water and other objects indispensable for the survival of the civilian population:

- Eritrea/Ethiopia, Awards on Military Objectives
- Water and Armed Conflicts
- Israel/Gaza, Operation Cast Lead

Exploitation of natural resources in the context of armed conflict and the duty of reparations:

- ICJ, Democratic Republic of the Congo/Uganda, Armed Activities on the Territory of the Congo
- Israel/Occupied Palestinian Territory, Occupation and Natural Resources
- Senegal, Exploitation of Natural Resources

Applicability of international environmental law during armed conflict:

- ICJ, Nuclear Weapons Advisory Opinion

## **A to Z**

Relevant definitions can be found in the “A to Z” section:

Attacks, Bacteriological weapons, Biological or bacteriological weapons, Chemical weapons, Civilian Objects, Civilian Population, Conduct of hostilities, Cultural Property, Customary International Humanitarian Law, Dams, dikes and nuclear electrical generation stations, Demilitarized zones, Displacement, Distinction, Dykes, Environment, Food, Fundamental principles of IHL, Hostilities, Implementation, Incendiary weapons, Indiscriminate attacks, Installations containing dangerous forces, Means of warfare, Methods of warfare, Napalm, Natural resources, Neutralized zones, Non-defended localities, Nuclear power stations, Nuclear weapons, Objects indispensable to the survival of the civilian population, Pillage, Precautions against the effect of attacks, Precautions in attack, Proportionality, Protected objects, Protection of the environment, Reprisals, Starvation, Water, Weapons, Works and installations containing dangerous forces, Zones.

## **To go further**

Additional guidelines, commentaries, rules, documents and resources can help explore the protection of the

natural environment in armed conflict further:

- The ICRC's Guidelines on the protection of the natural environment in armed conflict (2020)
- The ICRC's Commentary to Additional Protocol I, in particular on: - Article 35(3) - Article 55
- The ICRC's Study on Customary International Humanitarian Law, in particular: - Rule 43 - Rule 44 - Rule 45
- ICRC, 1976 Convention on the prohibition of military or any hostile use of environmental modification techniques - Factsheet (2003)
- ILC, Principles on the Protection of the environment in relation to armed conflicts (2022)
- Marja Lehto, "Overcoming the disconnect: environmental protection and armed conflicts", *Humanitarian Law & Policy blog* (27 May 2021)
- Vanessa Murphy & Helen Obregón Gieseken, "Fighting without a Planet B: how IHL protects the natural environment in armed conflict", *Humanitarian Law & Policy blog* (25 May 2021)

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