Introduction

Rethinking International Law and the Protection of the Environment in Relation to Armed Conflict

Rosemary Rayfuse*

1. Introduction

Truth may be the first casualty of warfare, but the environment is not far behind. Since time immemorial the environment has been a silent victim of warfare. From salting the enemy’s land, to poisoning water sources, to scorched earth policies, the environment has historically been both target and weapon. It has suffered both deliberate and incidental damage and it has suffered not only during but also in preparation for, and in the aftermath of, armed conflict.

Technological developments since the 19th century have only exacerbated the potential for and reality of environment damage associated with armed conflict. Chemical defoliants such as Agent Orange, depleted uranium munitions, chemical and nuclear weapons have all caused significant environmental harms. Conventional weapons, too, have caused environmental damage through, for example, the release of toxic chemical contamination or oil spills from bombed industrial sites, and the deliberate or accidental burning of oil wells. Landmines have rendered vast areas, including agriculturally productive areas, unusable, while intentional modification of the environment through, for example, causing floods or drought, has been used as a direct weapon of war. More recently the environment has been implicated as an ‘accessory’ in the conduct of armed conflict with ‘conflict resources’ being exploited to finance armed forces and the acquisition of weapons, thereby contributing to the prolongation of a number of particularly brutal internal conflicts.

The environmental consequences of armed conflict are well documented.\(^1\) Air, soil and water pollution, as well as habitat and species destruction, destroy

* Professor of International Law, Faculty of Law, The University of New South Wales, Australia; Conjoint Professor of International Environmental Law, Faculty of Law, Lund University, Sweden

1 See e.g. J. E. Austin and C. E. Bruch, *The Environmental Consequences of War: Le-
ecosystems and the ecosystem services upon which humans depend for their health and well-being. This destruction is expensive and sometimes irreversible. Livelihoods are undermined resulting in poverty and forced migration. Environmental protection policies are side-lined thereby weakening internal governance structures and making more difficult the achievement of a lasting and sustainable peace.\(^2\) As Principle 24 of the Rio Declaration confirms, “[w]arfare is inherently destructive of sustainable development”. States are therefore called upon to “respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.”\(^3\)

2. Traditional Approaches to Environmental Protection and Armed Conflict

Protection of the environment in times of armed conflict has traditionally been viewed through the lens of the laws of armed conflict, also referred to as international humanitarian law (IHL). Given its historic focus on protection of combatants and the obligations of occupying powers, it is hardly surprising that little is found in the early IHL treaties that could be capable of being construed as directly applicable to the environment. Perhaps the earliest rule of this sort is found in Article 23(g) of the Hague Regulations of 1907\(^4\) which prohibits the destruction or seizure of enemy property unless required by imperative military necessity. Article 53 of the 1949 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War,\(^5\) similarly prohibits the destruction by an occupying power of real or personal property belonging individually or collectively to any persons, or to the State, unless absolutely necessary for military operations. Neither of these articles makes express mention of the environment although they have been taken as the origins of what is now asserted to be a customary gal, Economic, and Scientific Perspectives (Cambridge University Press, 2000); A. T. Kassim and D. Barceló (eds.), Environmental Consequences of War and Aftermath (Springer, 2009).


\(^4\) Convention (IV) respecting the Laws and Customs of War on Land, signed 18 October 1907