

Follow-up to the International Conference for the Protection of War Victims (1993)

Resolution 1 adopted by the 26th International Conference of the Red Cross and Red Crescent (Geneva, 1995) endorsed the recommendations drawn up by an intergovernmental group of experts charged with translating the Final Declaration of the International Conference for the Protection of War Victims (Geneva, August/September 1993) into proposals for "concrete and effective measures".¹ These recommendations are addressed primarily to the States party to the Geneva Conventions, including the depositary of those instruments. However, the ICRC, the International Federation of Red Cross and Red Crescent Societies and the National Red Cross and Red Crescent Societies are also urged to contribute to the effort of achieving better implementation of international humanitarian law, the main objective being to prevent violations from occurring.

The Review intends to inform its readers from time to time of such "concrete and effective measures" which have been or ought to be taken by all concerned, in particular those proposed by the ICRC. The Review would be especially pleased if it could also report on measures taken by States.

The first paper in this series relates to a proposal which had been drafted before the War Victims Conference set this process in motion in 1993. It is an attempt to strengthen respect for the natural environment in armed conflict.

The Review

¹ *IRRC*, No. 310, January-February 1996, pp. 58-60. For the text of the Final Declaration of the International Conference for the Protection of War Victims, see *IRRC*, No. 296, September-October 1993, pp. 377-381, and for the Recommendations of the Intergovernmental Group of Experts for the Protection of War Victims see *IRRC*, No. 304, January-February 1995, pp. 33-38.

Guidelines for Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict

In two previous issues of the *Review*, ICRC legal expert Antoine Bouvier reported on the work being done on the international level to strengthen the legal means of protecting the natural environment in times of armed conflict.² In his second article, after reporting on the results achieved in 1992 by the 47th session of the United Nations General Assembly, the author concluded that “existing law, if properly implemented and respected, provided adequate protection”. Better implementation of existing international obligations is thus the main issue. In his opinion, “emphasis should henceforth be placed on seeking new mechanisms and putting the existing means into effect”.³

Since 1993 further work has been done along the lines advocated by Bouvier, which, by the way, correspond to the position taken on various occasions by the ICRC. It is not our intention here to give a comprehensive account of the various steps taken to strengthen protection of the natural environment in armed conflict.⁴ We merely propose to present and briefly discuss a practical proposal which the ICRC, after consultation with a group of international experts, submitted to the United Nations in 1994: the *Guidelines for military manuals and instructions on the protection of the environment in times of armed conflict*. Without formally approving them, the UN General Assembly, at its 49th session, invited all States to “give due consideration to the possibility of incorporating [the Guidelines] into their military manuals and other instructions addressed to their military personnel”.⁵

The Guidelines are intended as a tool to facilitate the instruction and training of armed forces in an often neglected area of international humanitarian law: the protection of the natural environment. They are

² A. Bouvier, “Protection of the natural environment in time of armed conflict”, *IRRC*, No. 285, November–December 1991, pp. 567–578, and “Recent studies on the protection of the environment in time of armed conflict”, *IRRC*, No. 291, November–December 1992, pp. 554–566.

³ “Recent studies ...” (note 2), p. 566.

⁴ See A. Bouvier’s articles (note 2) and the more recent account in H. P. Gasser, “For better protection of the natural environment in armed conflict: a proposal for action”, 89 *American Journal of International Law*, 1995, pp. 637–644.

⁵ GA res. 49/50, of 9 December 1994. The Guidelines have been published as an annex to UN Doc. A/49/323 (1994). See also H. P. Gasser (note 4).

nothing more and nothing less than a summary of the existing applicable international rules which must be known and respected by members of the armed forces. In other words, they are an instrument for dissemination purposes. The Guidelines drafted by the ICRC should not be seen as a blueprint for a new codification. Their sole aim is to contribute in a practical and effective way to raising awareness of a precious asset which merits respect and protection even — or especially — in time of armed conflict: the natural environment. It is now up to States and, in particular, the armed forces, to take appropriate action.

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GUIDELINES FOR MILITARY MANUALS AND INSTRUCTIONS ON THE PROTECTION OF THE ENVIRONMENT IN TIMES OF ARMED CONFLICT⁶

I. PRELIMINARY REMARKS

- (1) The present Guidelines are drawn from existing international legal obligations and from State practice concerning the protection of the environment against the effects of armed conflict. They have been compiled to promote an active interest in, and concern for, the protection of the environment within the armed forces of all States.
- (2) Domestic legislation and other measures taken at the national level are essential means of ensuring that international law protecting the environment in times of armed conflict is indeed put into practice.
- (3) To the extent that the Guidelines are the expression of international customary law or of treaty law binding a particular State, they must be included in military manuals and instructions on the laws of war. Where they reflect national policy, it is suggested that they be included in such documents.

⁶ UN Doc. A/49/323 (1994) and GA res. 49/50 (1994).

II. GENERAL PRINCIPLES OF INTERNATIONAL LAW

- (4) In addition to the specific rules set out below, the general principles of international law applicable in armed conflict — such as the principle of distinction and the principle of proportionality — provide protection to the environment. In particular, only military objectives may be attacked and no methods or means of warfare which cause excessive damage shall be employed. Precautions shall be taken in military operations as required by international law.

G.P.I Arts. 35, 48, 52 and 57

- (5) International environmental agreements and relevant rules of customary law may continue to be applicable in times of armed conflict to the extent that they are not inconsistent with the applicable law of armed conflict.

Obligations concerning the protection of the environment that are binding on States not party to an armed conflict (e.g. neighbouring States) and that relate to areas beyond the limits of national jurisdiction (e.g. the high seas) are not affected by the existence of the armed conflict to the extent that those obligations are not inconsistent with the applicable law of armed conflict.

- (6) Parties to a non-international armed conflict are encouraged to apply the same rules that provide protection to the environment in international armed conflict and, accordingly, States are urged to incorporate such rules in their military manuals and instructions on the laws of war in a way that does not discriminate on the basis of how the conflict is characterized.

- (7) In cases not covered by international agreements, the environment remains under the protection and authority of the principles of international law derived from established custom, the principles of humanity and the dictates of public conscience.

H.IV preamble, G.P.I Art. 1.2, G.P.II preamble

III. SPECIFIC RULES ON THE PROTECTION OF THE ENVIRONMENT

- (8) Destruction of the environment not justified by military necessity violates international humanitarian law. Under certain circumstances, such destruction is punishable as a grave breach of international humanitarian law.

H.IV.R Art. 23(g), G.C.IV Arts. 53 and 147, G.P.I Arts. 35.3 and 55

- (9) The general prohibition on destroying civilian objects, unless such destruction is justified by military necessity, also protects the environment.

H. IV. R Art. 23(g), G.C.IV Art. 53, G. P. I Art. 52, G. P. I I Art. 14

In particular, States should take all measures required by international law to avoid:

- (a) making forests or other kinds of plant cover the object of attack by incendiary weapons except when such natural elements are used to cover, conceal or camouflage combatants or other military objectives, or are themselves military objectives;

CW.P.III

- (b) attacks on objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas or drinking water installations, if carried out for the purpose of denying such objects to the civilian population;

G.P.I Art. 54, G.P.II Art. 14

- (c) attacks on works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, even where they are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population and as long as such works or installations are entitled to special protection under Protocol I additional to the Geneva Conventions;

G.P.I Art. 56, G.P.II Art. 15

- (d) attacks on historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples.

H.CP, G.P.I Art. 53, G.P.II Art. 16

- (10) The indiscriminate laying of landmines is prohibited. The location of all pre-planned minefields must be recorded. Any unrecorded laying of remotely delivered non-self-neutralizing landmines is prohibited. Special rules limit the emplacement and use of naval mines.

G.P.I Arts. 51.4 and 51.5, CW.P.II Art. 3, H.VIII

- (11) Care shall be taken in warfare to protect and preserve the natural environment. It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause wide-

spread, long-term and severe damage to the natural environment and thereby prejudice the health or survival of the population.

G.P.I Arts. 35.3 and 55

- (12) The military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State party is prohibited. The term “environmental modification techniques” refers to 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.

ENMOD Arts. I and II

- (13) Attacks against the natural environment by way of reprisals are prohibited for States party to Protocol I additional to the Geneva Conventions.

G.P.I Art. 55.2

- (14) States are urged to enter into further agreements providing additional protection to the natural environment in times of armed conflict.

G.P.I Art. 56.6

- (15) Works or installations containing dangerous forces, and cultural property shall be clearly marked and identified, in accordance with applicable international rules. Parties to an armed conflict are encouraged to mark and identify also works or installations where hazardous activities are being carried out, as well as sites which are essential to human health or the environment.

e.g. G.P.I Art. 56.7, H.CP. Art. 6

IV. IMPLEMENTATION AND DISSEMINATION

- (16) States shall respect and ensure respect for the obligations under international law applicable in armed conflict, including the rules providing protection for the environment in times of armed conflict.

G.C.IV Art. 1, G.P.I Art. 1.1

- (17) States shall disseminate these rules, making them known as widely as possible in their respective countries, and include them in their programmes of military and civil instruction.

H.IV.R Art. 1, G.IV Art. 144, G.P.I Art. 83, G.P.II Art. 19

(18) In the study, development, acquisition or adoption of a new weapon, means or method of warfare, States are under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by applicable rules of international law, including those providing protection to the environment in times of armed conflict.

G.P.I Art. 36

(19) In the event of armed conflict, the parties thereto are encouraged to facilitate and protect the work of impartial organizations contributing to preventing or repairing damage to the environment, pursuant to special agreements between the parties concerned or, as the case may be, the permission granted by one of them. Such work should be performed with due regard to the security interests of the parties concerned.

e.g. G.C.IV Art. 63.2, G.P.I Arts. 61-67

(20) In the event of breaches of rules of international humanitarian law protecting the environment, measures shall be taken to stop any such violation and to prevent further breaches. Military commanders are required to prevent and, where necessary, to suppress and to report to competent authorities breaches of these rules. In serious cases, offenders shall be brought to justice.

G.C.IV Arts. 146 and 147, G.P.I Arts. 86 and 87

Annex

SOURCES OF INTERNATIONAL OBLIGATIONS CONCERNING THE PROTECTION OF THE ENVIRONMENT IN TIMES OF ARMED CONFLICT

— General principles of law and customary international law

— International conventions

Main international treaties with rules on the protection of the environment in times of armed conflict:

Hague Convention (IV) respecting the Laws and Customs of War on Land, of 1907 (H.IV), and Regulations Respecting the Laws and Customs of War on Land (H.IV.R)

Hague Convention (VIII) relative to the Laying of Automatic Submarine Contact Mines, of 1907 (H. VIII)

Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 1949 (G.C.IV)

Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, of 1954 (H.CP)

Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques, of 1976 (ENMOD)

Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 1977 (G.P.I)

Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 1977 (G.P.II)

(United Nations) Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, of 1980 (CW), with:

- Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-traps and Other Devices (CW.P.II)
- Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (CW.P.III)