

## **Annexes**

- Annex A. Formation and evidence of customary international law
- Annex B. Protection of the atmosphere
- Annex C. Provisional application of treaties
- Annex D. The fair and equitable treatment standard in international investment law
- Annex E. Protection of the environment in relation to armed conflicts

## Annex E

### Protection of the environment in relation to armed conflicts (Ms. Marie G. Jacobsson)

#### I. Introduction

1. It has long been recognised that the effect on the environment during and after an armed conflict may pose a serious threat to the livelihoods and even existence of individual human beings and communities. The effect on the environment differs from other consequences of an armed conflict since it may be long-term and irreparable. It may remain long after the conflict and prevent an effective rebuilding of the society, destroy pristine areas or disrupt important ecosystems.

2. The protection of the environment in armed conflicts has been primarily viewed through the lens of the laws of warfare, including international humanitarian law. However, this perspective is too narrow as modern international law recognises that the international law applicable during an armed conflict may be wider than the laws of warfare. This is also recognised by the International Law Commission (ILC) in its recent work on Effect of Armed Conflicts on Treaties. This work takes as its starting point (Article 3) the presumption that the existence of an armed conflict does not *ipso facto* terminate or suspend the operation of treaties. The combined implication of Article 7 and the Annex of treaties is that, because of their subject matter, several categories of treaties relevant to the protection of the environment may continue in operation during periods of armed conflict.<sup>1</sup>

#### II. Background<sup>2</sup>

3. The need to protect the environment in times of armed conflict is not a 21st Century idea, or even a 20th Century idea. On the contrary, it is possible to trace legal rules relating to the natural environment and its resources back to ancient time. Such rules were closely connected with the need of individuals to have access to natural resources essential for their survival, such as clean water. Given the conditions under which war then was conducted, as well as the means and methods used, there was limited risk of extensive environmental destruction.

4. This changed during the 20th Century when technological development placed the environment at a greater risk of being permanently destroyed through destruction caused by nuclear weapons or other weapons of mass destruction, but also through destruction caused by conventional means and methods of warfare. The technological development went hand in hand with a rising awareness of the need to protect the environment for the benefit of existing and future generations.

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<sup>1</sup> Article 7 (Continued operation of treaties resulting from their subject-matter) and the indicative list of treaties annexed. The list includes treaties relating to the international protection of the environment, treaties relating to international watercourses and related installations and facilities, treaties relating to aquifers and related installations and facilities, treaties relating to human rights and treaties on international criminal justice, and, for obvious reasons: treaties on the law of armed conflict, including treaties on international humanitarian law.

<sup>2</sup> This section is by necessity brief and incomplete. It serves only as a frame of historical reference.

5. It is possible to identify three periods since the adoption of the UN Charter when the protection of the environment in relation to armed conflict has been addressed with the aim of enhancing the legal protection. The first phase started in the early 1960s, the second in the early 1990s and the third in the 2010s.

6. The **first phase**, begun in the 1960s, was spurred, on the one hand, by the means and methods of warfare during the Vietnam War, and, on the other hand, by the rising awareness of the need to protect the environment in more general terms (the birth of the international environmental law). The Stockholm Declaration on the Protection of the Environment (a political declaration in 1972) signals an attempt to expand the “Trail Smelter” principle beyond a bilateral context (Principle 21). The sensitive issue of the use of nuclear weapons was addressed, in vague terms, in Principle 26. Although no decisive legal conclusions can be drawn from the Stockholm Declaration, it gave a signal of what was the concern and what was to come in the Rio Declaration (1992), see below.

7. A few years later, specific provisions addressing the protection of the environment were included in international humanitarian law treaties. It is worth quoting two articles, Article 35 and Article 55 of the First Additional Protocol (1977) to the 1949 Geneva Conventions, not least because they partly seem to contradict each other.

Article 35, para.3 reads:

*“It is prohibited 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.”<sup>3</sup>*

Article 55 reads:

*“1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.*

*2. Attacks against the natural environment by way of reprisals are prohibited.”*

8. In addition, the ENMOD treaty, which aims exclusively to protect the environment, was adopted.<sup>4</sup> The standard-setting Article 1, para. 1 reads:

*“Each State Party to this Convention undertakes not to engage in 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.”*

9. During the 1980s, the Iran-Iraq war drew the attention of States and organizations to the need for enhanced protection of the environment during armed conflicts. This is

<sup>3</sup> This is repeated in the Preamble of 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, the so-called CCW (1980).

<sup>4</sup> Convention on the Prohibition of Military or Any Hostile Use of Environmental Modification Techniques, 10 December 1976, ENMOD. The Convention provides for review conferences to be held at least every five years, but thus far, only two review conferences have been held, in 1984 and in 1992.

evidenced e.g. by the request from the Commission of the European Communities for a report on the matter.<sup>5</sup>

10. The **second phase** started with the Iraq-Kuwait war in 1990. The burning of oil wells and other environmentally disastrous effects of the war awoke the international community to the effect of modern warfare on the environment. In addition, the United Nations Compensation Commission (UNCC) was established and entrusted with cases relating to loss or damage of the environment and the depletion of natural resources.<sup>6</sup> In its reports, the Commission discusses each claim for compensation separately and gives reasons for their acceptance, denial or adjustment. This provides a substantial amount of case law although the Commission relies on the criteria provided by the United Nations Security Council and Governing Council and not international law *per se*. It is noteworthy that the Commission awarded some compensation for all these claims, including for indirect damage to wetlands from water consumption by refugees.

11. In parallel, the item of protection of the environment was placed on the agenda of the United Nations: first under the heading, *Exploitation of the environment as a weapon in times of armed conflict and the taking of practical measures to prevent such exploitation*; and subsequently as *Protection of the environment in times of armed conflict*.<sup>7</sup> The Secretary General submitted his first report on the protection of the environment in times of armed conflict in 1992 and a second report in 1993. In essence, these reports were a reproduction of information received from the ICRC. The report of 1993 suggested what issues could be examined by the Sixth Committee.<sup>8</sup> The issues included the question of “[a]pplicability in armed conflict of international environmental law; general clarification and action on case of revision of treaties”.<sup>9</sup> At that time, the item had lost its place as an independent agenda item. Instead, it was dealt with under the item United Nations Decade of International Law.<sup>10</sup>

12. The ICRC was mandated by the General Assembly to work with the issue. As a consequence, expert meetings were held, and the issue was also on the agenda of the International Red Cross and Red Crescent Conferences. One result was the *Guidelines for Military Manuals and Instructions on the Protection of the Environment in Time of Armed Conflict*, annexed to the Report submitted by the ICRC to the forty-eighth session of the United Nations General Assembly. Due to lack of political support for any modification of the law of armed conflict as reflected in existing treaty provisions, annexing the Guidelines to a resolution and inviting States to disseminate them, was as far as it was possible to go at the time.<sup>11</sup>

<sup>5</sup> Bothe, Michael, Antonio Cassese, Frity Kalshoven, Alexandre Kiss, Jean Salmon and K.R. Simmonds. “Protection of the Environment in Times of Armed Conflict”, *Report to the Commission of the European Communities*, SJ/110/85 (1985).

<sup>6</sup> The United Nations Compensation Commission (UNCC) was established under UNSC Resolution 687 (3 April 1991). The mandate of the UNCC is more closely related to the old so-called Hague rules (1907), which contain regulations on compensation for violations of the laws of war, than to the Geneva Conventions and their First Additional Protocol.

<sup>7</sup> It was originally Jordan in 1991 that proposed to include the item on the agenda, see A/46/141, and the proposal was accepted. In 1992, the General Assembly decided to include the topic “*Protection of the environment in times of armed conflict*” on its agenda and to allocate it to the Sixth Committee.

<sup>8</sup> A/48/269.

<sup>9</sup> A/48/269, para. 110.

<sup>10</sup> A/RES/47/37.

<sup>11</sup> A/RES/49/50, op. para 11. The lack of a broad support for bringing the issue forward was further evidenced by the lack of development relating to the ENMOD treaty.

13. It should be recalled that the United Nations Conference on Environment and Development took place in 1992. The conference adopted the Rio Declaration, which clearly stipulates in Principle 24 and Principle 23 respectively that:

*“Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.”*

and

*“The environment and natural resources of people under oppression, domination and occupation shall be protected.”*

14. The San Remo Manual on International Law Applicable to Armed Conflicts at Sea (1994) repeatedly addresses the protection of the environment, for example by including damage to or the destruction of the natural environment or objects that are not in themselves military objectives as collateral casualties or collateral damage. The legal aspect of protecting the environment is particularly relevant in naval warfare since belligerents and third parties may have legitimate and competing claims to use an area outside the sovereignty of a State.<sup>12</sup>

15. The armed conflicts in the former Yugoslavia also bore evidence of the disastrous effects on the environment of both legal and illegal means and methods of warfare. At the same time, pressing concern from the international civil community forced states to address one particular aspect of IHL of direct relevance to the protection of the environment: the use of anti-personnel landmines. It is obvious that the lack of implementation of the existing provisions in 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 (CCW) brought about devastation, not only to those individual civilians that were maimed by the landmines, but also to their effective and secure use of land after the war was over. The examples of Balkan, Cambodia and Mozambique are self-explanatory. In addition to the lack of implementation, a major concern was the simple fact that the existing convention was not applicable in non-international armed conflicts. As a result, the Convention and its Second Protocol on Landmines were revised. However, this was not enough for those states and individual groups that wanted a more extensive ban. In a parallel track, the Ottawa Convention on a total ban on the use of anti-personnel landmines was negotiated and adopted.

16. The legally interesting aspect of this development is that the initial reluctance on the part of important militarily powerful states to modify the laws of armed conflict did not prevent the parallel development of a regime for the protection of the civilian population and its base of subsistence.

17. The **third phase** started in the early 2010s. It is difficult to connect the beginning of this phase with any particular war, but rather stems from a growing awareness of the need to protect the environment as such. Indeed, several wars such as those in Kosovo, Iraq, and Lebanon all bore evidence that war-torn societies pay a high environmental price. At the same time, international courts and tribunals addressed the issue of the protection of the environment in court practice. The negative effects on the environment were also raised by fact-finding missions. Starting with the legal cases in the 1990s, it was no longer sufficient to seek for legal answers in the realm of the laws of warfare. The development of environmental law and international criminal law could not be neglected, and it is worth

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<sup>12</sup> Manual on International Law Applicable to Air and Missile Warfare (2009) also contain specific rules regarding the protection of the natural environment, see Rules 88–89.

noticing that the International Criminal Court has jurisdiction over crimes that cause certain damage to the environment.<sup>13</sup>

### III. Work done by other bodies

18. As mentioned above, the ICRC summoned expert meetings and presented important reports during the 1990s. Those include *Guidelines for military manuals and instructions on the protection of the environment in times of armed conflict* (1994). The perspective of the ICRC is, for obvious reasons, that of international humanitarian law. This in essence poses the question: to what extent does existing international humanitarian law contain principles, rules or provisions that aim to protect the environment during an armed conflict. It is often noted that the environment needs to be protected in order to achieve the goal of protecting civilians and their livelihoods. But it is likewise pointed out that the environment as such needs protection. The underlying assumption is that the environment is civil in nature. This is evidenced by the ICRC's multi-volume explanation of customary international humanitarian law, published in 2005. Three of the rules identified by the ICRC as customary law, namely Rules 43–45, relate particularly to natural resources and environmental protection during armed conflicts. Rule 44 reads:

*“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 minimize, 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 precautions.”*

19. In 2010, the ICRC raised the issue on the current state of international humanitarian law. In its presentation on the topic *Strengthening Legal Protection for Victims of Armed Conflict*, the ICRC draws the conclusion that humanitarian law needs to be reinforced in order to protect the natural environment.<sup>14</sup> The ICRC apparently concludes that the extensive development of international environmental law in recent decades is not matched by a similar development in international humanitarian law. The clarification and development of international humanitarian law for the protection of the environment has lagged behind. It is a noteworthy conclusion since the ICRC predominantly expresses concern over the lack of the implementation of IHL provisions.

20. The **International Law Association (ILA)** has issued several reports of relevance to the topic. Of direct relevance is the 2004 report from the Committee on Water Resource Law. Chapter X, Articles 50–55, is entirely devoted to Protection of Waters and Water Installations During War or Armed Conflict. Another report is the 2010 Report on Reparations for Victims of Armed Conflict. It is also worth mentioning the 2006 report of the ILA's Committee on Transnational Enforcement of Environmental Law. While it does not specifically discuss the protection of the environment in the context of armed conflict, it does propose rules relating to the standing of individuals to bring claims for the destruction of the environment and other access to justice issues.<sup>15</sup>

<sup>13</sup> Article 8 of the Rome Statute (1998).

<sup>14</sup> <http://www.icrc.org/eng/resources/documents/statement/ihl-development-statement-210910.htm>.

<sup>15</sup> Its main focus seems to be domestic remedies for environmental claims, but the report also discusses the rejected Draft Article 7, which would have allowed judicial proceedings against a government for breaches of international environmental law.

21. The **International Union for the Conservation of Nature (IUCN)** has formed a Specialist Group on Armed Conflict and the Environment which is undertaking two related activities: exploring current questions of the law of armed conflict as it relates to the protection of the environment and assessing experiences in post-conflict management of natural resources and the environment. A survey on the status of international law protecting the environment during armed conflict, including opportunities for strengthening the law and its implementation is apparently under way.

22. The **United Nations Environmental Programme (UNEP)** and the **Environmental Law Institute (ELI)**, together with leading specialists in international law and the **ICRC**, have conducted a legal assessment of the protection of the environment during armed conflicts which produced the 2009 report *Protecting the Environment During Armed Conflict – An Inventory and Analysis of International Law*. The report examines four main bodies of international law that provide protection for the environment during armed conflicts: international humanitarian law, international criminal law, international environmental law, and human rights law. The report culminates with a number of key findings explaining why the environment still lacks effective protection in times of armed conflict. It also makes recommendations for how these challenges can be addressed and the legal framework strengthened.

#### IV. The UNEP proposal to the ILC

23. It was out of concern “that the environment continues to be the silent victim of modern warfare” that the UNEP and the Environmental Law Institute “*undertook a joint assessment of the state of the existing legal framework protecting natural resources and the environment during armed conflict*” in 2009.<sup>16</sup> The assessment is the result of an international expert meeting held by UNEP and the ICRC in March 2009. Based on ten key findings, the Report provides for twelve recommendations, among them that the ILC, as “*the leading body with expertise in international law*”, should “*examine the existing international law for protecting the environment during armed conflict and recommend how it can be clarified, codified and expanded*”.<sup>17</sup>

The Report suggests that the following issues be addressed.

- (a) *An inventory of the legal provisions and the identification of gaps and barriers to enforcement;*
- (b) *An exploration of options for clarifying and codifying this body of law;*
- (c) *The definition of key terms such as “widespread”, “long-term” and “severe”;*
- (d) *The consideration of the applicability of multilateral environmental agreements during armed conflicts as part of its ongoing analysis of the “effect of armed conflict on treaties”;*
- (e) *Extending protection of the environment and natural resources in the context of non-international armed conflict; and*

<sup>16</sup> UNEP Report, 2009, p. 9.

<sup>17</sup> UNEP Report, 2009, Recommendation 3, p. 53.

(f) Considering how the detailed standards, practice and case law of international environmental law could be used to clarify gaps and ambiguities in international humanitarian law.<sup>18</sup>

## V. Major issues raised by the topic

24. The proposal submitted by the UNEP Report raises the issue if the suggested topic would be a suitable topic for the Commission.

25. The ILC should continue to keep an open mind with respect to proposals submitted to it. Proposals submitted by the General Assembly, other bodies within the United Nations system and States, carry a special weight. It should be noted that the ILC has tried to encourage other United Nations bodies to submit proposals to the Commission at least since 1996.<sup>19</sup> Hence, the suggestion by UNEP deserves serious consideration, particularly since it *prima facie* appears a well-founded proposal.

26. So, what are the major issues raised by the topic?

27. The applicable law in relation to armed conflict clearly extends beyond the realm of the laws of warfare. It is not sufficient to refer to international humanitarian law as *lex specialis* in the hope of finding a solution to a specific legal problem. Also other areas of international law may be applicable, such as human rights. The International Court of Justice has clearly recognised this.

*“More generally, the Court considers that the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in Article 4 of the International Covenant on Civil and Political Rights. As regards the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law. In order to answer the question put to it, the Court will have to take into consideration both these branches of international law, namely human rights law and, as *lex specialis*, international humanitarian law.”*<sup>20</sup>

28. The underlying assumption of the Court’s reasoning is also recognised by the ILC, *inter alia* in its work on fragmentation<sup>21</sup> and in its recent work on Effect of Armed Conflicts on Treaties. This work takes as its starting point (Article 3) the presumption that the existence of an armed conflict does not *ipso facto* terminate or suspend the operation of treaties.<sup>22</sup>

29. Even if one were to assume that only the law of armed conflict is applicable during an armed conflict, that law is also applicable before and after the an armed conflict since it contains rules relating to measures taken before and after an armed conflict. Therefore, it is

<sup>18</sup> UNEP, *Protecting the Environment During Armed Conflict – An Inventory and Analysis of International Law* (2009), p. 53.

<sup>19</sup> *Yearbook of the International Law Commission, 1996*, Volume II, Part Two, para. 148. and para. 165.

<sup>20</sup> Legal Consequences of the Construction of a Wall on the Occupied Palestinian Territory, ICJ, Advisory Opinion, 2004, p. 178, para. 106.

<sup>21</sup> Fragmentation of international law: Difficulties arising from diversification and expansion of international law. Report of the Study Group of the International Law Commission, A/CN.4/L.682.

<sup>22</sup> *Supra*, p. 1.

obvious that applicable rules of the *lex specialis* (the law of armed conflict) co-exist with other rules of international law.

30. It seems as if no State or judicial body questions the parallel application of different branches of international law, such as human rights law, refugee law and environmental law. It also seems as if States and judicial bodies are uncertain as to the precise extension and balance of those areas of the law. At the same time, there is an expressed need to analyse and come to conclusions with respect to this problem. This is a new development in the application of international law, and States are faced with concrete problems of urgent needs. The case of the environmental effects of the war in the Democratic Republic of the Congo provides an important example of how internal wars force the population to flee and resettle – often in or near sensitive forest ecosystems. In such a situation, does the 1972 Convention for the Protection of the World Cultural and Natural Heritage continue to apply?

## VI. Proposal

31. Beginning almost two decades ago, several legal and semi-legal bodies have addressed the issue of the protection of the environment in times of armed conflict. This is a clear indication both of the existence of a legal problem and the need to address the matter.

It is therefore proposed that the ILC examine the topic in its long-term programme of work. The aim should be to:

- Identify the extent of the legal problem
- Identify any new developments in case law or in customary law
- Clarify the applicability of and the relationship between International Humanitarian Law, International Criminal Law, International Environmental Law and Human Rights Law
- Further develop the findings of the ILC's work on the Effect of Armed Conflict on Treaties, particularly on matters concerning the continued application of treaties relating to the protection of the environment and human rights
- Clarify the relation between existing treaty law and new legal developments (including legal reasoning)
- Suggest what needs to be done to achieve a uniform and coherent system (so as to prevent the risk of fragmentation)
- Envisage the formulation of applicable rules and formulate principles of general international law of relevance for the topic

32. The topic would also fit well into the ambitions express by the Commission in 1997, namely that the Commission should not restrict itself to traditional topics, but should also consider those that reflect new developments in international law and pressing concerns of the international community as a whole.<sup>23</sup>

33. The final outcome could be either a Draft Framework Convention or a Statement of Principles and Rules on the Protection of the Environment in Times of Armed Conflict.

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<sup>23</sup> *Yearbook of the International Law Commission, 1997*, vol. II (Part Two), para. 238; and *ibid.*, 1998, vol. II (Part Two), para. 553.

34. The time frame envisaged should be five years. The first three years should be devoted to indentifying existing rules and conflicts of rules. The fourth and fifth years should be devoted to operative conclusions and finalization of the outcome document in whatever form the ILC may deem most appropriate.

## **Appendix I**

### **Examples of relevant treaties and non-treaty practise**

#### **1. The laws of warfare and international criminal law**

- (g) *Treaties directly addressing the protection of the environment in relation to armed conflict*
- (i) Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD) (1976)
  - (ii) Additional Protocol I to the 1949 Geneva Conventions (1977), especially Article 35(3) and Article 55(1)
  - (iii) 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 (CCW) (1980), and its Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons (1980)
  - (iv) The Rome Statute of the International Criminal Court (1998), especially Articles 6, 7 and 8
- (h) *International humanitarian law and disarmament treaties that indirectly protect the environment in relation to armed conflict*
- (i) Convention Respecting the Laws and Customs of War on Land (Hague Convention IV) (1907)
  - (ii) Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (Hague Convention V) (1907)
  - (iii) Convention Concerning the Right and Duties of Neutral Powers in Naval War (Hague Convention XIII) (1907)
  - (iv) The Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (1925)
  - (v) Convention Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV) (1949)
  - (vi) Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954), and its Protocol I (1954) and Protocol II (1999)
  - (vii) Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water (1963)
  - (viii) Treaty on the Non-Proliferation of Nuclear Weapons (1968)
  - (ix) Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (BWC) (1972)
  - (x) Additional Protocol II to the 1949 Geneva Conventions (1977)

- (xi) Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC) (1993)
  - (xii) Comprehensive Nuclear Test Ban Treaty (1996)
  - (xiii) Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Ottawa Convention) (1997)
  - (xiv) Convention on Cluster Munitions (2008)
  - (xv) Examples of special regimes:
    - (1) The Spitzbergen Treaty (1920)
    - (2) The Åland Treaty (1921)
    - (3) The Antarctic Treaty (1959)
    - (4) Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco) (1967)
    - (5) The South Pacific Nuclear Weapon Free Zone Treaty (Treaty of Rarotonga) (1985)
    - (6) The African Nuclear Weapons Free Zone Treaty (Treaty of Pelindaba) (1996)
    - (7) The Treaty of the Southeast Asia Nuclear Weapon Free Zone (Bangkok Treaty) (1995)
    - (8) *Central Asian Nuclear-Weapon-Free Zone* (Treaty of Semipalatinsk) (2006)
  - (i) *General principles and rules of international humanitarian law of relevance to the protection of the environment in relation to armed conflict*
    - (i) The principle of distinction
    - (ii) The rule of military necessity
    - (iii) The principle of proportionality
    - (iv) The principle of humanity
  - (j) *Other instruments related to the corpus of the law of warfare*
    - (i) The San Remo Manual on International Law Applicable to Armed Conflicts at Sea (1994)
    - (ii) The Customary Law Rules by the International Committee of the Red Cross (ICRC) (2005)
    - (iii) The Manual on International Law Applicable to Air and Missile Warfare by the Program on Humanitarian Policy and Conflict Research at Harvard University (HPCR) (2009)
- Numerous resolutions from UNGA addressing the question of protection of the environment in relation to armed conflict. They are not cited here.
- (k) *Cases in courts and tribunals in which the issue of the protection of the environment in relation to armed conflict has been addressed*
    - (i) Case law of the International Court of Justice (ICJ)

- (1) Legality of the threat or use of nuclear weapons, Advisory opinion 8 July 1996
- (2) Legality of the use of force (*Serbia and Montenegro v. NATO*), Orders of 2 June 1999<sup>24</sup>
- (3) Case concerning armed activities on the territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment of 19 December 2005.

Decisions of international tribunals such as the decision of the International Criminal Court (ICC) on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir of 4 March 2009, the second Decision of the ICC on the Prosecution's Application for a Warrant of Arrest of 12 July 2010 and decisions by the United Nations Compensation Commission (UNCC).

## 2. International environmental law

### (a) *Multilateral environmental agreements (MEAs)*

(i) MEAs that directly or indirectly provide for their application in relation to armed conflict:

(1) Universal conventions:

(a) International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL) (1954);

(b) Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention) (1971);

(c) Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention) (1972);

(d) Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention) (1972);

(e) International Convention for the Prevention of Pollution from Ships (MARPOL) (1973), as amended by its Protocol I (1978);

(f) Convention on Long-Range Transboundary Air Pollution (LRTAP) (1979);

(g) United Nations Convention on the Law of the Sea (UNCLOS) (1982);

(h) United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses (1997).

(2) Regional conventions include:

(a) Convention for the Protection of the Mediterranean Sea against Pollution (1976), amended and renamed Convention for the

<sup>24</sup> On 30 June 1999 the Court delivered its orders in the following eight cases between Serbia and Montenegro and members of NATO: *Serbia and Montenegro v. Belgium*, *Serbia and Montenegro v. Canada*, *Serbia and Montenegro v. France*, *Serbia and Montenegro v. Germany*, *Serbia and Montenegro v. Italy*, *Serbia and Montenegro v. Netherlands*, *Serbia and Montenegro v. Portugal* and *Serbia and Montenegro v. United Kingdom*.

Protection of Marine Environment and the Coastal Region of the Mediterranean (1995);

(b) Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena Convention) (1983);

(c) African Convention on the Conservation of Nature and Natural Resources (Revised) (2003);

(ii) Multilateral environmental agreements that specifically provide for suspension, derogation or termination in relation to armed conflict:

(1) Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (1993)

(2) Convention on Third Party Liability in the Field of Nuclear Energy (1960)

(3) Vienna Convention on Civil Liability for Nuclear Damage (1963)

(4) International Convention on Civil Liability for Oil Pollution Damage (1971)

(iii) Multilateral environmental agreements that may be of relevance for the protection of the environment in relation to armed conflict:

(1) Convention on Early Notification of a Nuclear Accident (1986)

(2) Convention on Biological Diversity (1992)

(3) Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention) (1989)

(4) United Nations Convention to Combat Desertification (1994)

(b) *Customary international environmental law as reflected in:*

(i) The Trail Smelter Principle

(ii) Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) (1972)

(iii) World Charter for Nature, UNGA Resolution 37/7 (1982)

(iv) Declaration on Environment and Development (Rio Declaration) (1992)

(v) Programme of Action for Sustainable Development (Agenda 21) (1992)

(vi) UNGA Resolutions 47/37 Protection of the environment in times of armed conflict (1993) and 49/50 United Nations decade of international law (1995)

(vii) World Summit on Sustainable Development (2002)

(viii) UNEP Governing Council Decision 23/1/IV (2005)

### 3. Human rights law

(a) *Framework conventions*

(i) Universal Declaration of Human Rights (1948)

(ii) International Covenant on Civil and Political Rights (1966)

(iii) International Covenant on Economic, Social and Cultural Rights (1966)

- (iv) Other instruments of international human rights law:
  - (1) The Convention on the Elimination of Discrimination against Women (1979)
  - (2) The Convention on the Rights of the Child (1989)
  - (3) Indigenous and Tribal Peoples Convention (1989)
  - (4) Declaration on the right to development (1986)
  - (5) Declaration on the Rights of Indigenous Peoples (2007)
  - (6) UNGA Resolution XXIV 2542 Declaration on social progress and development (1969) (especially Articles 9 and 25)
  - (7) UNGA Resolution 55/2, The United Nations Millennium Declaration (2000)
- (v) Regional conventions:
  - (1) The European Convention on Human Rights (1950)
  - (2) The American Convention on Human Rights (1969)
  - (3) The African Charter on Human and Peoples' Rights (1981)

## Appendix II

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