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# Protection of the Environment in Times of Armed Conflict: Reflections on the Existing and Future Treaty Law

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# PROTECTION OF THE ENVIRONMENT IN TIMES OF ARMED CONFLICT: REFLECTIONS ON THE EXISTING AND FUTURE TREATY LAW\*

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## I. INTRODUCTION: ENVIRONMENTAL TREATY LAW IN PERSPECTIVE

A survey of the efforts made by the international community to deal with problems of the environment since the 1972 United Nations Conference on Human Environment in Stockholm reveals a piece-meal approach.<sup>1</sup> Thus, the existing legal instruments concluded since Stockholm have been aimed at addressing specific problems connected with what I call the *first generation environmental issues*, namely: the problem of water, air and soil pollution through industrial activities or through activities associated with poverty and under-development. Existing treaty law in the field of the environment, in general, includes:

### 1. Instruments for the protection of the marine

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1. For the Survey prepared for the Legal Working Group of the Preparatory Committee for the United Nations Conference on Environment and Development (UNCED) *infra* note 3, which includes instruments prior to the 1972 Stockholm Conference, see *United Nations Conference on Environment and Development*, U.N. GAOR, 4th Sess., Agenda Item 2, U.N. Doc. A/CONF.151/PC/103 (1992) and *United Nations Conference on Environment and Development*, U.N. GAOR, 4th Sess., Agenda Item 2, U.N. Doc. A/CONF.151.PC/103/Add.1 (1991).

- environment;
2. Instruments for the prevention of air pollution (preservation of the atmospheric environment);
  3. Instruments for the protection of species of fauna and flora and related issues;
  4. Instruments for the prevention of pollution of rivers and lakes;
  5. Instruments for the protection of the environment from radiological emergencies arising from peaceful uses of nuclear energy;
  6. Instruments addressing problems of interference with the environment by military and related activities; and
  7. Instruments dealing with problems of international traffic in toxic and dangerous products and wastes.<sup>2</sup>

In the meantime, *the second generation environment issues* entered the scene, namely: the problem of environmental degradation by desertification, global warming (climate change), acid rain, and the depletion of the stratospheric ozone layer. This group of second generation environmental issues, to which the question of protection of the environment in times of armed conflict is now well-established, has increasingly become the focus of attention in various fora both within the United Nations system and outside of it. The issues raised by these problems brought into focus the need to more fully integrate the problems of the environment and development, tackling the *first* and *second* generation issues together. It is in this spirit that the United Nations General Assembly decided by its resolution 44/228 of December 22, 1989 to convene the United Nations Conference on Environment and Development (UNCED), also known as the *Earth Summit*, to meet in Rio de Janeiro on June 3-14, 1992.<sup>3</sup>

The process of preparing for UNCED has confirmed the

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2. For a synopsis of each of the major treaties concluded in these seven areas since Stockholm, see A.O. Adede, *A Digest of Materials and Instruments for International Responses to Problems of Environment and Development* (1990) (unpublished).

3. The Preparatory Committee for UNCED in Rio de Janeiro established three Working Groups to deal with specific issues outlined in resolution 44/228 convening the Conference. Working Group III deals with legal institutional and related matters. For the most recent report, see G.A. Res 44/228, U.N. GAOR, 46th Sess., Supp. No. 48, U.N. Doc. A/46/48 (1991).

useful work that has been performed by the United Nations Environment Programme (UNEP) which was established after the Stockholm Conference of 1972 to coordinate environmental activities within the United Nations system. UNEP is clearly to be commended for the various global and regional multilateral treaties which have been negotiated under its auspices, as well as a number of guidelines ("soft law") adopted for addressing various environmental problems.<sup>4</sup>

This survey indicates that no treaty has been concluded to deal with environmental issues comprehensively. No treaty states basic principles which States would be called upon to observe with respect to the various environmental problems. However, some efforts in this direction are now underway as noted in the concluding section of this paper. The conclusion discusses the current drafts of such general principles as rights and obligations of States in the field of the environment, including specific reference to the question of the environment and armed conflict.

## II. FOCUS UPON DEVELOPING THE LAW FOR THE PROTECTION OF THE ENVIRONMENT IN TIMES OF ARMED CONFLICT

### A. UNEP'S RESPONSE TO THE PROBLEMS ARISING FROM THE IRAQ/KUWAIT CONFLICT IN THE GULF

Given the leading role of UNEP in the development of environmental law as mentioned above, it comes as no surprise that when the international community learned of the devastating environmental consequences of the Iraq/Kuwait conflict in the Gulf, UNEP was the first to act. As soon as news of serious oil spills became known, UNEP convened the first United Nations Inter-Agency Consultation in Geneva on February 5-6, 1991 to coordinate a comprehensive approach to the environmental problems caused by the events in the Gulf.<sup>5</sup> At its Sixtieth Ses-

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4. The latest UNEP Register of International Treaties and other Agreements on the Environment is found in U.N. Doc. UNEP/GC.16/INF. 4 (1991). For an analysis of UNEP's contributions in this field see, e.g., Carol Annette Peterson, *The Role of the United Nations Environment Programme (UNEP) in Development of International Environmental Law*, 5 AM. U. J. INT'L L. & POL'Y 351-91 (1990). See also Geoffrey Palmer, *New Ways to Make International Environment Law*, 86 A.J.I.L. 259, at 261-64 (1992).

5. See *Environmental Consequences of Armed Conflict between Iraq and Kuwait*,

sion in Nairobi, May 20-31, 1991, the Governing Council of UNEP adopted a decision which, *inter alia*, expressed awareness "of the general 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 laid down in the 1977 Protocol Additional to the Geneva Conventions of August 12, 1949 and Relating to the Protection of Victims of International Armed Conflict and of the provisions of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD)." The Governing Council "recommend[ed] that Governments consider identifying weapons, hostile devices and ways of using such techniques that would cause particularly serious effects on the environment and consider efforts in appropriate fora to strengthen international law prohibiting such weapons, hostile devices and ways of using such techniques."<sup>6</sup> All these were in addition to a much earlier stand taken by UNEP at the second special session of its Governing Council held August 1-3, 1990 in Nairobi, in which the Council expressed "its concern over the invasion of Kuwait by Iraq and the resulting destruction of the environment and disruption of social and economic structures."<sup>7</sup> The study of environmental law relating to armed conflict was thus placed on the agenda of UNEP's Group of Legal Experts dealing with periodic review of environmental law.

#### B. EARLIER EFFORTS BY THE UNITED NATIONS BODIES AND RELEVANT INTERNATIONAL ORGANIZATIONS TO DEVELOP THE LAW

The question of the use of the environment as a weapon had not been addressed by international humanitarian law until 1976-77. Two treaties were then adopted which, for the first time, expressly prohibited the use of the environment as a weapon. They are outlined below.

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UNEP, 16th Sess., Agenda Item 4, U.N. Doc. UNEP/GC.16/4/Add.1 (1991).

6. See UNEP/GC.16/L.53.

7. *Ibid.* The discussion, for example, of the measures taken by UNEP in response to this crisis including the establishment in 1991 of an *ad hoc* Inter-agency Action Plan for Kuwait and the Persian Gulf, is outside the scope of this paper. The absence of such emergency procedures is, however, to be noted as a gap in the law which should be filled.

### 1. *The General Assembly of the United Nations*

One of the two instruments dealing with this question is the United Nations Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques (ENMOD), which was adopted by General Assembly resolution 31/72 of December 10, 1976 (hereinafter ENMOD Convention). The Convention provides in Article I, paragraph 1, that:

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.<sup>8</sup>

Article II of the Convention defines the techniques in question as "any technique for changing through the deliberate manipulation of natural processes - the dynamics, composition or structure of the earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space."

The second instrument addressing this issue is Protocol I Additional to the Geneva Conventions of 1949, which contains two provisions regarding the use of the environment as a means of warfare. Article 35, paragraph 3 of the Protocol provides that: "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>9</sup>

Article 55 of the Protocol reads as follows:

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 damages to the natural en-

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8. See 1125 UNTS.3. See also M. Antoine A. Bouvier, *Protection of the Natural Environment in time of armed conflict*, INTERNATIONAL REVIEW OF THE RED CROSS 1991.

9. *Id.*

vironment and thereby to prejudice the health or survival of the population.

2. Attacks against the natural environment by way of reprisals are prohibited.<sup>10</sup>

While Article 35 of Protocol I deals with the issue of the use of the environment as a weapon from the point of view of prohibited methods of warfare, Article 55 of the same instrument focuses on the question of protection of the natural environment and of the population, particularly its health and survival, in times of armed conflict.

The question has been raised whether Protocol I and the ENMOD Convention duplicate each other. This does not seem to be the case for the following reasons. First, Protocol I is aimed at protecting the natural environment against damages which could be inflicted on it by any weapon, while the ENMOD Convention prevents the use of only one such potential weapon, i.e. environmental modification techniques. Whereas the elaboration of Protocol I was primarily motivated by the desire to protect human beings from environmental destruction in wartime, the elaboration of the ENMOD Convention was primarily motivated by the desire to contribute to general and complete disarmament and the preservation and improvement of the environment *per se* for the benefit of present and future generations. Second, Protocol I applies only to armed conflict, while the ENMOD Convention deals with the prohibition of environmental modification techniques for "military or any other hostile purposes," and thus has wider application (for example, in cases where no other weapon has been used). Third, the ENMOD Convention deals with "short-term" damage to the environment ("short-term" damage having been interpreted as referring to a period of months). Protocol I, by contrast, deals with "long-term" damage ("long-term" having been interpreted as referring to a period of decades). Finally, it should also be pointed out that Protocol I does not expressly include severe damage to the environment among the grave breaches of the Protocol (i.e. war crimes).

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10. *Id.*

## 2. *The Work of the International Law Commission*

The designation of severe damage to the environment as an international crime can be traced to the work of the International Law Commission (ILC). In the first part of the draft articles on State responsibility, the ILC has recognized certain acts as international crimes, including a "serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environment, such as those prohibiting massive pollution of the atmosphere or of the seas."<sup>11</sup>

The International Law Commission has also addressed this question in its work on other topics. Article 22 of the Draft Code of Crimes against the Peace and Security of Mankind, adopted by the ILC on the first reading in 1991, includes a definition of exceptionally serious war crimes. The relevant part of the article reads as follows:

### Article 22

#### Exceptionally serious war crimes

1. An individual who commits or orders the commission of an exceptionally serious war crime shall, on conviction thereof, be sentenced to . . . .

2. For the purposes of this Code, an exceptionally serious violation of principles and rules of international law applicable in armed conflict consisting of any of the following acts:

. . . .

(d) employing 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>12</sup>

Article 26 of the draft Code of Crimes also includes willful

11. See draft Article 19, para. 3(d) in 2 Y.B. OF INT'L L. COMM'N 30, at 32 (1980-part 2).

12. See *Report of the International Law Commission*, U.N. GAOR, 46th Sess., Supp. No. 10, at 269, U.N. Doc. A/46/10 (1991).



and severe damage to the environment in time of peace among such crimes and reads as follows:

Article 26

Willful and severe damage to the environment

An individual who willfully causes or orders the causing of widespread, long-term and severe damage to the natural environment shall, on conviction thereof, be sentenced to . . . .<sup>13</sup>

On the topic of the law of non-navigational uses of international watercourses, the draft articles adopted by the ILC at its first reading in 1991 include Article 29, which addresses the question of protection of international watercourses in times of armed conflict as set out below:

Article 29

International watercourses and installations  
in time of armed conflict

International watercourses and related installations, facilities and other works shall enjoy the protection accorded by the principles and rules of international law applicable in international and internal armed conflict and shall not be used in violation of those principles and rules.<sup>14</sup>

These draft articles and the commentaries thereto provisionally adopted by the ILC provide solid grounds for future treaty law on the subject, in addition to the ENMOD Convention and the international humanitarian law mentioned in this section.

### C. CURRENT EFFORTS BY NON-GOVERNMENTAL ORGANIZATIONS, GROUP OF EXPERTS AND THE UNITED NATIONS

The concern about the protection of the environment in times of armed conflict following the Gulf crisis was also shown by the number of professional groups outside the UN system which began to discuss this specific problem.

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13. *Id.* at 171.

14. *Id.* at 192.

1. *The Recommendations of the International Council of Environmental Law (ICEL) and the Preliminary Studies of Certain Groups of Experts*

One of the expert groups meeting to discuss the question was the London Conference on "A 'fifth Geneva' Convention on the Protection of the Environment in Times of Armed Conflict" held on June 3, 1991.<sup>15</sup> This was followed by the Conference of Experts on the Use of the Environment as a Tool of Conventional Warfare held in Ottawa from July 10 to July 12, 1991.<sup>16</sup> These two meetings of experts were exploratory in nature and were only able to record certain issues over which there were divergent views among the experts and certain questions on which shared views were evident.

The next meeting of a group of experts was convened by the International Council of Environmental Law (ICEL) on the "Law concerning the protection of the environment in times of armed conflict" in Munich on December 13-15, 1991. Taking advantage of the exploratory discussions at Ottawa and London and the discussions of the item in the General Assembly of the United Nations, the Munich meeting was thus better able to produce some concrete recommendations on this question that are contained in a report<sup>17</sup> which ICEL submitted to the Secretary-General of the United Nations and which are worth outlining here.

2. *Recommendations by ICEL*

In part I of the ICEL recommendations, there is a clear emphasis upon the need to enhance the effectiveness of existing law by calling for wider acceptance of relevant instruments, such as the 1977 Protocol Additional to the Geneva Convention of 1949, and relating them to the Protection of Victims of International

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15. The Executive Summary by the Rapporteur of the Conference, which is essentially exploratory of the divergent views on the issues, is available on file with the present author.

16. The Chairman's summary of the Conference containing shared views on certain issues is available on file with the present author.

17. See the report of the Munich meeting containing specific recommendations submitted by ICEL to the Secretary-General of the United Nations by letter dated January 20, 1992. Copy available on file with the present author.

Armed Conflict (Protocol I). This basic conclusion was also reached in both the London and Ottawa meetings. Under Part I of the ICEL recommendations, the group of experts observed that the current recognition that the environment itself is an object of legal protection in times of armed conflict implies that traditional perceptions of proportionality and military necessity have become obsolete. They also highlighted the importance of the norms of customary international law applicable in times of armed conflict which, *inter alia*, prohibit devastation not justified by military necessity; urged States to accept the competence of the International Fact-Finding commission provided for in Article 90 of Protocol I, whose task it is to inquire into alleged serious violations of the Conventions or the Protocols; and called upon parties to the Geneva Conventions and to Protocol I to take all necessary measures for the implementation of the obligations under these instruments and stressed the importance of giving orders and instructions to ensure their observance, notably through their incorporation in military manuals. Additionally, this group of experts drew attention to the fact that the rules of international environmental law continue to apply between parties to an armed conflict and third parties and recommended clarification of the extent to which these rules also continue to apply between parties to an armed conflict. Encouraged by the heightened public recognition of the need to protect the environment in times of armed conflict, the experts called upon States and interested national and international governmental and non-governmental organizations to increase consciousness, in particular, on the part of policy makers and military commanders; urged them to intensify their efforts to attain the objectives set out above; noted that States are duty-bound to comply fully with their obligations under international law concerning the protection of the environment in times of armed conflict; and stressed that, where specific treaty obligations are involved, States are expected to observe them accordingly.

In Part II of the ICEL recommendations, the group of experts addressed certain questions as part of further development of the law in this area and listed the following issues for consideration: the duty to protect the environment *per se* in times of armed conflict; the system of emergency preparedness to protect the environment in times of armed conflict (including urging the United Nations to establish such a system); the collection of in-

formation necessary to assist in the assessment of environmental damage through procedures which include monitoring and on-site inspections; prevention of environmental degradation through, *inter alia*, international or national actions based on an established catalogue of human activities which would be prohibited either absolutely or conditionally and through a registry of protected areas; duties of neutral or non-belligerent States concerning the environment, calling upon them to prevent harm to the environment under their jurisdiction or control, or in the commons; consideration of the impact of scientific progress calling for revision and updating of national military procedures to ensure protection of the environment including the necessity to reconsider traditional targets; dangerous forces, ultra hazardous activities and potentially dangerous sites not to be identified as military targets; characterization of hostile actions causing significant damage to the environment of another State or to the global common as threats to peace; responsibility/liability, taking into account, *inter alia*, the general obligation of States to prevent significant damage to the environment outside their national jurisdiction or control; the decision of the Security Council contained in resolution 687 (1991) concerning the Iraq/Kuwait conflict in the Gulf and Article 91 of Protocol I; and dispute settlement procedures.

These recommendations of ICEL were officially transmitted to the Secretary-General of the United Nations, as indicated above, and are intended to become part of ICEL's contribution to the program of activities relating to the United Nations Decade of International Law.

### 3. *Considerations by the General Assembly of the United Nations and by UNCED*

Apart from the initiative of UNEP and the work of the ILC on certain topics mentioned above, the General Assembly of the United Nations itself became involved when the Government of Jordan requested the Secretary-General to place on the agenda of the 46th session of the General Assembly an item entitled "Exploitation of the Environment as a Weapon in Times of Armed Conflict and the Taking of Practical Measures to Prevent

Such Exploitation." In its explanatory memorandum<sup>18</sup> requesting the inclusion of this item in the agenda of the United Nations General Assembly, the Government of Jordan stated, *inter alia*, the following:

The existing 1977 United Nations Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques was revealed as being painfully inadequate during the Gulf conflict. We find that the terms of the existing convention are so broad and vague as to be virtually impossible to enforce. We also find no provision for a mechanism capable of the investigation and settlement of any future disputes under the Convention. Furthermore, the Convention does not provide for advanced environmental scientific data to be made available to all States at the initial stages of crisis prevention.

We therefore propose that the General Assembly establish a committee to examine the above-mentioned problems, the committee to submit to the General Assembly, if possible by the forty-seventh session in 1992, proposals for an efficient mechanism to combat the exploitation of the environment in times of armed conflict. We believe that this may lead to the drafting of a new treaty, and we trust that any such treaty would give all humanity the confidence to face a more peaceful future. Pending the finalization of any such treaty, we would suggest that all nations should be invited to make unilateral decisions along the lines of the treaty.<sup>19</sup>

Since the question of the drafting of a treaty was specifically raised by Jordan and thus became the paramount issue for discussion, the General Assembly of the United Nations agreed to include the item on its agenda and allocated it to the Sixth (Legal) Committee for consideration. When the Committee took

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18. See *Exploitation of the Environment as a Weapon in Times of Armed Conflict and the Taking of Practical Measures to Prevent Such Exploitation*, U.N. GAOR, 46th Sess., U.N. Doc. A/46/141.

19. *Ibid.*

up the item for discussion, the Government of Jordan, on introducing it, observed that the item should actually deal with the question of "greater environmental protection, in general, in times of armed conflict,"<sup>20</sup> instead of the narrow scope reflected in the title of the item as originally proposed in the explanatory memorandum.<sup>21</sup> The Sixth Committee consequently agreed to change the title of the item to "Protection of the Environment in Times of Armed Conflict."<sup>22</sup>

The debate in the Sixth Committee took place against the background of the initiatives of UNEP mentioned above and also of Security Council resolution 687 (1991) of April 3, 1991. In that resolution the Council, *inter alia*, reaffirmed that Iraq "is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources . . . as a result of Iraq's unlawful invasion and occupation of Kuwait."<sup>23</sup> A number of references were made to this resolution in the course of the debate in the Sixth Committee in which two major views on the possible approaches to the question of protection of the environment in armed conflict emerged.

A widely shared view is that the existing body of international law for the protection of environment in times of armed conflict is adequate and that what is needed is wider acceptance of, and compliance with, the relevant instruments. Among the relevant instruments cited in this connection were: Additional Protocol I to the Geneva Convention of 1949; the 4th Geneva Convention relative to the protection of Civilian Persons in times of war (1949); Convention of the Prohibition of Military or any other Hostile use of Environmental Modification Technique (ENMOD Convention); 1925 Geneva Protocol for the Prohibition of use of Chemical and Bacteriological Weapons; and the 1907 Hague Convention of the Laws and Customs of War on Land. There was, therefore, the general view that the type of deliberate environmental destruction during armed conflict,

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20. See *Summary Record of the 18th Meeting*, U.N. GAOR 6th Comm., 46th Sess., Agenda Item 4, at para. 10, U.N. Doc. A/C.6/46/SR.18 (1991).

21. See *supra* note 18.

22. The discussion of other activities of the United Nations with respect to the environmental problems raised by the conflict in the Gulf is out of scope of this Paper.

23. See S.C. Res. 687, U.N. SCOR, 2981 Meeting, U.N. Doc. S/Res/687 (1991). (Under para. 18 of this resolution, a compensation mechanism for the loss or damage arising from the actions of Iraq was established).

such as that carried out by Iraq in the Gulf, violated both customary international law and treaty law. Iraq's action violated, for example, the customary international *law of proportionality* which only permits those acts of war that are "proportional to the lawful objective of the military operations and actually necessary to achieve that objective." The action also violated the principle of *military necessity* as provided in the regulations annexed to the 1907 Hague Convention.

The other view stressed the inadequacy of the existing rules of international law, noting this was clearly demonstrated by the actions of Iraq in the Gulf. Under this view, it was necessary to work towards a new convention to specifically address the question of protection of the environment in times of armed conflict. The commonly shared view is that the law in this area needs to be strengthened, because those who thought it was adequate recognized that it should be further strengthened and enhanced by introducing more effective mechanisms for investigation, prevention and settlement of environmental disputes. Thus, the 26th International Conference of the Red Cross and the Red Crescent was due to be held in Budapest in November/December 1991 focusing on the weakness of the existing procedural law. It was therefore agreed that the Sixth Committee should wait for the report of the International Red Cross Conference, which would be submitted to the Secretary-General at the 47th session of the General Assembly, instead of requesting Governments to express their views further on this matter in written submissions to the Sixth Committee. Accordingly, the decision adopted by the Sixth Committee on this item recommended that the General Assembly request the Secretary-General to ask for such a report from the International Red Cross. In the meantime, before the General Assembly could act on that decision, the news of the indefinite postponement of the Conference in question was received. Consequently, the General Assembly amended its decision to request the Secretary-General to report to the forthcoming (47th) session on the activities undertaken in the framework of the International Red Cross with regard to the question of protection of the environment in times of armed conflict.

In order to enable the organization to make the contribution expected from it, the International Red Cross has organized a meeting of experts to consider the contents, limitations and pos-

sible shortcomings of the existing rules of law for the protection of environment in times of armed conflict to take place in Geneva on April 27-30, 1992. The Sixth Committee of the General Assembly will resume its consideration of this question at the 47th session of the General Assembly on the basis of the report which the Secretary-General is expected to submit as explained above.

Concern about the question of protection of the environment in times of armed conflict also received attention in the current preparatory work for the UNCED. Accordingly, Principles 24 and 25 of the draft Rio Declaration on Environment and Development read as follows:

**Principle 24**

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.

**Principle 25**

Peace, development and environmental protection are interdependent and indivisible.<sup>24</sup>

While the entire Rio draft declaration, including the two above Principles, is due for further negotiations and finalization, the declaration provides the basis for discussions toward possible articulation therein of the principle that international environmental law is *not* suspended in times of armed conflict. The existence of such a principle was asserted during the debate on this item in the Sixth Committee of the General Assembly of the United Nations as summarized above. Such observations were

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24. See *Principles on General Rights and Obligations*, U.N. GAOR, 4th Sess., Agenda Item 3, U.N. Doc. A/CONF.151/PC/WG.III/L.33/Rev.1 (1992). The draft set out below was based on other proposals which were submitted by various delegations, e.g., working paper prepared by members of the Group of 77, see *Principles on General Rights and Obligations, Principles 23 and 24: Group of 77*, U.N. GAOR, 4th Sess., Agenda Item 3, U.N. Doc. A/CONF.151/PC/WG.III/L.20 (1992); *Principles on General Rights and Obligations, Proposal by the United States of America*, U.N. GAOR, 4th Sess., Agenda Item 3, U.N. Doc. A/CONF/PC/WG.III/L.21 (1992), Principle 10; and *Principles on General Rights and Obligations, Proposal by the Nordic countries*, U.N. GAOR, 4th Sess., Agenda Item 3, at para. 4, U.N. Doc. A/CONF.151/PC/WG.III/L.27 (1992).



also made in the Ottawa meeting<sup>25</sup> and at the Munich meeting.<sup>26</sup> That UNCED encourages the development of international law on this specific issue is seen in the proposal contained in the draft elements for inclusion in the Programme of Action into the 21st century and beyond - "Agenda 21" - particularly in Section IV, Chapter 8 on Legal Instruments and Mechanisms. Thus, paragraph 6(a) of the draft proposal, which is still to be negotiated and finalized in Rio, reads as follows:

In view of the importance of full compliance with the relevant rules of international law, all appropriate means should be considered to prevent any deliberate large-scale destruction of the environment, which cannot be justified under international law. The General Assembly and its Sixth Committee as well as the next International Conference of the Red Cross and the Red Crescent, in particular the ICRC expert meetings, are the appropriate forums to deal with different aspects of this subject.<sup>27</sup>

As discussed above, the United Nations General Assembly will indeed continue its considerations of this question on the basis of the report on the work of the International Red Cross that is to be submitted by the Secretary-General of the United Nations.

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25. It is interesting to note that on this point, the Chairman's summary of the Ottawa meeting, *supra* note 16, indicated that the view was clearly expressed that the law of armed conflict took precedence over the general law of the environment during wartime. Subsequently, some participants took the view that international legal rules, both conventional and customary, protecting the environment are neither suspended nor terminated by armed conflict, and must, subject to the application of the laws of war, be respected and enforced by the parties to the conflict. Some participants stated that peacetime rules on the protection of the environment were applicable between belligerents and third parties in wartime.

26. In the report of the Munich meeting, *supra* note 17, it is stated that the group drew attention to the fact that the rules of international environmental law continue to apply between parties to an armed conflict and third parties. The group recommended clarification of the extent to which these rules also continue to apply between parties to an armed conflict.

27. See *Survey of Existing Agreements and Instruments, and its follow-up*, U.N. GAOR, 4th Sess., Agenda Item 4, U.N. Doc. A/CONF.151/PC/WG.III/L.32 (1992).

### III. CONCLUSIONS

The survey given at the beginning of this paper was intended to illustrate the areas of the environment and subject-matter on which States have been able to conclude binding legal instruments after the 1972 Stockholm Conference on the human environment. It also indicates that international environmental law has developed largely through specific treaties dealing with specific issues arising from human activities at a given period. However, there is evidently the need to undertake the elaboration of a treaty which would deal comprehensively with issues of the environment and development, so as to generate general principles of international law to guide the conduct of the actors in this field. Such an effort was originally made by the legal experts convened under the Brundtland Commission (1985-1986), which produced legal principles for environmental protection and sustainable development.<sup>28</sup>

The most recent effort to produce a similar instrument dealing comprehensively with issues of the environment and development is the draft Covenant on Environmental Conservation and Sustainable Use of Natural Resources, prepared by the Group of Legal Experts convened at the International Council of Environmental Law (ICEL) of the International Union for Conservation of Nature and Natural Resources (IUCN).<sup>29</sup> Article 9 of the draft Covenant prepared by ICEL reads as follows:

#### Article 9

#### Military and Hostile Activities

1. States shall not engage in military activities resulting in widespread, long-lasting or severe damage to the environment.

2. States shall not engage in any military or other hostile use of the environment as a direct

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28. See *World Commission on Environment and Development (WCED) (the Brundtland Commission): Our Common Future*, Annex I (1987).

29. See Draft of the Working Group of Legal Experts on Environmental Law convened by the International Council of Environmental Law (ICEL) of the International Union for Conservation of Nature and Natural Resources (IUCN), Bonn, draft of April 29, 1991 submitted to UNCED and circulated as U.N. Doc. A/CONF.151/AG/WG.III/4 (English only).

means of destruction, damage or injury.

3. States shall take special measures to protect resources, sites and installations from acts of terrorism or sabotage which may result in damage to the environment.

4. States whose military activities contravene the provisions of paragraphs 1 and 2 shall be held responsible for the subsequent environmental restoration.

5. States shall avoid or minimize, as far as possible, all military activities harmful to the environment when not engaged in armed conflict.

Such drafts, prepared by experts in their individual capacities and in non-governmental settings, could provide useful bases for the work of governmental experts who may be called upon to consider the elaboration of such a comprehensive environmental treaty or other specific legal instrument toward the enhancement of the law for the protection of the environment in times of armed conflict. In either case, the relevant draft articles produced by the International Law Commission referred to above should be taken into account, as well as the results of the efforts being made by the UNCED in the context of the Rio declaration on environment and development, and the elements of legal instruments and mechanisms set out above and also by UNEP. The International Red Cross will, as noted earlier, certainly make further contributions in this field by studying the contents, limitations and possible shortcomings of the existing rules of law of the protection of the environment in times of armed conflict, and inform the General Assembly of the United Nations of its findings. The International Council of Environmental Law will also continue its study of this question, particularly toward further articulation of the issues contained in its recommendations briefly summarized in this paper, as part of its contribution to the United Nations Decade of International Law.

It would appear, therefore, that the question of future instruments for the protection of the environment in times of armed conflict will continue to be discussed on the basis of con-

crete proposals, taking into account, *inter alia*, the results of the work being done by both the governmental experts within the United Nations system and the experts convened by non-governmental organizations outside the United Nations systems as analyzed in this paper.

