Protection of the Environment in International Armed Conflict

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I. Introduction

The importance of the environment is universally acknowledged. As the ICJ proclaimed in 1996, in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*:

"the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn".

Attacks in wartime against military objectives\(^2\) often impact upon the environment. Oil facilities as military objectives can serve as a prime example. When an oil refinery is struck, this may give rise to toxic air pollution. When an oil storage facility is demolished, the oil may seep

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1 Advisory Opinion on *Legality of the Threat or Use of Nuclear Weapons*, ICJ Reports 1996, 226 et seq., (241, para. 29).

2 Military objectives are authoritatively defined as "those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage", article 52 para. 2 of Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977, reproduced in: D. Schindler/ J. Toman (eds), *The Laws of Armed Conflict: A Collection of Conventions, Resolutions and Other Documents*, 1988, 3rd edition, 621 et seq., (645).


into the ground and poison water resources. When an oil tanker is sunk at sea, the resultant oil spill may be devastating for marine life.\(^3\)

The ICJ, in the above mentioned case, went on to say:

"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".\(^4\)

Proportionality means that the collateral harm must not be "excessive in relation to the concrete and direct military advantage anticipated" when an attack is launched against a military objective.\(^5\) It follows from the Court's dictum that, in accordance with the principle of proportionality, "an attack on a military objective must be desisted from if the effect on the environment outweighs the value of the military objective".\(^6\)

Thus, the legal position consistent with present-day customary \textit{jus in bello} is that, when an attack is launched, environmental considerations must play a role in the targeting process. Hence, even if an attack is planned in an area with little or no civilian population, it may have to be called off if the harm to the environment is expected to be excessive in relation to the military advantage anticipated.\(^7\) Conversely, "if the target is sufficiently important, a greater degree of risk to the environment may be justified".\(^8\) Once due regard is given to environmental considerations and proportionality is observed, it must be borne in

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\(^3\) In the course of the Iran-Iraq War, hundreds of oil tankers were attacked by both sides in the Persian Gulf. As a result, in 1984 alone more than 2 million tons of oil were spilled into the sea. See P. Antoine, "International Humanitarian Law and the Protection of the Environment in Time of Armed Conflict", \textit{Int'l Rev. of the Red Cross} 32 (1992), 517 et seq., (530).

\(^4\) Advisory Opinion on \textit{Nuclear Weapons}, see note 1, 242 para. 30.

\(^5\) Cf. article 51 para. 5 lit.(b) of Protocol I, see note 2, 651.


\(^7\) See ibid., id.