

THE GENERAL ASSEMBLY RESOLUTION "PROTECTION OF THE ENVIRONMENT IN RELATION TO ARMED CONFLICTS" OF 2022: WHERE WE STAND 30 YEARS AFTER

Prof. VESNA BARIĆ PUNDA, PhD*
IRENA NIŠEVIĆ, LL.M.**

UDK 349.6"36"
DOI 10.21857/m16wjcn6n9
Review article
Received: 5 July 2023
Accepted for print: 15 November 2023

After the adoption of the General Assembly Resolution "Protection of the Environment in Times of Armed Conflict" in 1992, this United Nations organ adopted another resolution on the subject matter in 2022 entitled "Protection of the Environment in Relation to Armed Conflicts". The new Resolution is a result of efforts made within the International Law Commission which issued its "Draft Principles on Protection of the Environment in Relation to Armed Conflicts, with Commentaries" in the same year. Comments and observations to the Draft principles received from the governments of the great military powers are of special importance to the regulation of the subject matter. This work puts emphasis on Principle 13 of the Resolution which, subject to applicable international law, prohibits widespread, long-term and severe damage to the environment. The authors analyse whether such a threshold is too high and restrictive, consequently preventing the Resolution from effectively protecting the environment in accordance with its goals. On the basis of the results of such an analysis, the authors offer possible solutions to the related problems.

Keywords: international environmental law; the law of armed conflict; International Law Commission; General Assembly; Additional Protocol I.

* Prof. Vesna Barić Punda, PhD, University of Split, Faculty of Law, Domovinskog rata 8, 21000 Split, Croatia, email: vesnapu@pravst.hr.

** Irena Nišević, LL.M, Adriatic Institute, Croatian Academy of Sciences and Arts, Augusta Šenoa 4, 10000 Zagreb, Croatia, email: irena@hazu.hr.

1. INTRODUCTION

The General Assembly adopted without a vote the Resolution "Protection of the Environment in Relation to Armed Conflicts"¹ at its seventy-seventh session on 7 December 2022. The Resolution is based on the work of the International Law Commission (hereinafter: ILC) which issued its Draft principles on protection of the environment in relation to armed conflicts, with commentaries,² in the same year. In its Resolution, the General Assembly recalls the recommendation of the United Nations Environment Programme that the ILC examine the existing international law for protecting the environment during armed conflict and recommend how it can be clarified, codified and expanded.³

The existing international environmental law, which has evolved primarily through treaty law,⁴ has contributed to the protection of the environment in general. This field of international law has seen dynamic development. As such, it has always implied a challenge for international law experts. The problems which these experts are facing need to be dealt with by both traditional legal institutes and new legal concepts. At the same time, it has to be borne in mind that the protection of the environment represents a global interest and not just a national one.

There are positive examples of international cooperation, especially in the field of protection of the marine environment. The United Nations Convention on the Law of the Sea⁵ plays a huge role at the international level. At the regional level, there are also positive examples confirming that the protection of the environment goes beyond national interests, such as the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols⁶

¹ A/RES/77/104 (hereinafter: GA Resolution of 2022).

² ILC, Report on the Work of the Seventy-third Session (2022), A/77/10, Chapter V (hereinafter: Draft principles).

³ United Nations Environment Programme, *Protecting the Environment during Armed Conflict: An Inventory and Analysis of International Law*, 2009, Recommendation 3, p. 53.

⁴ Birnie, P. W.; Boyle, A. E.; Redgwell, C., *International Law and the Environment*, Oxford University Press, Oxford, 2009, p. 24.

⁵ Adopted on 10 December 1982, entered into force on 16 November 1994, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf (accessed 24 August 2023).

⁶ Adopted on 16 February 1976, entered into force on 12 February 1978, amended on 10 June 1995, https://wedocs.unep.org/bitstream/handle/20.500.11822/31970/bcp2019_web_eng.pdf (accessed 24 August 2023).

When referring to international environmental law conventions, one must analyse whether they continue to apply during armed conflict. Hence, in order to define the law governing the protection of the environment in relation to armed conflicts, one should analyse the relationship between international environmental law and the law of armed conflict. The first step is to examine the convention at hand in accordance with the rules of treaty interpretation set under the Vienna Convention on the Law of Treaties⁷ which are regarded as customary international law. Secondly, the rules of law of armed conflict should also be taken into account.

It is considered that no treaty is *ipso facto* terminated or suspended due to an outbreak of hostilities.⁸ Therefore, each treaty must be examined separately. Considering that the majority of international environmental law conventions do not expressly exclude their application during armed conflict, it could be concluded that they apply not only in peace, but that they continue to apply in armed conflict as well. On the other hand, it could be argued that the absence of an express clause regulating the effect of armed conflicts would mean that conventions cannot continue to apply in armed conflict.

The International Court of Justice in its Advisory Opinion of 1996 *Legality of the Threat or Use of Nuclear Weapons*⁹ dealt with this question incidentally. The Court did not focus on the question of whether international environmental law conventions continue to apply during armed conflict. Rather, the Court was of the opinion that the issue before it was whether these conventions were *intended* to impose obligations of total restraint during military activities.¹⁰ It concluded that international environmental law conventions could not be construed in such a way as to deny a State the right to use armed force in self-defence or to entail obligations of total restraint in armed conflict.¹¹ The Court's reasoning thus favours the view that the law of armed conflict operates as *lex specialis* in regard to international environmental law.

In the General Commentary to the Draft principles, it is stated that "the draft principles were prepared bearing in mind that the law of armed conflict,

⁷ Adopted on 23 May 1969, entered into force on 27 January 1980, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (accessed 24 August 2023).

⁸ ILC, Report on the Work of the Sixty-third Session (2011), A/66/10, Chapter VI, Draft Articles on the Effects of Armed Conflicts on Treaties, with commentaries, Art. 3.

⁹ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, p. 226.

¹⁰ *Ibid.*, p. 242, para. 30.

¹¹ *Ibid.*

where applicable, is *lex specialis* but that other rules of international law, to the extent that they do not enter into conflict with it, also remain applicable".¹² In this paper, the authors will analyse the relevant rules of the law of armed conflict regulating the protection of the environment in order to compare them with the principles of the GA Resolution of 2022.

Customary law rules of the law of armed conflict, which contribute both to the direct and indirect protection of the environment, should be further stressed. The environment enjoys general protection from direct attack as a civilian object.¹³ Recognition of the environment as a civilian object has done more to protect it than any environmentally specific rule of the law of armed conflict.¹⁴ As in the case with other civilian objects, the environment is only *prima facie* a civilian object and, therefore, it can become a legitimate military objective as well.¹⁵ From the definition of a legitimate military objective, there follows a negative definition of a civilian object: a civilian object is any object that is not a military objective. Furthermore, it is important to consider whether all parts of the environment which do not qualify as military objectives are necessarily civilian objects. In order not to leave space for grey areas in regard to the status of parts of the environment, the ILC took the position that all parts of the environment constitute a civilian object.¹⁶

Being a civilian object, the environment is protected by the customary international law principle of distinction between civilian objects and military objectives¹⁷ and by the principle of precautions.¹⁸ In particular, those who plan or decide upon an attack must do everything feasible to verify that the objectives to be attacked are not civilian objects, but are military objectives. Moreover,

¹² *Op. cit.* in fn. 2, General Commentary, para. 4.

¹³ This conclusion is derived from positioning Art. 55, para. 1 in Chapter III of Section I of Part IV (titled "Civilian objects") of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, adopted on 8 June 1977, entered into force on 7 December 1978 (hereinafter: Additional Protocol I), <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977> (accessed 24 August 2023).

¹⁴ Hulme, K., Taking Care to Protect the Environment against Damage: A Meaningless Obligation?, *International Review of the Red Cross*, vol. 92 (2010), no. 879, p. 678.

¹⁵ Art. 52, para. 2 of Additional Protocol I defines legitimate military objectives as "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 the circumstances ruling at the time, offers a definite military advantage".

¹⁶ *Op. cit.* in fn. 2, p. 143, para. 10.

¹⁷ Art. 48 of Additional Protocol I.

¹⁸ Art. 57 of Additional Protocol I.

they must take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimising, incidental damage to civilian objects. Furthermore, the environment is protected by the customary international law principle of proportionality. In particular, this principle prohibits an attack even against a legitimate military objective if it may be expected to cause incidental damage, *inter alia*, to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated.¹⁹ In this way, the aim is to protect the environment from becoming, as a civilian object, a collateral victim of an attack aimed at a military objective.

Additionally, the environment is protected by the customary international law principle of prohibition of destruction of enemy property, except where such destruction is rendered absolutely necessary by military operations.²⁰ However, invoking a military necessity could not rule out the illegality of destruction of enemy property if it did not constitute a legitimate military objective. Unlike the rule on the prohibition of employing methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the environment,²¹ this principle prohibits any destruction of enemy property, regardless of the nature and extent of the damage it might cause.²²

In addition to the general protection which the environment enjoys by its legal status as a civilian object, it also enjoys protection on the basis of the provisions of Additional Protocol I aimed at the protection of other civilian objects. In particular, these are Arts. 53 (Protection of cultural objects and of places of worship), 54 (Protection of objects indispensable to the survival of the civilian population) and 56 (Protection of works and installations containing dangerous forces). These rules can provide both direct and indirect protection to the environment. Direct protection is provided to the environment

¹⁹ Arts. 51, para. 5 (b) and 57, para. 2 (a) (iii) of Additional Protocol I.

²⁰ Art. 23 (g) of the Hague Regulation to the Convention (IV) respecting the Laws and Customs of War on Land, adopted on 18 October 1907, entered into force on 26 January 1910, <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907> (accessed 24 August 2023) and Art. 53 of the Convention (IV) relative to the Protection of Civilian Persons in Time of War, adopted on 12 August 1949, entered into force on 21 October 1950, <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949?activeTab=default> (accessed 24 August 2023).

²¹ Arts. 35, para. 3 and 55, para. 1 of the Additional Protocol I.

²² Therefore, in the analysis of the Iraqi burning of Kuwaiti oil platforms in the Gulf War, this customary international law principle had been considered in the case where the restrictive threshold under Art. 35, para. 3 and Art. 55, para. 1 of Additional Protocol I providing a direct protection to the environment could not be applied.

when a civilian object specifically protected by these rules also forms part of the environment. For instance, agricultural areas as objects indispensable to the survival of the civilian population are an integral part of the environment and, thus, Art. 54, by prohibiting the attack, destruction, removal or rendering useless of such objects, also offers direct protection to the environment. Similarly, Art. 53 can also afford direct protection to the environment when an object forming part of the environment qualifies as cultural property. Furthermore, there could be room for the indirect protection of the environment in the situation of an attack on dams, dykes and nuclear electrical generating stations, which is prohibited under Art. 56, considering that any release of dangerous forces capable of causing severe losses among the civilian population is also likely to damage the environment in which the population lives.²³

The protection of the environment granted under Arts. 53, 54 and 56 of Additional Protocol I also applies in non-international armed conflicts in accordance with Arts. 14, 15 and 16 of Additional Protocol II.²⁴ This protection under Additional Protocol II is particularly important taking into account that Additional Protocol II does not contain provisions directly protecting either the environment (such as Art. 35, para. 3 and Art. 55, para. 1 of Additional Protocol I²⁵) or civilian objects in general.²⁶ Notwithstanding that both international and non-international armed conflicts can cause equally harmful consequences to the environment, it should be borne in mind that there ought to be a clear distinction between these two types of armed conflicts with respect to the applicable law. The fact that there are separate legal regimes for international and non-international armed conflicts under the law of armed conflict cannot be disregarded.²⁷

²³ International Committee of the Red Cross, *Guidelines on the Protection of the Natural Environment in Armed Conflict*, 25 September 2020, p. 68 (hereinafter: ICRC Guidelines of 2020), <https://shop.icrc.org/guidelines-on-the-protection-of-the-natural-environment-in-armed-conflict-pdf-en.html> (accessed 24 August 2023).

²⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, adopted on 8 June 1977, entered into force on 7 December 1978 (hereinafter: Additional Protocol II), <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977> (accessed 24 August 2023).

²⁵ *Infra* 3.2.

²⁶ For more details on the current legal framework on the protection of the environment in non-international armed conflicts, see Pretorius, J., *Enhancing Environmental Protection in Non-International Armed Conflict: The Way Forward*, *Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht*, vol. 78 (2018).

²⁷ However, this was one of the most controversial issues when the ILC decided not to distinguish between the law applicable to international and non-international armed conflicts in its Draft principles. See *infra* 3.1.

There are several other legal instruments directly apposite to the protection of the environment in warfare. Along with Additional Protocol I and Additional Protocol II, adopted under the International Committee of the Red Cross (hereinafter: ICRC), significant efforts have been made under the United Nations as well. Among these instruments, the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques²⁸ should be mentioned, as well as the Rome Statute of the International Criminal Court,²⁹ Protocol III to the 1980 Convention on Prohibitions or Restrictions of the Use of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious or to Have Indiscriminate Effects,³⁰ and, finally, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction³¹ adopted under the Organisation for the Prohibition of Chemical Weapons.

In this paper the authors will focus on the efforts made within the General Assembly to enhance the protection of the environment. The analysis will start with a review of the 30 years preceding the new GA Resolution of 2022.

2. THE GENERAL ASSEMBLY RESOLUTION "PROTECTION OF THE ENVIRONMENT IN TIMES OF ARMED CONFLICT" OF 1992

There is certainly a casual nexus between the adoption of relevant international instruments regulating the protection of the environment on one hand and damage to the environment preceding this law regulation on the other. Such was the case with the adoption without a vote of the General Assembly Resolution "Protection of the Environment in Times of Armed Conflict" of 1992.³²

²⁸ Adopted on 10 December 1976, entered into force on 5 October 1978 (hereinafter: ENMOD Convention), https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVI-1&chapter=26&clang=_en (accessed 24 August 2023).

²⁹ Adopted on 17 July 1998, entered into force on 1 July 2002, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-10&chapter=18&clang=_en (accessed 24 August 2023).

³⁰ Adopted on 10 October 1980, entered into force on 2 December 1983, https://treaties.unoda.org/t/ccwc_p3 (accessed 24 August 2023).

³¹ Opened for signature on 13 January 1993, entered into force on 29 April 1997, https://www.opcw.org/sites/default/files/documents/CWC/CWC_en.pdf (accessed 24 August 2023).

³² A/RES/47/37 adopted at the forty-seventh session, on 25 November 1992 (hereinafter: GA Resolution of 1992).

In particular, during Iraq's retreat from occupied Kuwait in the Gulf War (1990-1991), Iraq opened the valves of oil terminals causing a huge oil spill into the Persian Gulf and set on fire Kuwaiti oil wells causing immense atmospheric pollution. Consequently, the General Assembly in its Resolution of 1992 "expressed its deep concern about environmental damage... during recent conflicts". The General Assembly further stressed that "destruction of the environment, not justified by military necessity and carried out wantonly, is clearly contrary to existing international law". The General Assembly in this Resolution of rather short text recognised the importance of the existing international law applicable to the protection of the environment in times of armed conflicts. At the same time, it welcomed the activities on further development in this field. Furthermore, the General Assembly urged States to ensure compliance with the existing provisions of international law applicable to the protection of the environment in times of armed conflicts, especially by incorporating these provisions into their military manuals.³³ The text of the GA Resolution of 1992 is not revolutionary in the sense that the General Assembly offered a set of specific instructions or rules of behaviour of States in regard to the protection of the environment. It rather noted the state of the protection of the environment at the time of its adoption and put emphasis on only one important provision – the aforementioned prohibition of destruction of the environment which is not justified by military necessity and which is carried out wantonly.

The International Court of Justice in its Advisory Opinion of 1996 cited this provision on the prohibition of destruction of the environment.³⁴ Although the General Assembly Resolutions are not binding as such, the International Court of Justice emphasised that they can "provide evidence important for establishing the existence of a rule or the emergence of an *opinio iuris*".³⁵ Indeed, it is considered that the aforementioned provision of the GA Resolution of 1992 reflects the customary international law. It was reiterated in other documents as well, such as the San Remo Manual on International Law Applicable to Armed Conflicts at Sea of 1994.³⁶

The General Assembly Resolutions are not a source of international law. They rather represent a recommendation. However, it would be wrong to deny

³³ *Infra* 4.4.

³⁴ *Op. cit.* in fn. 9, p. 242, para. 32.

³⁵ *Ibid.*, pp. 254-255, para. 70.

³⁶ Adopted on 12 June 1994, <https://ihl-databases.icrc.org/en/ihl-treaties/san-remo-manual-1994> (accessed 24 August 2023), Art. 44.

any legal effect to them.³⁷ When referring to the aforementioned rule of the GA Resolution of 1992, it should be noticed that its text is short and clear, which is useful for customary process. Such definitions summarising a legal rule should have priority over extensive and enumerative definitions.³⁸

The GA Resolution of 1992 was innovative in the field of protection of the environment in relation to armed conflicts. Previous attempts in the regulation of the subject matter, referring here primarily to Additional Protocol I, have not achieved such acceptance for them to be considered to form part of customary international law. Although Additional Protocol I has been ratified by 174 States,³⁹ it is worth noting that this high number of ratifications does not include the great military powers, such as the United States of America and Israel. Likewise, the United Kingdom and France have made reservations on the provisions of the Additional Protocol I regulating the subject matter.⁴⁰ Therefore, the customary law status of its relevant provisions is disputed.⁴¹ Consequently, the protection of the environment in relation to armed conflicts is thus weakened considering that customary international law can contribute more effectively to certain aspects of environmental protection than treaty law. The latter is a static source of international law which cannot easily be modified in accordance with changing circumstances. On the other hand, customary international law is a more appropriate source of international law to achieve the goal of the effective protection of the environment in relation to armed conflicts. This is because problems related to environmental protection require flexible solutions which

³⁷ Degan, V. Đ., *Sources of International Law*, Martinus Nijhoff Publishers, The Hague/Boston/London, 1997, p. 194.

³⁸ *Ibid.*, p. 199.

³⁹ <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/state-parties?activeTab=undefined> (accessed 24 August 2023).

⁴⁰ United Kingdom of Great Britain and Northern Ireland, Declarations and Reservations Made upon Ratification of Additional Protocol I, 28 January 1998, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Notification.xsp?action=openDocument&documentId=0A9E03F0F2EE757CC1256402003FB6D2> (accessed 26 April 2023); France, Declarations and Reservations Made upon Ratification of Additional Protocol I, 11 April 2001, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Notification.xsp?action=openDocument&documentId=D8041036B40EBC44C1256A34004897B2> (accessed 26 April 2023).

⁴¹ However, the ICRC in its Study on Customary International Humanitarian Law considers the relevant rule on prohibition of 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 as a norm of customary international law. See Rule 45: Causing Serious Damage to the Natural Environment, <https://ihl-databases.icrc.org/en/customary-ihl> (accessed 26 April 2023).

take into account new scientific knowledge, new technologies, political priorities and different circumstances in States.⁴²

Since the time of the adoption of the GA Resolution of 1992, it has been considered that existing international law regulating the protection of the environment in relation to armed conflicts should be further strengthened, especially by effective mechanisms for the prevention of environmental disputes.⁴³ In the 30 years between the two GA Resolutions at hand (the GA Resolution of 1992 and of 2022), the General Assembly has been active on the subject matter. It has adopted many resolutions aimed not only at the protection of the environment in general,⁴⁴ but at the protection of the environment in relation to armed conflicts as well. It has dealt continuously, albeit separately, with environmental issues arising before, during or after an armed conflict, such as the issue of the prevention of the exploitation of the environment in war⁴⁵ or the issue of remnants of war which can have a potential impact on human health.⁴⁶

However, the protection of the environment in relation to armed conflicts requires further regulation which covers a broader field of issues, such as peacekeeping operations, human rights law, environmental peacebuilding, etc.⁴⁷ There were other initiatives under international law preceding the ILC's work on the Draft principles which focused on the same subject matter.⁴⁸ However, the ILC

⁴² *Op. cit.* in fn. 4, p. 17.

⁴³ Adede, A. O., Protection of the Environment in Times of Armed Conflict: Reflections on the Existing and Future Treaty Law, *Annual Survey of International & Comparative Law*, vol. 1 (1994), no. 1, pp. 172-174.

⁴⁴ See A List of the General Assembly's Resolutions and Decisions on Environmental Protection, [https://digitallibrary.un.org/search?ln=en&as=0&p=subjectheading:\[ENVIRONMENTAL+PROTECTION\]](https://digitallibrary.un.org/search?ln=en&as=0&p=subjectheading:[ENVIRONMENTAL+PROTECTION]) (accessed 26 April 2023).

⁴⁵ A/RES/56/4 adopted at the fifty-sixth session on 5 November 2001, Observance of the International Day for Preventing the Exploitation of the Environment in War and Armed Conflict.

⁴⁶ A/RES/65/149 adopted on 20 December 2010, A/RES/68/208 adopted on 20 December 2013, A/RES/71/220 adopted on 21 December 2016, A/RES/74/213 adopted on 19 December 2019, Cooperative Measures to Assess and Increase Awareness of Environmental Effects Related to Waste Originating from Chemical Munitions Dumped at Sea.

⁴⁷ Sjöstedt, B.; Dienelt, A., Enhancing the Protection of the Environment in Relation to Armed Conflicts – the Draft Principles of the International Law Commission and Beyond, *Goettingen Journal of International Law*, vol. 10 (2020), no. 1, p. 16.

⁴⁸ ICRC, Guidelines for Military Manuals and Instruction on the Protection of the Environment in Times of Armed Conflict, Annex to the Report of the Secretary-General, United Nations Decade of International Law, A/49/323, 19 August 1994 (hereinafter: ICRC Guidelines of 1994). See the updated version of the Guidelines in fn. 23.

seemed to be the most suitable forum to deal with the topic in accordance with the UNEP recommendation.⁴⁹ Therefore, the ILC took up the subject matter in 2011⁵⁰ to provide a basis for the adoption of the new General Assembly Resolution.

3. THE GENERAL ASSEMBLY RESOLUTION "PROTECTION OF THE ENVIRONMENT IN RELATION TO ARMED CONFLICTS" OF 2022

3.1. The ILC's Draft Principles on "Protection of the Environment in Relation to Armed Conflicts" of 2022

At its sixty-fifth session, in 2013, the ILC decided to include the topic "Protection of the Environment in Relation to Armed Conflicts" in its programme of work and appointed Marie Jacobsson as Special Rapporteur for the topic. Due to the end of Jacobsson's mandate in the ILC, in 2017 Marja Lehto was appointed as the new Special Rapporteur.

One of the first challenges the ILC faced was how to structure the work. It decided to structure the topic into three temporal phases, determining the rules applicable before, during and after an armed conflict. In this way, the ILC was able to deal with the subject matter from a more general international legal perspective, instead of being restrained by the issue of fragmentation of international law. Therefore, the scope *ratione temporis* is set under Principle 1 which states that "...draft principles apply to the protection of the environment before, during or after an armed conflict". It uses the disjunctive "or" to underline that not all draft principles would be applicable during all phases. However, there is also a certain degree of overlap between the three phases. In particular, several draft principles are relevant to more than one phase. These are the principles of general application, such as Principle 13.⁵¹

In regard to the scope *ratione materiae*, the aforementioned Principle 1 refers to the term "protection of the environment" in relation to armed conflict. It makes no distinction between international and non-international armed conflicts. Hence, Principle 1 sets out both a temporal and a substantive framework without limitations.

⁴⁹ *Supra* text referred to in fn. 3.

⁵⁰ *Op. cit.* in fn. 8, Annex E, Protection of the Environment in Relation to Armed Conflicts, pp. 351-368.

⁵¹ *Infra* 3.2.

Finally, the scope *ratione personae* is set under several principles, which are addressed not only to States, but also to international organisations, or to parties to an armed conflict and other relevant actors.

The ILC took groundbreaking steps when it included some controversial topics in its Draft principles, such as prohibition of reprisals⁵² or indigenous peoples' rights.⁵³ On the other hand, it was reluctant to include some other issues in its work, such as weapons.⁵⁴ Due to technological development, the environment is at great risk of damage which could be caused both by weapons of mass destruction and by conventional means and methods of warfare. However, the issue of nuclear weapons was not addressed in the Draft principles. Nevertheless, the great nuclear powers were determined to challenge the legitimacy of those draft principles aimed indirectly at the potential prohibition of the use of nuclear weapons. The ILC was aware of these controversial issues and, therefore, it carefully worked on the preparation of the Draft principles with the aim of moving on and not being stopped during its work.

Despite its ambition and hard work, it was clear from the beginning that the ILC would not be able to deal with such a comprehensive subject matter appropriately. This is due to its limited mandate restricted to making recommendations to the General Assembly for the purpose of promoting the progressive development of international law and its codification.⁵⁵

At its seventy-first session, in 2019, the ILC adopted, on the first reading, the entire set of draft principles on protection of the environment in relation to armed conflicts, which comprised 28 draft principles, together with commentaries thereto.⁵⁶ In accordance with Arts. 16 to 21 of its Statute, the ILC decided to transmit the draft principles to governments, international organisations and others for comments and observations.

At its seventy-third session, in 2022, after an analysis of the comments and observations received from governments, international organisations and

⁵² Principle 15.

⁵³ Principle 5.

⁵⁴ ILC, Summary Record of the 3188th Meeting, A/CN.4/3188, 30 July 2013, p. 122, para. 37.

⁵⁵ Arts. 1 and 23 of the Statute of the ILC, adopted by the General Assembly in Resolution 174 (II) of 21 November 1947, as amended by Resolutions 485 (V) of 12 December 1950, 984 (X) of 3 December 1955, 985 (X) of 3 December 1955 and 36/39 of 18 November 1981, <https://legal.un.org/ilc/texts/instruments/english/statute/statute.pdf> (accessed 26 April 2023).

⁵⁶ ILC, Report on the Work of the Seventy-first Session (2019), A/74/10.

others⁵⁷ and of the third report of the Special Rapporteur,⁵⁸ the ILC adopted the Draft principles containing 27 principles with commentaries and a preamble. It decided to recommend that the General Assembly "take note of" them, to "annex" them "to the resolution" and to "encourage their widest possible dissemination". Additionally, the ILC decided to recommend that the General Assembly "commend the Draft principles", together with the commentaries thereto, "to the attention" of States and international organisations and all who may be called upon to deal with the subject.⁵⁹

These are intermediary types of recommendations that have emerged in practice. The focus of such a recommendation is not on the conclusion of a convention. Rather, this approach is more reasonable since it takes into account that States would not be keen to adopt a general convention on the subject matter. One of the controversial issues dealt with it in the Draft principles which favours the aforementioned view can be found in Principle 13 of the GA Resolution of 2022 which will be further analysed.

3.2. Principle 13 of the GA Resolution of 2022⁶⁰

Principle 13 consists of three paragraphs which provide protection of the environment during armed conflict. It emphasises the obligation to respect and protect the environment, the duty of care and the prohibition of the use of certain methods and means of warfare and, finally, the prohibition of attacks against any part of the environment, unless it has become a military objective. Similar wording which was used in Principle 13, such as "respect for the environment"

⁵⁷ ILC, Protection of the Environment in Relation to Armed Conflicts: Comments and Observations Received from Governments, International Organisations and Others, A/CN.4/749 (2022).

⁵⁸ ILC, Third Report on Protection of the Environment in Relation to Armed Conflicts, by Marja Lehto, Special Rapporteur, A/CN.4/750 + Corr.1, + Add. 1 (2022).

⁵⁹ *Op. cit.* in fn. 2, p. 91, C. Recommendation of the Commission.

⁶⁰ Principle 13, General protection of the environment during armed conflict:
"1. The environment shall be respected and protected in accordance with applicable international law and, in particular, the law of armed conflict.
2. Subject to applicable international law:
(a) care shall be taken to protect the environment against widespread, long-term and severe damage;
(b) the use of methods and means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the environment is prohibited.
3. No part of the environment may be attacked, unless it has become a military objective."

had already been used when referring to the subject matter, for instance in the previously mentioned ICJ Advisory Opinion of 1996. The Court stated that "respect for the environment is one of the elements that go to assessing whether an action is in conformity with the principles of necessity and proportionality".⁶¹ Similar wording of Principle 13 can be found elsewhere, especially in Additional Protocol I. In its Art. 35, para. 3 and Art. 55, para. 1, Additional Protocol I protects the environment against intentional and non-intentional damage, provided that the consequences for the environment are foreseeable.

Neither Art. 35 nor 55 of Additional Protocol I or Principle 13 prohibit a particular weapon when providing protection to the environment. The words "methods and means of warfare" relate both to weapons and to the way in which they are used in the widest sense. However, the accompanying wording of the aforementioned articles of Additional Protocol I and Principle 13 designate the prohibition of use of such methods and means of warfare "...which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment". Considering the restrictiveness of the set threshold, it is to be expected that such damage to the environment would be the result only of the use of weapons of mass destruction in the armed conflict.⁶² Therefore, the great nuclear powers, such as the United States of America, the United Kingdom, France and Israel, are interested in preventing the rule on the prohibition of methods and means of warfare which are intended or may be expected to cause such damage to the environment from acquiring customary law status. The USA and Israel are not States parties to Additional Protocol I, while the UK and France are, but with reservations to its articles relevant for the subject matter.⁶³ Moreover, among States which deny the customary law status of the aforementioned rule is Canada which actually is a State party to Additional Protocol I, without reservations to its articles regulating the subject matter.

3.3. Problems Related to the High Threshold Set under Principle 13 of the GA Resolution of 2022

When compared to the regulation of the protection of the environment in the GA Resolution of 1992, the situation with the GA Resolution of 2022 is more complex.

⁶¹ *Op. cit.* in fn. 9, p. 242, para. 30.

⁶² Bothe, M.; Partsch, K. J.; Solf, W. A., *New Rules for Victims of Armed Conflicts*, Martinus Nijhoff Publishers, The Hague/Boston/London, 1982, p. 348.

⁶³ *Supra* in fn. 40.

Under the latter, not every case of destruction or damage is prohibited. This is due to the high threshold set under its Principle 13. In order to analyse this Principle, the authors will focus on two of the main problems related to the threshold.

The first problem is the lack of definition of the components of the threshold, i.e., what is meant under the terms "widespread", "long-term" and "severe". Regarding the three elements of the threshold – scope of area affected, duration and degree of damage – it can be noticed that only the element of duration ("long-term") was explained during the preparatory work on Additional Protocol I.⁶⁴ It is considered to be measured in decades. The remaining two elements ("widespread" and "severe") have, thus, been left without a definition by the drafters of Additional Protocol I.

However, regardless of the definition provided by the drafters, one must take into account that current scientific knowledge of the environmental processes and of the effects of damage has increased since the time of the drafting in the 1970s. There is now more scientific data on the interrelationship between the different parts of the environment and of the interdependent nature of environmental processes.⁶⁵ Furthermore, the cumulative effects of the harm should be considered along with individual effects in order to determine whether the damage meets the threshold.⁶⁶ Finally, the impact of climate change must also be taken into account.⁶⁷

The second problem is the fact that these three elements, which are not even properly defined, need to be met cumulatively. This makes the threshold too high and too restrictive and thus practically leaves the environment unprotected from damage caused by conventional weapons. In this way, environmental protection is weakened. In particular, it often happens that environmental damage meets one or two of the conditions of the threshold, but not the third. For example, in the case of destruction of all members of a species which occupies only a limited region, the damage would be long-term and severe (since it is irreversible) but perhaps it would not meet the "widespread" criterion considering that the range of the species is spatially restricted.⁶⁸

⁶⁴ *Op. cit.* in fn. 62, p. 346.

⁶⁵ *Op. cit.* in fn. 23, p. 32, para. 54.

⁶⁶ *Ibid.*

⁶⁷ Similar standing can be found in another General Assembly Resolution A/RES/70/1, Transforming Our World: the 2030 Agenda for Sustainable Development, adopted at its seventieth session, on 25 September 2015, which regulates the issue of sustainable development in general.

⁶⁸ Schmitt, M. N., War and the Environment: Fault Lines in the Prescriptive Landscape, *Archiv des Völkerrechts*, vol. 37 (1999), no. 1, pp. 43–44.

The rule cited in Principle 13 is a clear example of indeterminacy in the law of armed conflict.⁶⁹ The prohibition of widespread, long-term, and severe damage to the environment is incomplete since it applies to damage that is unlikely to occur in an armed conflict and it is silent on the many other environmental devastations.⁷⁰

4. POSSIBLE SOLUTIONS OF THE PROBLEMS RELATED TO THE THRESHOLD SET UNDER PRINCIPLE 13 OF THE GA RESOLUTION OF 2022

4.1. A Definition of the Three Elements of the Threshold under the ENMOD Convention

One of the possible solutions to the problem of a high threshold could be to lower the threshold by using the disjunctive (which means the word "or" instead of "and". Such was the case with the ENMOD Convention which was adopted a couple of months before Additional Protocol I. Under the ENMOD Convention, States parties undertake 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 another State party.⁷¹ The ENMOD Convention enumerates the three elements of damage by using terms which are almost identical to those in Additional Protocol I (a slight difference can be noticed in regard to the term "long-lasting" used in the ENMOD Convention), with the aforementioned difference in using the disjunctive. In accordance with the Understanding attached to the ENMOD Convention, the term "widespread" relates to "an area on the scale of several hundred square kilometres", "long-lasting" relates to "a period of months, or approximately a season" and, finally, "severe" is defined as "serious or significant disruption or harm to human life, natural and economic resources or other assets". These definitions contribute to a clear interpretation of the related treaty.

However, it is stated explicitly in the Understanding that its definitions are intended exclusively for the ENMOD Convention. Therefore, the definitions of the three elements contained in the Understanding cannot be used for an interpretation of the same or similar terms in Additional Protocol I. Terms have

⁶⁹ On the issues of indeterminacy in the law of armed conflict, see Fleck, D., *The Martens Clause and Environmental Protection in Relation to Armed Conflicts*, *Goettingen Journal of International Law*, vol. 10 (2020), no. 1, pp. 252-253.

⁷⁰ *Ibid.*, p. 252.

⁷¹ *Op. cit.* in fn. 28, Art. 1.

different meanings in treaties due to their different scopes and objectives related to environmental protection. For instance, in regard to weaponry, whereas the ENMOD Convention protects the environment only against environmental modification techniques, Additional Protocol I is of wider scope given that it protects the environment against all types of weapons.⁷² Additionally, when the existing definitions of the terms used in the two treaties are compared, there is a difference in the required duration of damage. Unlike the ENMOD Convention under which damage is counted in months, Additional Protocol I demands that the effects of damage be counted in decades.

Therefore, the question of the lack of definition of the threshold remains open. Interpretation of these terms primarily affects the decision makers who balance the principles of distinction, proportionality, precautions, and prohibition of the destruction of enemy property on the one hand, and military advantage on the other. In order to provide guidelines for these decision makers, other solutions to the problems of the threshold set under Principle 13 should be considered as well. Some of the possible solutions might be found in the GA Resolution of 2022 itself.

4.2. The Martens Clause

The environmental Martens Clause is contained in Principle 12 of the GA Resolution of 2022. It is based on the original Martens Clause which appeared first in the preamble to the Hague Convention (II) with Respect to the Laws and Customs of War on Land of 1899 and which was restated in several later treaties.⁷³ The General Assembly has already invoked the Martens Clause in regard to

⁷² *Supra* 3.2.

⁷³ Art. 63 of the Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted on 12 August 1949, entered into force on 21 October 1950, <https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949?activeTab=1949GCs-APs-and-commentaries> (accessed 24 August 2023); Art. 62 of the Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, adopted on 12 August 1949, entered into force on 21 October 1950, <https://ihl-databases.icrc.org/en/ihl-treaties/gcii-1949?activeTab=1949GCs-APs-and-commentaries> (accessed 24 August 2023); Art. 142 of the Convention (III) Relative to the Treatment of Prisoners of War, adopted on 12 August 1949, entered into force on 21 October 1950, <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949?activeTab=1949GCs-APs-and-commentaries> (accessed 24 August 2023); Art. 158 of the Convention (IV) relative to the Protection of Civilian Persons in Time of War, adopted on 12 August 1949, entered into force on 21 October 1950, <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949?activeTab=default> (accessed 24 August 2023); Art. 1, para. 2 of the Additional Protocol I.

the subsidiary protection of the environment in relation to armed conflicts. In particular, in its Resolution of 1994⁷⁴ it invited all States to disseminate the ICRC Guidelines of 1994 which contain the environmental Martens Clause.⁷⁵ The ICRC Guidelines of 2020 also invoke it.⁷⁶ In particular, the ICRC emphasised the importance of the Martens Clause since it underlines the dynamic factor of the law of armed conflict.⁷⁷

The objects of the protection provided by the original Martens Clause are civilians and combatants, whereas Principle 12 aims at the protection of the environment in relation to armed conflicts. The role of the Martens Clause is to emphasise that these objects, in cases not covered by the treaty rule, are not deprived of protection. Instead, their protection is granted under the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience. This means that the parties to the conflict are not *ipso facto* entitled to use certain means or methods of warfare based on the fact that these acts of war are not expressly prohibited by the treaty or customary rule of the law of armed conflict. In particular, reference is made to the principles of humanity and to the dictates of public conscience.

In regard to "the principles of humanity", one can wonder whether there is a link between the protection of the environment and the principles of humanity. The General Assembly in its recent Resolution on the human right to a clean, healthy and sustainable environment⁷⁸ recognised that the protection of the environment, including ecosystems, contributes to and promotes human well-being and the full enjoyment of all human rights, for present and future generations. It can be considered that humanitarian and environmental concerns are interrelated. Without discussing here the difference between the anthropocentric and biocentric approach to the protection of the environment, we focus only on the possible function of such principles in serving both human beings and the environment in relation to armed conflict.

Furthermore, when analysing the meaning of "dictates of public conscience", there is a tendency to consider the notion of intergenerational equity. The understanding of the environmental effects of armed conflict has developed since the

⁷⁴ A/RES/49/50, adopted at the forty-ninth session, on 9 December 1994.

⁷⁵ *Op. cit.* in fn. 48, p. 50, Guideline 7.

⁷⁶ *Op. cit.* in fn. 23, Rule 16.

⁷⁷ *Ibid.*, p. 79, para. 200.

⁷⁸ A/RES/76/300, The Human Right to a Clean, Healthy and Sustainable Environment, adopted at the seventy-sixth session, on 28 July 2022.

time of the codification of the law of armed conflict. A modern understanding of the dictates of public conscience emphasises the effective protection of the environment in light of the responsibility towards future generations.⁷⁹

Although the ILC in its commentary to Principle 12 explicitly states that the inclusion of that principle does not mean, or imply, that the ILC is taking a position on the various views regarding the legal consequences of the Martens Clause,⁸⁰ several States were of the opposite view. In their comments on Draft principle 12, they referred to the controversial issue of the ILC's interpretation of the Martens Clause as an autonomous source of law. Invoking this clause, which would be able to establish prohibitions, in particular in relation to certain categories of weapons, even in the absence of applicable treaty or customary law rules, is, according to the comments of these States,⁸¹ questionable and leads to uncertainty as to the exact scope of the obligations of the parties to the conflict.

Inclusion of the environmental Martens Clause in the GA Resolution of 2022 has required more reflection and explanation on the part of the ILC and GA. The term "principles of humanity" requires further clarification so as not to leave room for misleading interpretations when compared to the term "principle of humanity", as one of the two main principles of the law of armed conflict. In addition, the historical context of the Martens Clause and the *lex specialis* nature of the law of armed conflict have been disregarded. Accordingly, it seems that the environmental Martens Clause is not an appropriate solution for filling the legal gaps in the protection of the environment in relation to armed conflicts. Therefore, other possible solutions should also be examined.

4.3. "The Fifth Geneva Convention"

In order to further protect the environment in relation to armed conflicts, it was even considered to adopt a completely new specialised convention regulating the subject matter. Such proposals have been made either by international environmental law experts⁸² or by scientists from various biology institutes, and

⁷⁹ *Op. cit.* in fn. 23, p. 266.

⁸⁰ *Op. cit.* in fn. 2, p. 97, para 4.

⁸¹ *Op. cit.* in fn. 57. See the comments and observations of France and Israel, pp. 64-67.

⁸² Plant, G. (ed.), *Environmental Protection and the Law of War: A Fifth Geneva Convention on the Protection of the Environment in the Time of Armed Conflict?*, Belhaven Press, London and New York, 1992.

the like.⁸³ Many of them have expressed concern about armed conflicts which continue to destroy megafauna and push species to extinction.⁸⁴ Their proposals were directed at adopting the so-called Fifth Geneva Convention to uphold environmental protection during armed conflicts. Such a multilateral specialised treaty would incorporate explicit safeguards for biodiversity and legal instruments for site-based protection of crucial natural resources.

Opponents of adopting a Fifth Geneva Convention argue, among other reasons, that advances in the protection of the environment are only possible when based upon reliable and complete scientific understanding of the relevant issues.⁸⁵ Hence, if the initiative of adopting that Convention has already come from scientists who have acquired wide-ranging scientific understanding of the relevant issues, then this initiative should no longer face resistance. However, the legal experts are still against the adoption and base their arguments on several other grounds. Beside the problem related to the definition of damage to the environment, they argue that there is still no consensus on several other important legal issues. For instance, they raise the problem of distinguishing between intentional, collateral and completely unexpected damage to the environment or of whether certain kinds of destruction might be permissible in certain circumstances.⁸⁶

Although the idea of adopting a systematic and innovative convention is worth considering, the peculiarity of treaty law should be kept in mind. Acceptance of new obligations in such a field of law is not an easy task, especially not in the form of *lex scripta*. Therefore, governments should be encouraged to deal with the subject matter in a more convenient way.

⁸³ List of Signatories to Stop Military Conflicts from Trashing Environment, <https://media.nature.com/original/magazine-assets/d41586-019-02248-6/16964846> (accessed 26 April 2023).

⁸⁴ Brito, J. C. *et al.*, Armed Conflicts and Wildlife Decline: Challenges and Recommendations for Effective Conservation Policy in the Sahara-Sahel, *Conservation Letters*, vol. 11 (2018), no. 5.

⁸⁵ Richards, P. J.; Schmitt, M. N., Mars Meets Mother Nature: Protecting the Environment during Armed Conflict, *Stetson Law Review*, vol. 28 (1999), no. 4, p. 1090.

⁸⁶ Roberts, A., Chapter XIV. Environmental Issues in International Armed Conflict: The Experience of the 1991 Gulf War, in: Grunawalt, R. J. *et al.* (eds.), *Protection of the Environment during Armed Conflict*, International Law Studies, vol. 69, Naval War College, Newport, Rhode Island, 1996, p. 268, cited in *ibid.*, p. 1089.

4.4. Military Manuals

A more realistic solution which should be considered is the inclusion of definitions of the three elements of the threshold in military manuals. This would be of great importance for military officials. Moreover, this could contribute to the generation of customary international law in the case of emerging State practice accompanied by *opinio iuris*.

New scientific knowledge on environmental processes and the rapid development of technologies require strong and rapid answers for the problems related to the protection of the environment in armed conflicts. In this regard, military manuals could prove more effective than the treaty-making process. In particular, the abundance of international instruments regulating the protection of the environment, as in the case of conventions adopted under international environmental law, causes either overlaps and incoherence or legal gaps.⁸⁷ Admittedly, military manuals also risk being multiplied, thus offering different interpretations of what the underlying rule is. Consequently, there is the potential risk that the most convenient manual could be invoked. Still, military manuals represent a form in which legal scholars can contribute to the progressive development of law. This is particularly true for the law of armed conflict where State practice of a few dominant States in the field is of overriding importance.⁸⁸ Hence, it is worth considering military manuals as an appropriate remedy for dealing with environmental challenges in relation to armed conflicts. They can focus on filling the gaps in the existing law and propose further development of the law. Military manuals have a strong influence on the practice of military State actors. Definitions included in military manuals could influence State practice by citation and reference to them. Therefore, military manuals could play a significant role in the process of the regulation of the protection of the environment in relation to armed conflicts.

Meanwhile, the United Nations should act as a forum for defining the three elements of damage. It should encourage States to engage in filling the gaps in the existing law. UNEP and other relevant parts of the UN system should receive information from States on their national legislation and recent case law relevant to the subject matter. Such cooperation, which takes into account current views of the States, could enhance the protection of the environment.

⁸⁷ Degan, V. Đ., *Međunarodno pravo*, Školska knjiga, Zagreb, 2011, p. 396.

⁸⁸ Jennings, R.; Watts, A., *Oppenheim's International Law*, 9th Edition, Volume I, Longman, London, 1992, p. 29.

5. CONCLUSION

The consequences of armed conflicts on the environment have increased awareness of the importance of the appropriate regulation of its protection. When regulating a subject matter, various fields of international law must be taken into account. Environmental challenges are thus undoubtedly related to debates on the fragmentation of international law.

Under the law of armed conflict, many efforts have been made to protect the environment directly or indirectly. The General Assembly Resolution of 2022 took a step forward in affirming the importance of its protection as well. Its Principle 13 follows the wording of Additional Protocol I of 1977 where it states 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 environment. As a result of such a high threshold, this new General Assembly Resolution of 2022, when compared to the General Assembly Resolution of 1992, does not prohibit every case of destruction or damage to the environment. It is thus important to define the three elements of damage in order to clearly interpret the threshold.

In this regard, more effort should be made, especially under the United Nations. In particular, it needs to be kept in mind that new scientific knowledge affects the definition of the threshold. Additionally, the effects of environmental damage are now being compounded by the climate crisis. Therefore, consideration might be given to include a definition of the three elements of the threshold in military manuals. This would be of great importance for those who plan or decide on an attack. Moreover, this could contribute to the generation of customary international law in the case of emerging State practice accompanied by *opinio iuris*. Customary international law, given its flexibility, is a more appropriate source of international law for achieving the goal of the effective protection of the environment in relation to armed conflicts when compared to treaty law. Therefore, attempts to adopt a specialised convention should be rejected in favour of generating customary international law rules on the protection of the environment in relation to armed conflicts. States should be encouraged to adopt and enforce such solutions which are more practical and which could thus be more easily accepted in State practice.

BIBLIOGRAPHY

Books:

1. Birnie, P. W.; Boyle, A. E.; Redgwell, C., *International Law and the Environment*, Oxford University Press, Oxford, 2009.
2. Bothe, M.; Partsch, K. J.; Solf, W. A., *New Rules for Victims of Armed Conflicts*, Martinus Nijhoff Publishers, The Hague/Boston/London, 1982.
3. Degan, V. Đ., *Međunarodno pravo*, Školska knjiga, Zagreb, 2011.
4. Degan, V. Đ., *Sources of International Law*, Martinus Nijhoff Publishers, The Hague/Boston/London, 1997.
5. Grunawalt, R. J. et al. (eds.), *Protection of the Environment during Armed Conflict*, International Law Studies, vol. 69, Naval War College, Newport, Rhode Island, 1996.
6. Jennings, R.; Watts, A., *Oppenheim's International Law*, 9th Edition, Volume I, Longman, London, 1992.
7. Plant, G. (ed.), *Environmental Protection and the Law of War: A Fifth Geneva Convention on the Protection of the Environment in the Time of Armed Conflict?*, Belhaven Press, London and New York, 1992.

Articles:

1. Adede, A. O., Protection of the Environment in Times of Armed Conflict: Reflections on the Existing and Future Treaty Law, *Annual Survey of International & Comparative Law*, vol. 1 (1994), no. 1, pp. 161-179.
2. Brito, J. C. et al., Armed Conflicts and Wildlife Decline: Challenges and Recommendations for Effective Conservation Policy in the Sahara-Sahel, *Conservation Letters*, vol. 11 (2018), no. 5, pp. 1-13.
3. Fleck, D., The Martens Clause and Environmental Protection in Relation to Armed Conflicts, *Goettingen Journal Of International Law*, vol. 10 (2020), no. 1, pp. 243-266.
4. Hulme, K., Taking Care to Protect the Environment against Damage: A Meaningless Obligation?, *International Review of the Red Cross*, vol. 92 (2010), no. 879, pp. 675-691.
5. Pretorius, J., Enhancing Environmental Protection in Non-International Armed Conflict: The Way Forward, *Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht*, vol. 78 (2018), pp. 903-932.

6. Richards, P. J.; Schmitt, M. N., Mars Meets Mother Nature: Protecting the Environment during Armed Conflict, *Stetson Law Review*, vol. 28 (1999), no. 4, pp. 1047-1090.
7. Schmitt, M. N., War and the Environment: Fault Lines in the Prescriptive Landscape, *Archiv des Völkerrechts*, vol. 37 (1999), no. 1, pp. 25-67.
8. Sjöstedt, B.; Dienelt, A., Enhancing the Protection of the Environment in Relation to Armed Conflicts – the Draft Principles of the International Law Commission and Beyond, *Goettingen Journal of International Law*, vol. 10 (2020), no. 1, pp. 13-25.

Treaties:

1. Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted on 12 August 1949, entered into force on 21 October 1950, <https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949?activeTab=1949GCs-APs-and-commentaries> (accessed 24 August 2023).
2. Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, adopted on 12 August 1949, entered into force on 21 October 1950, <https://ihl-databases.icrc.org/en/ihl-treaties/gcii-1949?activeTab=1949GCs-APs-and-commentaries> (accessed 24 August 2023).
3. Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols, adopted on 16 February 1976, entered into force on 12 February 1978, amended on 10 June 1995, https://wedocs.unep.org/bitstream/handle/20.500.11822/31970/bcp2019_web_eng.pdf (accessed 24 August 2023).
4. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, adopted on 10 December 1976, entered into force on 5 October 1978, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVI-1&chapter=26&clang=_en (accessed 24 August 2023).
5. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on 13 January 1993, entered into force on 29 April 1997, https://www.opcw.org/sites/default/files/documents/CWC/CWC_en.pdf (accessed 24 August 2023).

6. Convention (IV) relative to the Protection of Civilian Persons in Time of War, adopted on 12 August 1949, entered into force on 21 October 1950, <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949?activeTab=default> (accessed 24 August 2023).
7. Convention (III) relative to the Treatment of Prisoners of War, adopted on 12 August 1949, entered into force on 21 October 1950, <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949?activeTab=1949GCs-APs-and-commentaries> (accessed 24 August 2023).
8. Hague Regulation to the Convention (IV) respecting the Laws and Customs of War on Land, adopted on 18 October 1907, entered into force on 26 January 1910, <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907> (accessed 24 August 2023).
9. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, adopted on 8 June 1977, entered into force on 7 December 1978, <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977> (accessed 24 August 2023).
10. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, adopted on 8 June 1977, entered into force on 7 December 1978, <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977> (accessed 24 August 2023).
11. Protocol III to the 1980 Convention on Prohibitions or Restrictions of the Use of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, adopted on 10 October 1980, entered into force on 2 December 1983, https://treaties.unoda.org/t/ccwc_p3 (accessed 24 August 2023).
12. Rome Statute of the International Criminal Court, adopted on 17 July 1998, entered into force on 1 July 2002, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-10&chapter=18&clang=_en (accessed 24 August 2023).
13. United Nations Convention on the Law of the Sea, adopted on 10 December 1982, entered into force on 16 November 1994, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf (accessed 24 August 2023).
14. Vienna Convention on the Law of Treaties, adopted on 23 May 1969, entered into force on 27 January 1980, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (accessed 24 August 2023).

General Assembly's Resolutions:

1. A/RES/56/4, Observance of the International Day for Preventing the Exploitation of the Environment in War and Armed Conflict, adopted at the fifty-sixth session, on 5 November 2001.
2. A/RES/77/104, Protection of the Environment in Relation to Armed Conflicts, adopted at the seventy-seventh session, on 7 December 2022.
3. A/RES/47/37, Protection of the Environment in Times of Armed Conflict, adopted at the forty-seventh session, on 25 November 1992.
4. A/RES/76/300, The Human Right to a Clean, Healthy and Sustainable Environment, adopted at the seventy-sixth session, on 28 July 2022.
5. A/RES/70/1, Transforming Our World: The 2030 Agenda for Sustainable Development, adopted at the seventieth session, on 25 September 2015.
6. A/RES/49/50, United Nations Decade of International Law, adopted at the forty-ninth session, on 9 December 1994.
7. A List of General Assembly Resolutions and Decisions on Environmental Protection, [https://digitallibrary.un.org/search?ln=en&as=0&p=subjectheading:\[ENVIRONMENTAL+PROTECTION\]](https://digitallibrary.un.org/search?ln=en&as=0&p=subjectheading:[ENVIRONMENTAL+PROTECTION]) (accessed 26 April 2023).
8. A Series of General Assembly Resolutions, Cooperative Measures to Assess and Increase Awareness of Environmental Effects Related to Waste Originating from Chemical Munitions Dumped at Sea, A/RES/65/149 adopted on 20 December 2010, A/RES/68/208 adopted on 20 December 2013, A/RES/71/220 adopted on 21 December 2016, A/RES/74/213 adopted on 19 December 2019.

International Law Commission Documents:

1. Protection of the Environment in Relation to Armed Conflicts: Comments and Observations Received from Governments, International Organisations and Others, A/CN.4/749 (2022).
2. Report on the Work of the Sixty-third Session (2011), A/66/10.
3. Report on the Work of the Seventy-first Session (2019), A/74/10.
4. Report on the Work of the Seventy-third Session (2022), A/77/10.
5. Statute of the ILC, adopted by the General Assembly in Resolution 174 (II) of 21 November 1947, as amended by Resolutions 485 (V) of 12 December 1950, 984 (X) of 3 December 1955, 985 (X) of 3 December 1955 and 36/39 of 18 November 1981, <https://legal.un.org/ilc/texts/instruments/english/statute/statute.pdf> (accessed 26 April 2023).

6. Summary Record of the 3188th Meeting, A/CN.4/3188, 30 July 2013.
7. Third Report on Protection of the Environment in Relation to Armed Conflicts, by Marja Lehto, Special Rapporteur, A/CN.4/750 + Corr.1, + Add. 1 (2022).

International Court of Justice:

1. *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, p. 226.

Other:

1. ICRC, Guidelines for Military Manuals and Instruction on the Protection of the Environmental in Times of Armed Conflict, Annex to the Report of the Secretary-General, United Nations Decade of International Law, A/49/323, 19 August 1994.
2. ICRC, Guidelines on the Protection of the Natural Environment in Armed Conflict, 25 September 2020, <https://shop.icrc.org/guidelines-on-the-protection-of-the-natural-environment-in-armed-conflict-pdf-en.html> (accessed 24 August 2023).
3. International Humanitarian Law Databases, <https://ihl-databases.icrc.org/en/customary-ihl> (accessed 26 April 2023).
4. International Humanitarian Law Databases, France, Declarations and Reservations Made upon Ratification of the Additional Protocol I, 11 April 2001, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Notification.xsp?action=openDocument&documentId=D8041036B40EBC44C1256A34004897B2> (accessed 26 April 2023).
5. International Humanitarian Law Databases, List of States Parties to the Additional Protocol I, <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/state-parties?activeTab=undefined> (accessed 24 August 2023).
6. International Humanitarian Law Databases, San Remo Manual on International Law Applicable to Armed Conflicts at Sea, adopted on 12 June 1994, <https://ihl-databases.icrc.org/en/ihl-treaties/san-remo-manual-1994> (accessed 24 August 2023).
7. International Humanitarian Law Databases, United Kingdom of Great Britain and Northern Ireland, Declarations and Reservations Made upon Ratification of the Additional Protocol I, 28 January 1998, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Notification.xsp?action=openDocument&documentId=0A9E03F0F2EE757CC1256402003FB6D2> (accessed 26 April 2023).

8. List of Signatories to Stop Military Conflicts from Trashing Environment, <https://media.nature.com/original/magazine-assets/d41586-019-02248-6/16964846> (accessed 26 April 2023).
9. United Nations Environment Programme, Protecting the Environment During Armed Conflict: An Inventory and Analysis of International Law, 2009, https://wedocs.unep.org/bitstream/handle/20.500.11822/7813/-Protecting%20the%20Environment%20During%20Armed%20Conflict_An%20Inventory%20and%20Analysis%20of%20International%20Law-2009891.pdf?sequence=3&isAllowed= (accessed 24 August 2023).

Sažetak:

REZOLUCIJA OPĆE SKUPŠTINE »ZAŠTITA OKOLIŠA U VEZI S ORUŽANIM SUKOBIMA« IZ 2022. GODINE – TRIDESET GODINA POSLIJE

Nakon usvajanja Rezolucije Opće skupštine »Zaštita okoliša u vrijeme oružanog sukoba« 1992. godine, ovaj organ Ujedinjenih naroda usvojio je i Rezoluciju »Zaštita okoliša u vezi s oružanim sukobima« 2022. godine. Nova Rezolucija temelji se na radu Komisije za međunarodno pravo koja je iste godine usvojila »Nacrt načela o zaštiti okoliša u vezi s oružanim sukobima, s komentarima«. Za uređenje ove materije, posebno su važni komentari i opažanja na Nacrt načela koji su zaprimljeni od vlada najvećih vojnih sila. U ovome se radu ističe Načelo 13 Rezolucije koje, podložno primjenjivom međunarodnom pravu, zabranjuje prostorno znatnu, trajniju i veliku štetu okolišu. Autorice analiziraju je li predmetni standard štete postavljen suviše visoko i restriktivno, onemogućivši time učinkovitu zaštitu okoliša u skladu s ciljevima Rezolucije. Na temelju rezultata takve analize, autorice nude moguća rješenja iznesenih problema.

Ključne riječi: pravo okoliša; pravo oružanih sukoba; Komisija za međunarodno pravo; Opća skupština; Dopunski protokol I.