4 The Ethics, Principles and Objectives of Protection of the Environment in Times of Armed Conflict

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1. Introduction: The Question

Is war the end of ethics or ethical behaviour? Are killing and devastation, as they occur in war, unethical per se? If one looks at the ethical discourses over the centuries this is a position which can certainly be found, although if one takes the discourse as a whole, it is an extreme position. Nevertheless, regardless of whether war is or is not unethical per se, as the rich literature on war and ethics proves war does not lead to an abdication of ethics. Rather, in relation to war, ethical considerations go in two different, albeit not necessarily mutually exclusive directions. On the one hand there is the virtue of courage in fighting. Courage in fighting for the defence of the soldier’s country is also an ethical postulate which can be related to the concept of chivalry. This, on the other hand, brings into play the second direction of ethical considerations, that of ethical demands as a restraint in warfare. Restraint in the ways and means of waging war is a demand of the just war theory which holds that just wars are only those which are, inter alia, conducted by just means.

What are the consequences of ethical approaches for the protection of the environment in armed conflict? The just war theory seems to implicate reference to the law of armed conflict in that unlawful warfare is also unethical. While this reasoning may appear to lead to a vicious circle, as will be demonstrated, this

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3 P. P. Christopher, Just War Theory: an historical and philosophical analysis (University of Massachusetts Amherst, 1990).
is not necessarily the case. In addition, the specific discourse on environmental ethics may also be relevant. The principal demand of environmental ethics is conduct that respects the need to preserve the natural environment of the planet. Different approaches exist concerning the way in which this goal is to be reached: the ecocentric and the anthropocentric approach. The former demands the preservation of nature for its own sake, while the latter requires this preservation for the benefit of humankind. In the international discourse on environmental policy, the pure ecocentric approach is largely set aside. Rather, an anthropocentric approach which requires the preservation of the environment in order not to jeopardise the living conditions of present and future generations is the prevailing and generally recognised policy principle. In this way, the preservation of the environment is a demand of intergenerational equity.

The purpose of this study is to attempt to clarify the ethical requirements concerning the legal protection of the environment in armed conflict. It takes as its starting point a number of assumptions. The first is that there is an ethical underpinning for the law relating to the protection of the environment in armed conflict. The second assumption is that certain principles can be derived from these underpinnings. Finally, the third assumption is that such principles have inspired and continue to inspire the objectives of designing and applying a legal regime. The point of this study is to demonstrate whether, and if so why, these assumptions are correct.

2. The Ethics of the Laws of War and of Environmental Law

In attempting to answer the question of the protection of the environment in armed conflicts, one immediately encounters the phenomenon of the fragmentation of international law, or the notion that different areas of international law develop in a quasi-autonomous way. The fact of fragmentation can be observed simply by looking at the reality of the international order. Nevertheless, some theorists of international law oppose this view, insisting, instead, on the unity

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5 Rolston, *ibid.*, in particular pp. 33 et seq.

6 Principle 1 of the Rio Declaration of Environment and Development 1992: “Human beings are at the center of concern for sustainable development.”

7 Principle 3 of the Rio Declaration: “The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.”