



International Symposium on Security and Military Law 2014

Eco Threats as Security Threats and the Protection of the Environment During Hostilities

By

Dr. Sascha-Dominik Bachmann
Associate Professor in Law,
LTC (GER Army Res)

- I. INTRODUCTION
- II. ECOTHREATS AS GLOBAL SECURITY THREATS
- III. THE LEGAL PROTECTION OF THE ENVIRONMENT DURING HOSTILITIES
- IV. CONCLUSION AND OUTLOOK

INTRODUCTION

- To introduce the notion of environmental threats to global peace and security
and
- To look into shortcomings of environmental protection during hostilities under the Law of Armed Conflict (LOAC).

INTRODUCTION

<http://www.youtube.com/watch?v=tYCISGINHyU>

ECOTHREATS AS GLOBAL SECURITY THREATS

- Environmental issues – referring to the human impact on the environment – can amount to threats for global security.
- If such environmental threats have a **nexus** to interstate state conflict, they can turn into threats to world peace and security.

ECOTHREATS AS GLOBAL SECURITY THREATS

- Examples are
 - Issues of water scarcity
 - resource scarcity
 - extreme weather effects caused by climate change and
 - other environmental catastrophes such as spring floods are all major environmental threats, which warrant a comprehensive and joint response
- Recognised in the UN *Report of the Secretary General of the United Nations on climate change and its possible security implications of 2009*

ECOTHREATS AS GLOBAL SECURITY THREATS

- NATO's Report Environment & Security in an International Context of 1999 identified four environmental security threats:
 - ethno-political conflicts;
 - migration conflicts;
 - international resource conflicts and
 - finally environmental conflicts.

ECOTHREATS AS GLOBAL SECURITY THREATS

- NATO's Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organisation of 2010 contains clear descriptions of new threat scenarios which include environmental issues.
- NATO created in summer of 2010 a new division tasked with countering these "Emerging Security Challenges" (ESCs) and founded in 2012 the Centre for Excellence on Energy Security (NATO ENSEC COE)

THE LEGAL PROTECTION OF THE ENVIRONMENT DURING HOSTILITIES

- The Law of Armed Conflicts (LOAC), the *jus in bello* (as the branch of international law which is applicable during hostilities) contains various legal provisions on how to protect the environment during hostilities
 - Articles 35 (3) and 55 (1) of the Additional Protocol I to the Geneva Conventions of 1977
 - The goal of these LOAC provisions is to avoid/limit environmental damages in combat, when nature and its resources are either targets of an attack or turned into weapons.

- The scope of these restrictions on warfare are limited due to their nature as optional LOAC treaties (AP), binding only states parties
- Besides such treaty law Customary International Law (CIL) might apply:
 - CIL consists of rules that come from “a general practice accepted as law” and that exist independently of treaty law

- The general LOAC principles of
 - “military necessity”,
 - “proportionality”/”limitation”,
 - “distinction between civilian and military targets”
 - and the “humanity”, based on the Hague Convention 1907

Limit any military action directed against the Environment as such.

- However, there exists no explicit environmental protection provision, such as a general prohibition of environmental targeting

- **Other international limitations to warfare on the environment:**
 - Principle 24 of the **UN-Rio Declaration on Environment and Development** of 1992 affirms that warfare is inherently destructive of **sustainable** development **Limit** any military action directed against the Environment as such and calls on states to respect international environmental law in times of arms conflict and cooperate in its further development, as necessary

- UN General Assembly Resolution on the Protection of the environment in times of armed conflict, UN Res. 47/37 of 1992 stresses: „destruction of the environment, not justified by military necessity and carried out wantonly, is clearly contrary to existing international law“,
- urged states to ensure compliance with existing international law relating to environmental protection during wartime, and to incorporate the relevant provisions of international law into their military manuals.

- **Further UN initiatives**
 - Guidelines for Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict, UN Document A/49/323 Annex (Aug. 19, 1994) on the basis of ICRC work
 - General Assembly Resolution 49/50 (Dec. 9, 1994) para. 11 invited states to disseminate the guidelines

➤ **Further UN initiatives**

- 2007: UN Department of Peacekeeping Operations /Department of Field Services (UNDDPKO/DFS) drafted environmental protection guidelines for UN field missions (with technical references)
- 2008: United Nations Peacekeeping Operations, Principles and Guidelines, 9.1 Managing Mission (Environmental) Impact („Capstone Doctrine“)
- 2009: UNDDPKO/DFS Environmental Policy for UN field missions (*draft*)
- 2010: Global Field Support Strategy: “Reduce the in-country environmental impact of peacekeeping and fieldbased special political missions

➤ **NATIONAL EV PROTECTION**

- Germany: Policy Directive on Environmental Protection in the Bundeswehr 1998, No. 7 and 2007
- U.S.: Department of Defense has directed armed forces to „comply with the law of war in the conduct of military operations and related activities in armed conflict, DOD Dir. 5100.77 (1979) + DoD Instruction 4715.6; April 24, 1996 (“Environmental Compliance”) + Army Regulation 200–1: Environmental Quality: Environmental Protection and Enhancement”
- JSP 418: MOD Sustainable Development & Environment Manual - Volume 1 (2005) + JSP 815, The Defence Environment and Safety Management-Handbook

- The environment is protected during hostilities to a certain extent and as long as within the scope of an international armed conflict.
- Such protection is, however, still ‘un- and under-developed’ when set in the context of non-international armed conflicts or countering eco-threats outside the scope of regular warfare.

- Report: „Protecting the environment during armed conflict” recommends e.g.:
 - “The terms widespread, long-term and severe within Articles 35 and 55 of Additional Protocol 1 to the 1949 Geneva Conventions should be clearly defined”
 - “The ICRC Guidelines on the Protection of the Environment during Armed Conflict (1994) require updating and subsequent consideration by the UN General Assembly for adoption, as appropriate”

CONCLUSION AND OUTLOOK

- The International Law Commission (ILC) should examine the existing international law for protecting the environment during armed conflict and recommend how it can be clarified, codified and expanded”
- “A permanent UN body to monitor violations and address compensation for environmental damage should be considered”

CONCLUSION AND OUTLOOK

- Environmental threats are a category on their own and pose a more comprehensive challenge than that of the issue of environmental protection during hostilities.
- Traditional legal safeguards under international law do not seem to sufficient when it comes to challenging these threats.

CONCLUSION AND OUTLOOK

- This presentation introduced the reader to the notion of environmental threats to global peace and security, so called ‘eco-threats’, and environmental protection during hostilities under (LOAC).
- A solution from a legal perspective would be the further development of the rules of proportionality of the use of force within the framework of environmental protection inside and outside the parameters of armed conflict.

NB: This presentation is based on my publication 'Eco Threats as Security Threats and the protection of the Environment during Hostilities', jointly with Professor J Sanden J, 94 *Amicus Curiae* 1-5

CONTACT:

sbachmann@bournemouth.ac.uk

Sanden@uni-leuphana.de

© Bachmann, Sanden 2014