

Michigan Law School 2015 Young Scholars' Conference "Within/out the Narrow Confines of the Law"

TITLE: Restoring Humanity to Humanitarian Law: Borrowing from Environmental Law to Protect Civilians and the Environment

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While the current state of international humanitarian law (IHL) provides protections for civilians and the environment during armed conflict, examples in practice of excessive harms to both suggest that a gap exists in our understanding and approach to these protections, both during conflicts in the context of military decision-making, as well as post-conflict when conduct is evaluated to determine whether prosecutions for violations of IHL are necessary. There tends to be an arbitrary separation in the law between humans and the environment, which is perplexing, given the two are inextricably linked: civilians and environment often, if not always, go hand in hand. This paper uniquely bridges this lacuna by employing general principles of international law found in international environmental law [IEL] as a means of clarifying military decision-making under IHL.

The paper begins with an examination of existing IHL, including an examination of military decisions made in two armed conflicts - Iraq and Kosovo - which resulted in the deployment of certain weapons resulting in excessive harms to both civilians and the environment and suggested by some to be violations of IHL, resulted in no international criminal legal action. Next, this paper turns to the role of general principles of international law, in particular the precautionary principle and the principle of intergenerational equity in IEL, which are well-accustomed to dealing with short-term and long-term health and environmental risks, as well as scientific uncertainty. Ultimately, this paper demonstrates how the use of these principles in military decision-making, as well as prosecutorial and juridical analysis, could fill the troubling gaps and bridge the arbitrary separation in IHL of humans and environment in order to reduce harms to civilians and the environment during conflict and provide greater clarity in evaluating the legality of military action post-conflict.

