

The Protection of Environment during Armed Conflict: A Review of IHL

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Abstract

International warfare in modern times results tremendous suffering for human being from mass killing of civilians to the exodus of millions of refugees. There are international legal instruments to save civilians, wounded soldiers and prisoners of war. But, the destruction of environment is a common phenomenon during modern war, which is overlooked by the policy makers. Therefore, this study is intended to demonstrate the body of international laws regarding the protection of environment during war. International Environmental Law is applicable in peace time. But, only International Humanitarian Law (IHL) is applicable during armed conflict. For that reason this article primarily denotes the conceptual framework of environmental protection and historical development of the environmental protection during war. Furthermore, the general, direct and indirect aspect of International Humanitarian Law regarding the protection of environment during war has been discussed. In addition, different international legal instruments including United Nations Resolutions have been evaluated. Finally, the paper concentrates on the limitations of International Humanitarian Law considering environmental protection during war.

Keywords: Protection of Environment, Armed Conflict, International Humanitarian Law (IHL).

Introduction

The demand of protection of environment during armed conflict did not come at current stage within a few decades rather it has a long history. The main argument behind the laws and regulations for environmental protection developed gradually from environmental peace movement at local stage to global stage. The changing pattern of environmental destruction and hazards by human beings changes the nature of laws and regulations. In addition, large scale destruction of environment during armed conflict gave rise the demands and formulations of international rules and regulations side by side others. Thus, world conventions and laws regarding the armed conflict

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incorporated several provisions to protect environment during armed conflict. It seems logical that International Environmental Law is applicable for the protection of environment from the scourge of war. But it is false because Environmental Law is applicable in peace time but not during war. Moreover, International Humanitarian Law is the only instrument which is applicable during armed conflict and considered as the 'law of war or armed conflict.' So the main focus of this paper is to find out the provisions of International Humanitarian Law which generally, directly or indirectly protects environment during war. Furthermore, others international treaties, United Nations Resolutions which directly or indirectly work for the safety of environment during war will be discussed.

Conceptual Framework and Methodology

When we discuss about the protection of environment during armed conflict, then the question of environmental security comes first. Furthermore, when we talk about the background or history of environmental protection, then we have to consider the environmental movement since the very long periods of environmentalists or naturalists. So, we can say that there are two broader spectrums to conceptualize the environmental protection during war. One is from the perspective of security and another is from the perspective of environmental movement. The first notion to theorize the environmental protection can be best achieved through the concept of expanding notion of security. The concept of security firstly defined in terms of realist approach that is only state centric tradition militaristic concept. In addition, there is no room for environmental protection. The main trend of security concept where the environmental protection is included is the non traditional approach of security, where the notion of environmental security has been clearly included. In addition, the protection of environment is seen as one of the vital option for the survival of mankind in the ecosystem. The redefining aspect of security thus included the concept of environmental protection. (See, Narrotam, 2000). Thus, we can generally conclude that from the perception of security, the concept of environmental protection is included in the broader spectrum of human security.

Secondly, if we see the issue of environmental protection as a broader sense of environmental movement, then we can conceptualize the issue as a matter of new social movement. There is no specific theoretical framework of new social movement. Timothy (2005) states that, the picture of global environmental movement has described through the theoretical framework of new social movement. There are many characteristics of new social movement. Jonathon and Joseph (1995) describe that major characteristics of new social movement (NSM). They state that NSMs often involve the new emergence of new dimensions of identity. The grievances are based on a set of beliefs, symbols, values, and meanings, rather than just on the economic grievances that characterized the working class movements.

Again this characteristic is more applicable to minority world's movements, though environmental movements do cross class divisions and other boundaries in majority worlds regularly. In addition, NSMs often involve personal and intimate aspects of human life, e.g. what we eat, wear and enjoy. Thus, the concept of environmental movement has been conceptualized in terms of new social movement.

There is no direct and concrete theoretical framework of environmental protection during war time. But the protection of environment under the spectrum of Non Traditional aspect of security and environmental movement based on the theoretical framework of New Social Movement can be best serve as the theoretical or conceptual framework of environmental protection. But these two aspects of theories don't include the environmental protection during war specifically. But it does not prohibit or deny the environmental protection during war.

This is an explanatory study. It has been conducted based on secondary data and analyzed in qualitative manner. Data sources are books, journals articles, organization websites etc. For operational definition, International Humanitarian Laws refers to the laws of armed conflict.

Development of the Concept of Environmental Protection during War

Major Environment literature states that the concept and law of environmental protection during war has emerged in the 20th century. As Malviya (1999) said that the law of environmental protection has been developed primarily in the twenty first century. In addition, the environmental movement as a form of social movement has also developed in 20th century. For example Taylor (2008) explains the history of environmental movement on the perspective of America. He states that, the environmental movement emerged in the early 20th Century as a collection of conservationists, naturalists and bird watchers. The movement grew slowly until government began recording natural resource impact of human activity, such as over hunting, timber clear cuts and strip mining. In the last half of the 20th Century the movement exploded world wide of the government recognition of the potential health effects of the environmental transgressions. Today, one is considered to be uncivilized if unconcerned about the environment. Today, environmental matters are free-for-all of global political pomposity and propaganda. Another writer, he is John McCormick (1989), who described that the Environmental movement had no clear beginning. There was no single event that sparked a mass movement, no orator or prophet who arose to fire the masses, few great battles lost or won, or few dramatic landmarks. The movement did not begin in one country and spread to another, it emerged at different places at different times and usually for different reasons. The earliest movements were local issues. Once the most immediate and personal costs of pollution or hunting or the lost of forests were appreciated. Individual formed groups,

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which formed coalitions, which became national movement and finally a multinational movement. This evolution was episodic, with periods of dynamic expansion interspersed with times of somnolence. So, we can say that the beginning of the history of environmental protection movement is a debatable issue but generally it started in 20th century as a major scale because of rapid destruction and pollution of environment through the rise of industrialization and growing tremendous nature of destruction of environment during warfare.

Environmental issue a transnational subject developed in the late of twenty century. Gabriel (2011) states that particularly since the 1960s, global environmental movements have proliferated with the awareness and politicization of environmental degradation and its relationship to the wider organization of modern societies in their economic, political and cultural aspects. Increased awareness around the connection between globalization and environmental degradation has led movements to take their struggle out of a purely national context. The 1992 UN Conference on Environment and Development (UNCED) is usually quoted as watershed for transnational actor involvement in global environmental politics, where close to 15, 00 NGOs organized a parallel conference and many more movements and NGOs rallied across the globe. Twenty years later, over 6,000 officially registered NGOs gathered in Johannesburg for the 2002 International Summit on Sustainable Development, alongside countless “unofficial” groups and movements. Movements and organizations across the world also campaigned on climate change in the run up to the UN Climate Change Conference in Copenhagen in December 2009. In addition the incorporation of environmental concern during armed conflict included into the major body of international law. The development of International Environmental Law in 20th century side by side the law of armed conflict was the apex moment of the environmental protection during wartime. Moreover, major international law including International Humanitarian Law, Human Rights Law, and Treaty Laws and so on incorporated environmental protectionist measures directly or indirectly into their provisions. But it is clear that the adoption of Additional Protocol I in 1977 of Four Geneva Convention clearly included about environmental protection during war directly. International Environmental Law is not applicable in war time. For that reason the following section will analyze the laws which directly or indirectly work for the protection of environment during armed conflict.

International Humanitarian Law (IHL) and the Protection of Environment

Merrema et. el. (2009) of UNEP state that the first body of laws for the protection of environment is the International Humanitarian Law. There are four major area of IHL the Treaty Law, Customary Law, Soft Law and Case Law. Firstly, the Treaty Law has three main branches for the protection of

environment during war. These are directly protection of environment, general principle applicable to all circumstances, and the provisions indirectly contain the measures of protection of environment during war.

IHL Provisions for Direct Protection of Environment during Armed Conflict

According to the report of UNEP (2009) there are many provisions directly aimed at environmental protection during war. These are briefly discussed as followed:

Additional Protocol I

Additional Protocol I to the 1949 Geneva Conventions, Article 35(3) and Article 55(1) (1977) directly deal with environmental protection during war. According to Hans-Peter Gasser (1997) Article 35 also added a new prohibition as general limitation on warfare: “It is prohibited to employ methods and means of warfare which are intended, or may be expected, to cause widespread, long term and severe damage to the natural environment.” This article includes some important words like “widespread”, “Long term” “severe damage” and “natural environment”. From this article it is clear that the means and methods of warfare which cause devastating, serious, long time, destruction on “natural environment” is strictly forbidden in terms of warfare. The Report of UNEP (2009) stated that in terms if Vietnam War, serious long term environmental damaged was caused by the United States forces.

Article 55 (1) of additional Protocol I drills with the protection of natural environment. The article states that, “Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.” It also added that “Attacks against the natural environment by way of reprisals are prohibited.”

These two articles of Additional Protocol I of Geneva Convention is applicable in international armed conflict at least when the conflict will run at least between two states. But in modern time the pattern of conflict has been changed from international to internal. The “new war debate” started very strongly among scholars. So the major deficiencies of these two articles are that it is not applicable in non international armed conflict. Whatever, these articles strongly and highly defense the natural environment during armed conflict. In addition another discrepancy is the lack of clarification of ‘widespread’ ‘long term’ ‘severe’ damage was raised by Merrema et al (2009).

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UN Convention on the Prohibition of Military or Any Other Use of Environmental Modification Techniques (ENMOD) (1976)

The second important aspect of direct protection of natural environment mentioned in the UNEP (2009) Report was United Nations Conventions on the Prohibition of Military or Any Other Use of Environmental Modification Techniques (ENMOD) (1976). This convention was convened by the United Nations because of the previous wide spread destruction of environment by the U.S forces in Vietnam War. The U.S forces attacked on Environment to instigate earthquake, tsunami, and natural disaster and so on. They try to use the environment as weapons. By the destruction of environment or by attacking on environment, U.S forces wanted to greatly harm the people of Vietnam. So this convention was established against the reaction to use environmental modification technique by U.S military in Vietnam and included provisions of such use of environmental modification techniques in warfare. Article 1 of this convention states that, ““each State Party to this Convention undertakes not to engage in 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.” There are some similarities and dissimilarities between article 35 of additional protocol I and ENMOD article 1. Moreover, the ENMOD’s article 1 is more congenial for environmental protection rather than article 35 of Additional Protocol 1 regarding the “Long Term” and “Long Lasting” effects. According to the report the ‘long term’ effect in article 35 refers to decades but in article 1 “long lasting” refers to moth or a season. Thus, we can say that the ENMOD provisions are better initiatives to preserve the environment from the deadly course of modern warfare.

Prohibition on the Use of Certain Types of Conventional Weapons 1980

Furthermore, the UNEP (2009) report rightly mentioned another convention that include the direct environmental protection during wartime that is “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 (CCW), and its Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons (1980).” It is also known as “Convention on Certain Conventional Weapons and the Inhumane Weapons Convention). The preamble of this convention states that, ““it is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment”. Further amendments of this article in 2001 strengthen its spectrum to Non-International Armed conflict also. In addition, Article 2(4) of the CCW Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons also directly addresses

environmental protection, as it prohibits “making forests or other kinds of plant cover the subject of an 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.”

These three sets of rules including the Additional Protocol I, ENMOD, and CCW and its additional protocol III will enforce the environmental protection directly during armed conflict at any corner of the world. So the strict implementation of these three set of rules is necessary by international institutions.

The Chemical Weapon Convention 1993

The chemical weapon has tremendous effects on environment and human lives. The tremendous effects of Chemical weapons on human lives and environment forced nations to ban this weapon. Poll and Bolley and Pool (2011) rightly outlined that “the Chemical Weapons Convention was adopted in January 1993;it only came into force in 1997.” According the Chemical Weapons convention all kinds of use, development and stockpiling of Chemical weapons is forbidden. In case of destruction the stocked chemical weapons environmental consideration must be estimated. According to the Mrema et al (2009) “chemical substances has both acute impact on natural environment.” In addition, Bolley and Poll states that Articles 4(10), 5(11) and 7(1) of the Chemical Weapons Convention mandate States Parties to ensure the protection of the environment during transportation, sampling, storage, destruction and implementation of all chemical weapons. So these three articles can be considered as major protection of environment under this Chemical Weapons Conventions. Moreover, the Convention has forbidden in its first article to use chemical weapons in any circumstance. For that reason it is also forbidden to harm environment by chemical weapons substances during war or peace time.

The Convention on the Anti-Personnel Mines 1997

The Convention on the Anti-Personnel Mine imposes restriction or obligation on state parties in terms of the use of Anti-Personnel Mine. It was adopted in 1997 and imposed restriction of its use in armed conflict. Bolley and Pool state that the regulation of Anti Personnel Mine related to environment in terms of its destruction. When any destruction of Anti-Personnel Mine will be conducted by the state parties, then should estimate the environmental costs and hazards. Thus, the Anti-personnel Mine convention is related directly with the protection of environment. It is also widely known as Ottawa Treaty 1977.

The Bacteriological Weapons Conventions 1972

The Bacteriological Weapons Conference prohibits the degradation of natural environment. In any case of degradation the Security Council will take measures according to the level of degradation. As, Bolley and Pool

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(2011:111) furthermore mentioned that “the Bacteriological Convention of 1972 does not prohibit the use of Bacteriological weapons as such as this is specifically provided for under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Cases and of Bacteriological Methods of Warfare of 1925. The Bacteriological Weapons Convention extends beyond the latter, however, in one significant respect, namely by prohibiting the degradation of the natural environment.” Thus the bacteriological convention stimulates the environmental protection by limiting on environmental destruction and hazards.

The Nuclear Weapon Treaty

The Nuclear Weapon treaty does not ban the nuclear weapons use during warfare even did not include any provision regarding the environmental protection and the concern of future generation. The Hiroshima and Nagasaki of Japan is the sparkling example of direct effects of nuclear bombing. According to Bolley and Poll the Nuclear Weapon Treaty of 1968 is for the nuclear disarmament. A judgment of ICJ (1996”) stated that the use of nuclear weapons would be “serious danger for future generation|” and has “potential to damage the future environment, food and marine ecosystem”, including “genetic defects and illness in future generation.” But, the judgment did not forbade the use of nuclear weapon but supported its use in case of self defense by estimating the cost of military necessity and proportionality which indirectly include the protection of environment during armed conflict.

The General Provisions of IHL Regarding Which can be Applicable in case of the Protection of Environment

Except the specific protection of environment during warfare, the broader body of International Humanitarian law also incorporated few common or general restrictions on the means and means and methods of warfare which can govern also the environmental protection measures. These general principles of IHL are discussed below with special attention to the environmental protection during armed conflict.

Poll and Bolley (2011) stated that “the general principles of international law applicable in armed conflict are regarded as a source of law in accordance with Article 38(1) of the Statute of the ICJ.” These all are applicable to all state parties. According to the Report of UNEP (2009) the most important norms and values for the protection of environment originated from the Martens clause. The Martens clause states that, ““Until a more complete code of the laws of war has been issued, the high contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates

of the public conscience.” According to the report the important thing of this clause is the “humanity” and public “conscience”. Now let us describe these two propositions in a way which link up environmental protection during war or conflict.

Principle of Humanity

The Martens clause states that until there will not exist any specific rules regarding any matter or specific aspects into the body of international law then the humanitarian concern will get preference. It means that the state party will judge any inhuman act or method of warfare with the sense of humanity. In this regard, if there is no existence of any international customary laws and regulations regarding the protection of environment, then the principle of humanity will be applicable and justified by the conflicting parties. It is assumed that the environmental protection by the principle of humanity will get momentum during armed conflict.

The Matter of Public Conscience

Another important aspect of Martens clause can be said as the issue of public conscience will be regarded as the parameter whether environment destruction is right or wrong during war. Generally the clarification of public mind or brain in case of widespread destruction of environment will not allow it right but wrong. From that perspective environmental protection during the war is a matter of morality. In realist view there is no place of morality in international politics but according to the Martens clause morality should be incorporated in case of warfare in the absence of international treaty, rules and regulations.

Other General Protection of Environment under IHL

Except the Martens clause there are few general aspects of prohibition on the means and methods of warfare which also applicable in terms of protection of environment. Poll and Bolley (2011) and UNEP (2009) and other authors also identified these aspects. These are the principle of distinction, military necessity and proportionality. These principles are briefly discussed by linking up with the protection of environment during armed conflict.

The Principle of Distinction

The most important principles in the battle field there should be made a clear distinction between “civilian” and “military objects” and “civilian” and “combatant”. St. Petersburg (1868) presented in its preamble that “the only legitimate object which state should Endeavour to accomplish during war is to weaken the military forces of the enemy.” Furthermore, the United Nations Resolution 2444 states that, “a distinction must be made at all times between combatants and civilians.” In addition, Article 52 (1) of Additional Protocol I strictly limited the scope of attack without military objectives. Military objectives are also those objectives which are solely used for

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military purposes and bases. By the principle of distinction any environmental objects generally as civilian is not be targeted by military forces because it may cause superfluous injury to the civilian population. Thus by the principle of distinction environment can be protected during war or armed conflict. Mrema et al (2009) outlined some deficiencies of this principle in their report of UNEP and required further clarification of that.

The Principle of Military Necessity

Another general principle of IHL is the principle of military necessity in case of attack. This principle generally states that when any attack will be conducted against the opponent then military necessity must be counted. As Poll and Bolly (2011) states that the principle of military necessity first included into Lieber Code at article 14 of 1863 which states that, ““use of force is only justified to the extent it is necessary to achieve a defined military objective.” In addition they also mentioned the Fourth Geneva Convention for further clarification of principle of military necessity by mentioning Article 23 (g) that refers to enemy property and stipulates that it is forbidden “to destroy or seize the enemy’s property, unless such destruction or seizure be imperatively demanded by necessities of war”. This provision is of particular relevance to the natural environment as “enemy property” may include protected areas, environmental goods and high-value natural resources. These resources could thus be granted indirect protection through the principle of military necessity as articulated in Article 23(g) of the Fourth Hague Convention. Thus, the principle of military necessity can save the natural environment and environmental resources during warfare.

The Principle of Proportionality

Before conducting any attack the proportionality of benefit rather than cost must be estimated correctly as higher. If the benefit is obviously more than the cost or damage then the attack may be permitted by the rules of IHL otherwise it is forbidden. The UNEP reports states that, “Based on the principle of proportionality codified in Article 57 of Additional Protocol I, disproportionate attacks are those in which the “collateral damage” would be regarded as excessive in relation to the anticipated direct military advantage gained. Destroying an entire village or burning an entire forest to reach a single minor target, for example, would be considered a disproportionate strategy in relation to the military gain.” There are several instances of disproportionate attack by military forces during Gulf War, Afghanistan War and Iraq war. Thus, the principle of proportionality forbids any collateral damage to natural environment.

Indirect Protection of Environment under IHL during War

International Humanitarian Law has certain aspects which is applicable indirectly in several circumstances including environmental protection during armed conflict. Scholarly literature (UNEP Report, (2009) and Pool

and Bolly (2011) identifies few areas of indirect protection of environment under IHL. Poll and Bolly state that there are five major area of treaty law which can be categorized as the direct protectionists guard of environment during war. These are namely: “(a) rules limiting or prohibiting certain weapons and methods of warfare; (b) clauses protecting civilian objects and property; (c) clauses protecting cultural sites; (d) rules pertaining to installations containing dangerous forces; and (e) limitations on certain specifically defined areas.” These areas are briefly discussed as follows:

Limitations to the Means and Methods of Armed Conflict or War

Conflicting parties cannot use all means and methods to harm the opposition forces as their wishes. There are many prohibited weapons under international treaty law. Those prohibited weapons and methods have dangerous repercussion on human lives and physical environment or natural environment. For example, the Hague Convention of 1899 and 1907, article 22 states that, ““The rights of belligerents to adopt means of injuring the enemy are not unlimited.” In addition, the first Peace Conference of The Hague (1899) declared the use of “dum-dum” Bullets and of poison and poisoned weapons to be illegal. Poison and poisonous gas has tremendous effects on human lives and environment also. Especially the Hague laws are concerned with the aspect of setting limitations on the means and methods of warfare. UNEP report has rightly mentioned that the rate of implementation of Hague law is very insufficient during war.

Protection of Civilian Objects and Property

There are clear articles in IHL about the protection civilian objects and property. Generally the civilian objects are those objects which is not being used as military purpose or object. Moreover, environment is primarily not used as military purpose or object. For that reason it is civilian object. In addition, environmental resources are scarce in nature and not unlimited. General people are dependent on environment. In many cases, the whole people of a region may be fully dependent on environmental resources. So harming of environment is to harm of civilian populations. For that reason, environmental protection is mandatory indirectly under IHL.

The Protection of Cultural Property

There are very specific articles in international humanitarian law regarding the protection of cultural heritage. In 1954, the Convention for the Protection of Cultural Property in the Event of Armed Conflict was adopted under the Auspices of United Nations Educational, Scientific and Cultural Organizations. The Conventions imposes restrictions on conflicting parties on cultural properties and heritages during armed conflict. As if the convention directly does not include the protection of natural environment but indirectly there is indication of environmental protection. For example, Schmitt (2003) states that although there is no direct provision regarding the protection of environment but the widespread damage of environment can

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harm or destroy the cultural resources. Thus, cultural property protection indirectly supports the protection of environment for its safety. The same argument revealed in other literature also.

Protection of Dangerous Objects

IHL also incorporated the protection of industrial installation containing dangerous forces like dam, dykes, hydrological power plant and so forth. For example, Article 56 of Additional Protocol clearly demonstrates that, ““works or installations containing dangerous forces” including “dams, dykes and nuclear electrical generating stations” as objects of attack, even though these objects may be military objectives. Pool and Bolly added that, Yet it is noticeable that oil fields and petrochemical plants are not, for example, explicitly mentioned and may, according to UNEP, “have been intentionally excluded.” The additional protocol II article 15 prohibits these provisions in terms of Non International Armed Conflict. A critic about these provisions also demonstrates that if the provision prohibits on the attack on oil field then it become difficult to capture Iraq by U.S force because there were available oil field in Middle Eastern states.

Limitation of Attacks based on Targeted Area

According to Pool and Bolly, limitation based on targeted area can be subdivided into three categories. The UNEP Report also includes this issue. Other literatures regarding the protection of environment during wartime also incorporated this issue. Whatever, the three categories are: territories under occupation; neutral territories; and demilitarized zones. Attacks in these three areas are forbidden under IHL. So automatic protection of environment incipiently included into provisions related to these tree aspects.

Other International Instruments of Environmental Protection during War

The main protectionist’s measures of environment during armed conflict have been discussed above. Now let us discuss few important measures regarding direct environmental protection during armed conflict.

Rome Statute of International Criminal Court (ICC)

Article 8 of Rome Statute of International Criminal Court deals with war crime and defined the activities which will be considered as war crimes. It states that the violation of all Four Geneva Convention of 1949 shall be considered as war crimes. Article 8 (2) (b) (IV) concretely contains about the punishment of environmental destruction: “Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.” will be considered as war crime. The state parties of Rome

Statute should obey it. Any violation of this Statute by the authority of any state or military force may face legal procedures under ICC. Thus, Rome Statute is a modern time instrument for environmental protection during armed conflict.

Declaration of UN Conference on the Human Environment (Stockholm Declaration, 1972)

The UNEP report included the United Nations Conference on the Human Environment convened at Stockholm which contains 26 principles regarding human and their environment. There are two principles what bear the questions whether International Environmental Law applies during armed conflict. The First, Principle 21 provides the foundational basis of the conference by stating that: ““States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.” Thus the question of applicability of IEL during armed conflict remains vague. The final clause, 26 more specifically connote about to reach an international agreement to get ride from the danger of nuclear arsenals. It also denote to the complete elimination of nuclear arsenal. Thus, it is clear how this declaration is related with environmental protection during armed conflict.

General Assembly Resolution 37/7 (1982)

The UNEP Report also contains another important body of protection of environment from the scourge war that is “World Charter for Nature, UNGA Resolution 37/7 (1988). It has three important principles regarding the environmental protection during warfare. Principles 11 states that, “nature shall be secured against degradation, caused by warfare or other hostile activities.” Moreover, this principles also mandates that, “activities which might have an impact on nature shall be controlled, and the best available technologies that minimize significant risks to nature or other adverse effects shall be used.” Finally, principle 20 regarding implementation states that, “military activities damaging the nature shall be avoided.” Thus the resolution contributes to the protection of natural environment.

Rio Declaration (1992)

The Report also mentioned the Declaration on Environment and Development (Rio Declaration) in 1992. The conference was briefly about the treatment of environment during armed conflict, the UN Conference on Environment and Development convened at Rio de Janeiro of Brazil. The main theme of the conference comes out was the principles sustainable development. The declaration outlined 21 principles for sustainable

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development for the long term protection of environment for the future generation. In 2002, another international summit on Sustainable Development was held reaffirming the support on these 21 principles. The vast majority of the literature of 21 principles directly not concerned with environmental protection during war time but peace time. According to the Report the implementing section 39.6 states that, “measures in accordance with international law should be considered to address in times of armed conflict, large-scale destruction of the environment that cannot be justified under international law.” Thus we can say that there is aspect of environmental protection during war time in Rio Declaration.

United Nations General Assembly Resolution 47/37 Protection of Environment in Times of Armed Conflict 1993

Another important measure has been taken by the United Nations General Assembly was the UNGA Resolution 47/37 Protection of Environment in Times of Armed Conflict, 1993. According to the UNEP (2009) Report, the Preamble recognizes “the importance of provisions of international law applicable to the protection of environment during armed conflict.” Furthermore, paragraph 1 urges states parties to take measures to do so. In addition paragraph 3 “urges States to take steps to incorporate the provisions of international law applicable to the protection of the environment into their military manuals and to ensure that they are effectively disseminated.” Thus the general assembly resolution contributed to the protection of natural environment during armed conflict.

Limitation of International Humanitarian Law Regarding Environmental Protection

Now it is clear that international humanitarian law or at broader spectrum internal law has deficiencies regarding the protection of environment during armed conflict. The major limitations are as follows: All existing provisions of international law considering the protection of environment in the case of international armed conflict. But the pattern of armed conflict has been changed as the “new war” debate is going on. The pattern of interstate or international armed conflict turned into internal conflict or civil war. There are no strong laws regarding environmental protection during non international armed conflict. As If, the Additional Protocol II is exists but not ratified by major parties and not mandatory for all. The UNEP reports states that, there is no central permanent implementation agency of international law against severe damage of environmental protection. In addition, the general principles of IHL are not enough for the protection of environment during armed conflict. There is a great lack of clarification for environmental protection in IHL. Some provisions indirectly support the environmental protection and can create vague when any debate will arise. Thus, international law is not sufficient for the protection of environment. In essence, UNEP rightly mentioned that there is a great lack of implementation of existing laws regarding environmental protection.

Conclusion

From above discussion it is clear that the only instrument to protect environment during armed conflict is international humanitarian law. As International Environmental Law is applicable in peace time, so it does not directly include the preservation of environment in terms of war. There are few general, direct and indirect provisions of International Humanitarian Law regarding the protection of environment during armed conflict. But, these provisions are not enough for the protection of environment from the scourge of deadly conflict. So, it is high time to enact new rules and regulations for the safety of environment from the hand of massive destruction in future during war. Otherwise, the existence of human and other animals' lives will be severely threatened. Finally I want to conclude by the following wording that "The General Assembly...invites all States to disseminate widely the revised guidelines for military manuals and instructions on the protection of the environment in times of armed conflict" (cited in Gaser, 2014).

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