

THE INTERPLAY OF ENVIRONMENT AND ARMED CONFLICTS:

An Emerging Existential Challenge

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[Abstract: As rightly pointed out by Albert Einstein, 'so long as there are men, there will be wars;' conflict has been at the core of humankind and environment has unequivocally been a mute spectator, in fact, an indirect participant of the wars and conflicts concomitant to humankind. A pitfall of subsisting in the twenty-first century world is the unprecedented use of war manoeuvres that hinge on environment, ecosystem or flora and fauna. The implementation of scorched earth policy, use of chemical gases, atom bombs, herbicides, etc. are a few examples of such exploitation. Even though environment has been a passive victim of wars and conflicts; the sad reality is the fact that its contribution and suffering has been undermined for years by global community. It is only after a decade and a half had passed after World War-II, that environmental damage found its mention in post war damage discussions. Conventions and Treaties have been formulated fairly recently to address this domain and its issues. Even after having a plethora of international instruments in place the implementation of these instruments feels like a far-fetched dream, especially during wartime. This paper is an attempt to discuss the impact and intersection of armed conflicts and the environment. It throws light on different aspects of the topic including but not limited to historical exploitation of nature during war crisis, the initial discussions surrounding the core issue, in addition to discussing the reciprocal relationship between the two. Further the paper gives a detailed description of the existing jurisprudence on this issue, including the realms of International Humanitarian Law, International Environmental Law, and International Human Rights Law. Lastly, an attempt at suggesting a few practical and real time solutions has also been made while addressing the topic at hand.]

Keywords: *Environment, Armed Conflicts, International Environment Law, International Humanitarian Law, Human Rights Law.*

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I

Armed Conflicts & Environment: Existing State of Affairs

The individual conceptual understanding of the terms ‘armed conflict’ and ‘environment’ is readily comprehensible. The word ‘Environment’ is derived from the French word ‘environ’ which literally means to surround and theoretically conveys the idea of the natural world in which persons and other organisms live¹. Black’s Law Dictionary defines *environment* as *the milieu in which an organism lives*². On the other hand, the term ‘armed conflict’ in its full capacity evolved over legal discussions and can be said to be still evolving. International Humanitarian Law (IHL), or the Law of the Armed Conflicts, is a set of principles that govern the conduct of nation-states that are engaged in armed conflicts, also known as *jus in bello*. The school of thought around ‘armed conflict’ has evolved over time to expand the scope of its application to armed conflicts of international character and non-international character, as well as occupation operations over territories.

Common Articles 2³ and 3⁴ of the four *Geneva Conventions* have elaborated on the scope of application of these conventions apart from the *Prosecutor v. Tadic*⁵ case which concretized the jurisprudence on types of armed conflicts. There exist three primary types of armed conflicts, firstly, *International Armed Conflicts*- where two or more State Parties are engaging in an act of war; secondly, *Non-international Armed Conflict*- when either of the two parties engaging in the war is not a State Party, rather it is non-state actor engaging in a conflict that is protracted and organised⁶, and lastly, *Occupation Operations* over territories of other States. It can be extrapolated from such wide definitions that IHL is applicable on all variations of conflicts or crisis except internal disturbances.

¹OXFORD ENGLISH DICTIONARY available at:<https://www.oed.com/viewdictionaryentry/Entry/63089> (May 23, 2023).

² A. Garner Brian, BLACK’S LAW DICTIONARY (Thomson Reuters 2014).

³Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, *Geneva Convention Relative to the Treatment of Prisoners of War*, 2,75 U.N.T.S. 135 (Aug. 12, 1949).

⁴Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, *Geneva Convention Relative to the Treatment of Prisoners of War*, 3,75 U.N.T.S. 135 (Aug. 12, 1949).

⁵ Prosecutor v. Tadic, Case No. IT-94-1-I, Decision on Defence Motion for interlocutory Appeal on Jurisdiction, 70 (Int’l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995).

⁶*Id.*

With respect to internal disturbances or sporadic acts of violence within a State, the domestic laws are applicable in such situations, for instance, *Article 355*⁷ of the *Constitution of India*, which makes it the *duty of the Union to protect every State against internal disturbances and external aggression*⁸. Besides, there exists a constitutional mandate under *Article 51-A (g)*⁹ to protect the environmental resources and a plethora of judicial precedents which have helped in creating a legacy of environmental jurisprudence in India. Unfortunately, the niche discussion of concretising environmental protection during armed conflicts has not made its way to India, yet Indian military has gone beyond its way in afforestation, waste management initiatives and deploying greener, renewable, eco-friendly technology¹⁰. Similarly, not many countries have executed policies tackling the problem of environmental damage during armed conflict apart from a handful of developed nations like *Sweden*¹¹, *United Kingdom*¹², *Norway*¹³, *Canada*¹⁴ and *Australia*¹⁵ who have either explicitly expressed concerns, or they have executed certain environmental protection policies or measures into their national or military policies.

It is significant to delve into the basic concepts of armed conflicts as this paper is themed around the nexus of Armed Conflicts and Environment. In other words, two independent aspects of international law, i.e. International Humanitarian Law (IHL) and International Environment Law (IEL) along with their overlapping effect on each other are central to the theme of this discussion. It becomes all the more necessary here to understand the limits of application of either of the above two

⁷The Constitution of India, 1950, A. 355.

⁸*Id.*

⁹The Constitution of India, 1950, A. 51 A(g).

¹⁰DEFENCE RESEARCH AND STUDIES available at:<https://dras.in/environmental-protection-and-sustainability-indian-armed-forces/> (last visited May 23, 2023).

¹¹THE SWEDISH ARMED FORCES ENVIRONMENTAL REPORT available at:https://www.forsvarsmakten.se/siteassets/4-om-myndigheten/dokumentfiler/hallbarhetsredovisningar/tidigare-miljoredovisningar/fm_miljorapport_2017_eng_6nov.pdf (last visited May 23, 2023).

¹²THE BRITISH ARMY available at:<https://www.army.mod.uk/news-and-events/news/2021/03/future-green-defence/> (last visited May 23, 2023).

¹³NORWEGIAN MINISTRY OF DEFENCE available at:<https://www.regjeringen.no/contentassets/3a2d2a3cfb694aa3ab4c6cb5649448d4/long-term-defence-plan-norway-2020---english-summary.pdf> (last visited May 23, 2023).

¹⁴GOVERNMENT OF CANADA available at:<https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/4000-series/4003/4003-0-environmental-protection-and-stewardship.html> (last visited May 23, 2023).

¹⁵AUSTRALIAN GOVERNMENT DEFENCE available at:<https://www.defence.gov.au/about/strategic-planning/defence-environmental-strategy-2016-2036> (last visited May 23, 2023).

aspects so that apt conclusions and pertinent solutions for the issue at hand can be derived. Moreover, it helps the social engineers to put things in perspective by giving us an accurate hint at the pace of the discussion.

The very recent conflict between Russia and Ukraine has cost an environmental damage of more than USD fifty billion¹⁶, besides creating worst humanitarian crisis possible. The slack attitude of nations with respect to this issue and other gaping loopholes compel an individual to infer that the issue is in fact *an emerging challenge to human existence*.

II

Instances Of Historical Exploitation of Environmental Resources During Armed Conflicts

'When elephants fight, it is the grass that suffers.'

For years, environment and its resources has been a passive victim of armed conflicts. Environment, i.e. the flora-fauna along with other natural resources, and Armed Conflicts has a direct relationship with each other. In fact, the ground on which war is fought is also a part of the environment. Although wars are generally discouraged, the effect they have on environment is not much thought about. Environment has been exploited during wars and history has been a witness to it.

Scorched Earth Policy-

A planned military tactic known as the 'Scorched Earth Policy' came to light during the Iran-Iraq war; it entails the retreating forces to destroy or make unusable any resources, buildings, and land in their route in order to obstruct the enemy's approach. In order to leave nothing of value for the adversary, it involves burning crops and destroying buildings, bridges, and other essential infrastructure. Legally, the policy raises questions about whether it complies with international humanitarian law because it may seriously hurt civilian populations, trample on the proportionality principle, and inflict long-term environmental harm.

Oil Well Fires-

The deliberate igniting of oil wells has been used as a tactic during armed conflicts to obstruct the enemy's access to supplies and interrupt their activities. During the Gulf

¹⁶Explained Desk, *The other victim: The environmental costs of the Russia-Ukraine War*, THE INDIAN EXPRESS,(Feb. 27, 2023) available at <https://indianexpress.com/article/explained/explained-climate/environmental-costs-russia-ukraine-war-846312/>(last visited May 23, 2023).

War, approximately 600 oil wells were out on fire in Kuwait in order to gain military advantage¹⁷. This tactic entails lighting oil wells on fire, which causes enormous flames, copious amounts of smoke, and the release of hazardous contaminants into the atmosphere. In terms of environmental protection and the possible harm to civilian populations through pollution, health concerns, and the destruction of livelihoods, the intentional destruction of oil wells can be considered as a breach of international law.

Herbicides: Use of Agent Orange during Vietnam War-

During the Vietnam War, the American military used Agent Orange as a herbicide to clear forests of foliage and eliminate enemy cover. It included dioxin, a very poisonous substance that caused terrible health impacts on both soldiers and civilians. Due to the serious environmental damage, long-lasting health effects, and violations of the proportionality and distinction norms of international humanitarian law, the deployment of Agent Orange created serious legal questions. [OBJ]

Mustard and Chlorine Gas-

Chemical weapons such as mustard gas and chlorine gas were employed during World War I, causing soldiers and bystanders to endure horrific misery. Chlorine gas caused choking and lung damage, mustard gas serious burns, eyesight, and respiratory issues¹⁸. The Hague Conventions and subsequent treaties that forbade the use of poison or poisonous weapons were flagrantly violated by the deployment of chemical weapons in World War I.

Atomic Bombs in World War II-

Tens of thousands of people died instantly, and survivors suffered long-term repercussions from the 1945 deployment of atomic bombs on Hiroshima and Nagasaki. These bombings left behind massive wreckage, broad devastation, and environmental harm that will never be repaired. Legally, the use of atomic weapons presented ethical and legal issues, particularly in relation to the concepts of proportionality and distinction as well as the potential breach of the laws of war by targeting civilian populations and inflicting indiscriminate and excessive suffering.

¹⁷ Katherine M. Kelly, *Declaring War on the Environment: The Failure of International Environmental Treaties During the Persian Gulf War.*, 7AM. U. INT'L L. REV., 921-950 (1992).

¹⁸ Gerard J. Fitzgerald, *Chemical Warfare and Medical Response During World War I*, 98AJPH, 611-625 (2008).

III

Legal Discourse- A Comprehensive Critique

Jurisprudential Principles

The bedrock of IHL or the general jurisprudence for determining the code of conduct of parties engaged in an armed conflict is the *interrelated principles of distinction, proportionality and precaution*. Although the issue of decimation of environment and its resources during armed conflicts is a pressing contemporary issue yet it is opined here that basic jurisprudential principles of IHL are the guiding light towards the dissolution of this issue.

These cardinal principles which form the backbone of IHL are as follows:

1. **Distinction:** The principle of distinction forms the fabric of IHL; [100] it simply elaborates that civilian objects shall be distinguished from military objects and only military objects shall be the object of attack. The environment and all its parts are of civilian nature and cannot be the object of attack, unless some parts of the natural environment have been transformed into a military objective. For example, when fighters use vegetation for concealment.
2. **Proportionality:** This principle emphasises on the proportion of force used while attacking a military objective. An assessment of probable environmental damage as 'incidental damage' in accordance with the principle of proportionality shall be the modus operandi of the militaries engaging in wars. In cases where incidental damage is higher than military advantage, then such an attack shall not be pursued any further.
3. **Precautionary measures:** Any unintentional harm to the environment and all of its components should be avoided and, in any event, minimized by taking all practical precautions, both passive and active. Therefore, military forces should abstain from using the natural world for tactical advantage. Also keep in mind that accidental damage could be caused by fighters simply being present at certain locations. Professionals who work to save the environment are civilians and immune to harm unless they are actively engaged in combat.

Apart from the aforementioned cardinal principles, **the Martens Clause is one spectacular feature of IHL that finds mention in the Geneva Convention and its Additional Protocols**. The clause is an acknowledgment of evolving aspects of IHL, and it envisages that the conduct of parties involved in an armed conflict shall be

guided by *humanity* and *public conscience* in the absence of a codified law on a matter.

[Obj:]

The practical implementation of above-mentioned principles has the ultimate potential to tackle the global problem of environmental exploitation during war crisis. In fact, the initial discussions around framing legislations for this issue show evident reflections that the social engineers kept these principles in their mind while drafting the laws.

Tracing International Resolutions, Treaties & Conventions

- **Stockholm Declaration:**

*'Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth.'*¹⁹

After experiencing the havoc caused by two world wars and other ongoing military conflicts between Nation States at that point in time, the United Nations eventually addressed the issue of harmful impact of using war weapons on the environment in 1972. It held its first discussion on the topic in June of 1972 in Stockholm and issued a set of *non-binding principles* in a Conference of governments under the title *Declaration of the United Nations Conference on the Human Environment*. The global community felt the need *'for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment'*²⁰; this need triggered the global community to lay down **Principle 26** which pronounced that nuclear weapons and other means of mass destruction must be avoided, besides, imploring that *'States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons'*²¹.

The intersection between IHL and International Environment Law got kick-started by the issuance of this declaration as it is the first instance where use of mass destruction weapons was viewed in light of environmental pollution and human destruction.

¹⁹U.N. Conference on the Human Environment, *Declaration of the United Nations Conference on the Human Environment*, U.N. Doc. A/CONF.48/14/Rev.1, (June 16, 1972).

²⁰*Id.*, note 24.

²¹U.N. Conference on the Human Environment, *Declaration of the United Nations Conference on the Human Environment*, 26 U.N. Doc. A/CONF.48/14/Rev.1, (June 16, 1972).

- **ENMOD Convention, 1977 & Additional Protocol I, 1977:**

During the latter half of the 1970s, America engaged into an armed conflict with Vietnam with the ultimate goal to prevent the over-take of communist political regime over Vietnam. In the process, America used several environmental modification techniques to gain military advantage over the Vietnamese forces. It deployed rainmaking through cloud seeding among other techniques to slow the guerrilla warfare²²; the use of such techniques as an attack over the enemy prompted the United Nations to enact a *binding convention* by the name of *Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, 1977*, which later came to be known as the *ENMOD Convention*. **Article II**²³ of this Convention defined the term ‘environmental modification techniques’ 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’²⁴ besides prohibited state parties from undertaking any environmental modification technique or any other ‘hostile’ technique which has a ‘*widespread, long-lasting, or severe effect*’²⁵ on the environment.

Unequivocally, the binding nature of this convention made it stand out from the rest of the declarations however, it is opined here that the convention miserably failed in achieving its end-goal as a very small number of countries are a party to it. Also, a *Review Conference of the parties to the 1977 ENMOD Convention*²⁶ was held in September 1984 to adjudge the usefulness of the ENMOD convention and following critical points were observed:

1. The Convention prohibited only the ‘employment’ and not the development or possession of environment modification techniques²⁷.
2. Secondly, it specifically prohibits only ‘hostile’ use of a modification technique which has widespread, long-lasting or severe effect on the nature; ergo restricting the scope of the application by prescribing a threshold of destruction, which if not achieved renders the convention inapplicable.

²²*Supra* note 23, Katherine M. Kelly.

²³U. N. Conference of the Committee on Disarmament (CCD), *Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques*, II., 1108 U.N.T.S. 151 (May 18, 1977).

²⁴*Id.*

²⁵U. N. Conference of the Committee on Disarmament (CCD), *Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques*, II., 1108 U.N.T.S. 151 (May 18, 1977).

²⁶ Jozef Goldblat, *Review of the Enmod convention*, 7 CONTEMP. SECUR. 3, 59-62 (1986).

²⁷*Id.*

3. The complaint and review procedure of the Convention involved another limb of the UN, i.e. the Security Council, and the Review Committee believed that that the verification procedures are untested hence inadequate²⁸.

These persisting problems with the ENMOD rendered it devoid of any legislative power and it failed to stand the test of time. A similar criticism was faced by *Article 35²⁹ and 55³⁰ of Additional Protocol I, 1977 to the 1949 Geneva Convention*.

- **UNGA Resolution 37/7, 1982:**

It is opined here that Stockholm Declaration spurred the discussion on the issue and limited itself to that. Unfortunately, it did not delve any deeper into the issue for at least next ten years. In October 1982, the UN General Assembly passed another *non-binding Resolution 37/7* under the title *World Charter for Nature*. [OBJ] General Principle 5 of this charter validated that '*Nature shall be respected and secured against degradation caused by warfare or other hostile activities*'.³¹ This charter is an exceptionally detailed and exemplary document which laid down general principles, functions and implementation strategies for tackling environmental protection however, owing to its very nature, the Charter '*could not have any binding force or a regime of sanctions attached to it*'³² as it was passed only as a resolution, thus hinting at the half-hearted attempts made at global level.

- **Rio Declaration, 1992 & UNGA Resolution 47/37, 1993:**

Another **non-binding** set of Principles issued by the United Nations in 1992 in **Rio de Janeiro** during the **United Nations Conference on Environment and Development**³³ motivated the global community towards pursuing research on the issue of environmental decimation during armed conflicts. **Principle 24** of the **Rio**

²⁸*Id.*

²⁹Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1)*, 35, 1125 U.N.T.S. 3 (June 8, 1977).

³⁰Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1)*, 35, 1125 U.N.T.S. 3 (June 8, 1977).

³¹*Id.*

³² H. W. Wood, *The United Nations World Charter for Nature: The Developing Nations' Initiative to Establish Protections for the Environment*, 12ECOL. LAW Q., 977-996 (1985).

³³U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. 1), annex 1 (Aug. 12, 1992).

Declaration necessitated state cooperation for protection of environment during armed conflict.³⁴ In the immediately following year the United Nations General Assembly adopted *Resolution 47/37* with an aim to bar environmental destruction carried out wantonly without justifying any military necessity³⁵. This resolution urged the nation states to become parties to the relevant international treaties, ensure compliance and incorporate the relevant provisions in their military manuals.

- **Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1993:**

Adopted later in 1997, the *Chemical Weapons Convention* is a comprehensive convention that banned the use of chemical weapons altogether in furtherance of preventing environmental harm. *Article 1* of the convention banned the use, development and production of chemical weapons³⁶ and provisioned for disallowing the dumping of such weapons into water bodies or on land³⁷.

The above-mentioned description of laws immediately compels one to infer that this issue suffers from *'piece-meal legislative motivation induced multiple legislations*. Unequivocally, the global community has made attempts to subdue the problem of environmental damage caused by armed conflicts; however, the intermittent and occasional motivation rather than a constant attitude towards finding solutions for it is the actual cause for a plethora of non-binding and binding treaties and conventions.

The United Nations was not entirely unaware of the issue of piece-meal and multiple laws, hence, very recently in 2022, the law-making unit of the UN, i.e., the ILC has come up with *Draft Principles on the Protection of the Environment in relation to Armed Conflicts*.

- **International Law Commission's PERAC-Protection of the Environment in Relation to Armed Conflicts, 2022:**

³⁴ U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development* Principle 24, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. 1), annex I (Aug.12, 1992).

³⁵U.N. General Assembly, *Protection of the environment in times of armed conflict*, A/RES/47/37 (Feb. 9, 1993).

³⁶Conference on Disarmament, *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction*, (Sept. 3, 1992).

³⁷*Id.*

International Law Commission or the ILC is a body of legal experts formed in 1947 for the advancement and ‘progressive development of international law and its codification’. ILC has thirty-four elected members from the United Nations General Assembly who came together in its seventy-third session in 2022 to officially adopt the ‘*Draft Principles on Protection of the Environment in relation to Armed Conflicts*’³⁸ or the PERAC. PERAC is the most recent piece of well-researched draft principles put together by the United Nations’ ILC and a one-of-a-kind legal document which, if successfully implemented as a piece of legislation, has the potential to tackle the issue of environmental exploitation during conflicts. It encompasses twenty-seven draft principles which divide the issue at hand into four distinct categories, i.e., environmental protection before, during and after armed conflict along with the special case of environmental protection obligations during occupancy over territories³⁹. Environmental damage before armed conflicts can occur in the form of GHG emissions discharged during military capacity building, training, and sustenance activities. During armed conflicts, damage to geo-diversity can be witnessed in the use of ‘environmental modification techniques’⁴⁰, explosives, attack on energy resources and the ensuing pollution. The list is non-exhaustive as conventional and unconventional weapons leave an undesirable legacy of damage and most importantly human displacement⁴¹. Conduct of nation states with respect to ‘Environmental Assessments and Remedial Measures’ after a conflict is over is enshrined in Principle 24 of the PERAC⁴². Evidently, PERAC seems like a promising document as it can give rise to ‘State Responsibility’ including acts or omissions committed by non-State armed groups, individuals and business entities.⁴³

Several states raised multifaceted objections to interpretation of PERAC in relation to its scope of application, extension and limits of purpose of PERAC, use of better and strong language, inconsistency with other existing laws, State responsibility, etc. These objections made it obvious that formalisation of these draft principles might take longer than expected.

International Court of Justice and Precedents

³⁸International Law Commission, DRAFT PRINCIPLES ON THE PROTECTION OF THE ENVIRONMENT IN RELATION TO ARMED CONFLICTS (2022) *available at: [Draft principles on protection of the environment in relation to armed conflicts \(2022\) \(un.org\)](https://www.un.org/en/development/dhlpr/interim-report-draft-principles-on-protection-of-the-environment-in-relation-to-armed-conflicts-2022)* (last visited May 23, 2023).

³⁹*Id.*, at 5.

⁴⁰*Id.*

⁴¹*Id.*, at 3.

⁴²*Id.*, at 6.

⁴³*Supra* note 40.

The role played by the International Court of Justice in preserving the interests of environment during war crisis cannot be undermined. Although the judgements pronounced by the ICJ do not have any precedential value as per the statute of the judicial organ, yet these judgements are considered to be a secondary source of international law; further, by virtue of being a source of international law, it is pertinent to analyse the perspective of the international judicial body especially when it has showcased a proactive role in favour of environment.

The ICJ has played a crucial role in cases where environment and armed conflict intersect. While recognizing that *'environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn'*⁴⁴, the ICJ in the advisory opinion case of *Threat or Use of Nuclear Weapons* opined that *'States must take environmental considerations into account when assessing what is necessary and proportionate in the pursuit of legitimate military objectives. 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'*⁴⁵.

Interestingly, very recently in March 2023, the United Nations General Assembly has also asked for the advisory opinion of the ICJ on changing climate patterns⁴⁶, thus making ICJ a part of the discussion.

IV

Reciprocal Relationship Between Armed Conflicts & Environment Apropos Climate Change

Upon studying the instances of war-like crisis that happened in the recent past or that are currently ongoing in the contemporary world, an observation with respect to the relationship of armed conflicts and environment has been made. This observation is distinct from the generic discussion around environmental impact of armed conflicts which is the central theme of this paper. As per this observation, all spectacles of conflicts be it of international or of non-international character, are driven by humankind's quest for various manifestations of nature. A man's

⁴⁴I.C.J., LEGALITY OF THE THREAT OR USE OF NUCLEAR WEAPONS, ADVISORY OPINION, 29 I.C.J. Reports 1996, p. 226 (July 8, 1996).

⁴⁵*Id.*, note 50.

⁴⁶International Court of Justice, OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE (REQUEST FOR ADVISORY OPINION) (2023) available at: [The Court authorizes the European Union to participate in the proceedings \(icj-cij.org\)](https://www.icj-cij.org) (last visited May 23, 2023).

intention to exploit the resources available in nature like minerals, oil, etc. for his own use engenders conflict-like situations.

The nature of reciprocal relationship between the two is such that apart from armed conflicts severely impacting environment, the pursuance of environmental resources leads to international or non-international armed conflicts. The most obvious example in support of this contention is the Rohingya Crisis of Myanmar where the vested interests of Myanmar Government and its military in the resource abundant province of Rakhine, which was the homeland of persecuted Rohingya Hindus and Muslims, becomes important to understand and factor in.⁴⁷ The *Conflict Diamonds or Blood Diamonds of Africa* is another such example where naturally occurring diamonds are mined to finance wars, terrorism and other conflicts⁴⁸.

Environment induced Armed Conflict & Climate Change

Climate Change is the intimidating reality that has hit us, especially in the twenty first century, with rising temperatures, drying water bodies and toxic air. All the primary sources required for a human existence and/or sustenance are either adulterated or come at a price which only the privileged few can afford. As the rich is getting richer and the poor is getting poorer, access to clean and pure natural resources is getting limited. A considerable impact of change in the climate on humankind is at a stone's throw away. International community including the United Nations Security Council (hereinafter UNSC) has often pondered over the issue of 'climate induced wars' besides coming up with meetings and resolutions. The initial discussions started in the year 2007 when the United Nations Secretary-General Ban Ki-Moon chaired a ministerial level open debate on the topic including but not limited to climate and security⁴⁹. The irony of the situation is that UNSC had to face a lot of disapproval and criticism for exercising its jurisdiction over a matter which was beyond its scope of function. It was argued that the United Nations General Assembly and other functioning organs of the United Nations can adjudicate on such matters. And the Security Council cannot encroach upon them.

⁴⁷ Kunal Debnath, Souvik Chatterjee & Afnan Bint Afzal, *Natural Resources and Ethnic Conflict: A Geo-strategic Understanding of the Rohingya Crisis in Myanmar*, 26 JADAVPUR J. INT. RELAT. (2022).

⁴⁸ STANFORD UNIVERSITY, *Conflict Diamonds in West Africa*, available at - <https://web.stanford.edu/class/e297a/Conflict%20diamonds%20in%20West%20Africa.htm> (last visited May 27, 2023).

⁴⁹ UNITED NATIONS, *Security Council holds first-ever debate on Impact of Climate Change on Peace, Security, hearing over 50 speakers* (April 17, 2007) available at - [security council holds first-ever debate on impact of climate change on peace, security, hearing over 50 speakers | un press](#) (last visited May 23, 2023).

Only after more than a decade of discussions, meetings and conflicts, it has become obvious to the International Community that Climate Change and International Peace and Security are deeply intertwined issues which have triggering and other stimulating effects on each other. In a Security Council report titled '*The UN Security Council and Climate Change*'⁵⁰ published in June 2021, the UNSC stressed upon the fact that '*Climate Change is a threat to International Peace and Security*'⁵¹. Even though United Nations Framework Convention on Climate Change (UNFCCC) was accepted as the parent document to tackle climate change, the Security Council realised that climate change is a '*threat multiplier*' that can further instigate '*conflict risks and instability*'. From holding *Arria-formula meetings*⁵² to passing resolutions on climate and security, the efforts of UNSC are slowly working towards fruition.

For instance, *Security Council Resolution 2349* against the African terrorist group Boko Haram was passed after the Security Council sent a visiting mission to Nigeria⁵³. The resolution in out-rightly recognised 'adverse effects of climate change and ecological changes among other factors on the stability of the Region, including through water scarcity, drought, desertification, land degradation, and food insecurity, and emphasise[d] the need for adequate risk assessments and risk management strategies by governments and the United Nations relating to these factors'⁵⁴ as the root cause of crisis caused by Boko Haram.

It is totally understandable when renowned scholar and author U.C. Jha in his book titled '*Armed Conflict and Environmental Damage*'⁵⁵ claims that climate change has the potential to trigger the existent issues with respect to security, especially when it comes to- '*border disputes, migration, energy supplies, resource shortage, societal stress and humanitarian crisis*'.⁵⁶ Unexpected cyclones and floods in the recent past are the best suited example for disrupting peaceful human existence, thus forcing them to leave their dwellings and create an insecure and vulnerable environment. The Russia-Ukraine war crisis, which messed up the supply chain process of

⁵⁰U.N. NEWS, *Climate change recognized as 'threat multiplier', UN Security Council debates its impact on peace* (Jan. 25, 2019) available at : <https://news.un.org/en/story/2019/01/1031322>(last visited May 23, 2023).

⁵¹*Id.*

⁵²U.N. Security Council, RESOLUTION 2349 (2017), ¶ 26 S/RES/2349 (2017) (Mar. 31, 2017).

⁵³*Id.*

⁵⁴*Id.*

⁵⁵Dr. U.C. Jha, ARMED CONFLICTS AND ENVIRONMENTAL DAMAGE (2014).

⁵⁶*Id.*

essential commodity like wheat is another best suited example for addressing the food crisis induced by armed conflict.

Human Rights and Environmental Protection During Armed Conflicts

There are a number of human rights treaties that demonstrate the connection between **International Human Rights Law** or the **IHRL** and environmental preservation, but relatively few include provisions on their implementation during times of armed conflict. While it guarantees the ‘*right to life*’ and ‘*sufficient quality of living*’ concepts, the 1948 Universal Declaration of Human Rights⁵⁷, which is a soft law, does not include any clause pertaining to environmental preservation during armed conflict. It is arguable that the 1966 ICCPR’s inclusion of some articles provides indirect safeguards for the environment during armed conflict.

The freedom of minority groups to preserve their culture and customs is guaranteed under Article 27 of the ICCPR⁵⁸. Self-determination and the use of natural resources have been seen to be supported by this clause. It suggests that during times of war, occupying Governments may be compelled to allow local parties to exploit natural resources even if such exploitation is not a legitimate military purpose. Moreover, since environmental harm may have a detrimental impact on family and home life, Article 17 of the ICCPR⁵⁹ may be interpreted as banning it. Human rights and the preservation of life-sustaining ecosystems are linked in Article 1 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR)⁶⁰. Environmental protection, such as the right to a healthy environment and the right to a generally good environment, is provided through other regional agreements and judicial organisations.

V

Conclusion and Suggestions

The brief discussion above tells us how since 1972 the global community has persevered and made attempts at addressing the issue at hand by framing better

⁵⁷ U.N. General Assembly, UNIVERSAL DECLARATION OF HUMAN RIGHTS, 217 A (III) (Dec. 10 1948).

⁵⁸ U.N. General Assembly, INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 27 United Nations, Treaty Series, vol. 999, p. 171 (Dec. 16, 1966).

⁵⁹ U.N. General Assembly, INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 17 United Nations, Treaty Series, vol. 999, p. 171 (Dec. 16, 1966).

⁶⁰ U.N. General Assembly, INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1 United Nations, Treaty Series, vol. 993, p. 3 (Dec. 16, 1966).

resolutions and treaties and conventions, however, each time, the failure in implementing those laws pushes us backwards as a global society. It can be extrapolated from this paper that environmental protection and preservation during armed conflicts or internal disturbances is an interplay of International Humanitarian Law and Environmental Protection alongside other corresponding and sensitive topics like Climate Change and International Human Rights Law. The international community needs no impetus to start working on this issue and it is conspicuous that it is already on the right path, however, in order to put an end to this overlooked issue, *stricter implementation while working in close association with countries* is required. Proactive discussions like the Conference of Parties or annual COPs are an exceptional solution to the implementation issue discussed above. It is no doubt that environmental protection during armed conflicts is an emerging existential challenge, however, one can be hopeful about PERAC as it can bring about an actual change in the existing state of affairs. It is amply clear that grave problems exist at almost all stages of this topic; be it the process of legislation or implementation, the issue needs to be examined strictly because the need for a system in place cannot be stressed upon enough. A few workable solutions towards the issue are as follows

1. *Doing away with Soft Law tendencies of Environment Protection Laws-* An issue with the existing set of laws is the abundance of 'soft laws' on this topic. It is opined here that the soft law approach for this issue is equivalent to half-hearted attempts, and it should be replaced with stricter laws and penalties. In fact, another suggestion which follows from this suggestion is a unique amalgamation of International Trade Law and environmental protection. This kind of setup will ensure compliance as trade and business is regarded to be of utmost importance internationally. Either Incentive-based or Sanction-based approach for nation states which are involved in an armed conflict is a possible solution for this issue.

Furthermore, **International Environment Law** or the IEL has not contributed much to this issue, and it has limited itself to topical solutions through conventions like the **OILPOL Convention of 1954**⁶¹ and **MARPOL Convention of 1973**⁶²; thus, suggesting that IEL needs to adopt a pro-active role in this discussion.

⁶¹International Conference on Pollution of the Sea by Oil, *International Convention for the Prevention of Pollution of the Sea by Oil*, 327 U.N.T.S. 3 (May 12, 1954).

⁶²International Maritime Organization, *International Convention for the Prevention of Pollution from Ships*, 1340 U.N.T.S. 61 (Nov. 2, 1973).

2. ***Enforcement Body-*** Although the United Nations Environment Programme body already exists at an international level, it is important to note here that this issue lacks proper enforcement. It is hereby suggested that an enforcement body, or at least a separate wing dedicated to monitoring the interrelated aspects of environment and armed conflicts must be established. The problem of scattered but multiple laws and regulations with respect to this issue can be resolved once an administrative body is created.
3. ***Conscious and Conscientious Approach-*** The two C words need to be kept in mind when spreading awareness about environment and wars. One has to keep in mind that environment and its preservation is important for our future generations and environmental destruction through war engagement is the last thing our future generations can afford. Thus, the mankind needs to be sensitised when it comes to conflicts and nature.
4. ***Sharing the burden of Developing Countries-*** Developing Countries and Emerging Economies get affected by wars as they have to endure the different forms of crisis that follow an armed conflict. Be it refugee crisis or food scarcity, the countries and their ecologies have to bear the brunt of wars. It is opined here that the burden of these countries should be shared by the equipped nations and only then a balance can be achieved.
5. ***Underreporting of Nationally Determined Contributions (NDCs) by Nation States and inaccuracy in UNFCCC's data because of lack of transparency across international reporting-*** Although the data for studying the greenhouse gas (GHG) emissions by military activity is sparse and hidden under civilian GHG emissions category⁶³, yet a report published by Scientists for Global Responsibility (SGR) and Conflict and Environment Observatory (CEOBS) in November 2022, suggests that 'operational military' emits approximately 1.0% of total GHG emissions; and its global carbon footprint is 5.5% of the global total⁶⁴. These figures describe only one minute aspect of environmental damage due to armed conflicts. The numbers put forward by such research organisation aid in identifying the loopholes of the existing mechanism and underreporting or inaccurate data presented by participating nations only hinders the solution to the problem.

⁶³CONFLICT AND ENVIRONMENT OBSERVATORY available at:https://ceobs.org/wp-content/uploads/2022/11/SGR-CEOBS_Estimating_Global_Military_GHG_Emissions.pdf. (last visited May 23, 2023.)

⁶⁴*Id.* at 8.

6. *The question of Internal Disturbances:* internal disturbances in the form of sporadic acts of violence or riots are blatantly ignored in the existing discussion. At the domestic level, countries should initiate law making processes to tackle environmental damage resulting from internal distur