

Protecting the Environment During an Armed Conflict: The Added Value of International Environment Law

The International Humanitarian Law (IHL) framework seems *prima facie* to furnish significant, if not the desired, protection to the environment during an armed conflict. Nevertheless, considerable restraints that are attached to nearly the whole array of IHL rules limit substantially the protective scope of the latter. Consequently, the existing normative landscape of IHL seems ill-suited to accommodate sufficiently the concerns in relation to the protection of environment during an armed conflict, especially in the context of a non-international conflict.

My paper deals with the protection of the environment during an armed conflict from the perspective of international environmental law. My aim is to assess whether this corpus of law as applied in times of war carries the potential of adding value to the existing protection afforded by IHL. In other words, I examine whether the potential co-applicability of international environmental law during an armed conflict may fill the gaps in relation to wartime environmental protection. On the premise that international environmental law applies during an armed conflict, I survey which rules of this regime should apply in the light of the duty of present generations to preserve the environment in a sustainable condition for future generations.

The paper places at the epicenter of the analysis the continued applicability of environmental treaties during an armed conflict. On this account, emphasis should be laid on the provisions of the Vienna Convention on the Law of Treaties. Remarkably, a variety of theories have been proposed in this respect, such as the 'classification' theory, the 'nature of the treaty' theory or the 'intentions of the parties' theory. The latest development in relation to the above issue occurred in the context of the International Law Commission, which explicitly qualified international environmental treaties as continuing their operation during an armed conflict.

Inevitably, a set of further questions arises: Should international environmental treaties be considered as applying in times of an armed conflict, what is their relationship with conflicting or, at least, competing norms of international humanitarian law? A pertinent question is whether the law of war has evolved towards integrating and taking into account ecological concerns. Moreover, since environmental treaties are generally designed with the view of applying in peacetime, which provisions are compatible with the exigencies of an armed conflict? Said otherwise, it is quite important to identify with which environmental treaty provisions belligerent parties should comply and what are the precise legal obligations that the latter parties bear. Relatedly, are the above provisions applied equally in the context of a non-international armed conflict, given that the applicable legal framework in a non-international armed conflict is quite under-developed? Finally, it is surveyed whether customary international environmental law and international environmental law principles apply in the context of an armed conflict and what are the implications of their continued applicability in relation to environmental protection during an armed conflict.