

Inclusion of HR and IHL within the threshold of International Environmental Law: A Comparative Analysis on the Kaleidoscopic Regime of Environmental Law

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Abstract

The scope of International Environmental Law is wide and diverse. Due to growing tendency of international trade and the transboundary consequences of pollution and natural resource degradation, environmental issues are now no longer domestic matter. But when we are attempting to decide the boundaries of environmental law, no specific definition may be applied. Like many different branches of international law, environmental regulation is interdisciplinary, intersecting and overlapping with several different areas of studies, including economics, political science, ecology, human rights and navigation/admiralty. In spite of the proliferations of international environmental agreements, environmental hazards and new environmental challenges have continued to emerge due to the failure of apprehending inter-linkages between environmental problems with different international laws including human rights and humanitarian law. This paper focuses on issues relating to the International Environmental Law with other branches of Public International Law like Human Rights and Humanitarian law and their interlinking relation to promote and protect safe and healthy environment in the light of international instruments and few important cases in environmental fields.

Introduction

Environment has become the central idea of modern International law which in many circumstances promotes the idea that environment and human rights are inseparable and need to be addressed together. The UN Charter marked the beginnings of modern international human rights law.ⁱ The Charter reaffirmed the faith of peoples of United Nations in fundamental human rightsⁱⁱ and provided that one of the UNs purposes was to promote and encourage respect for human rights and fundamental freedoms for all without distinction as to the race, sex, language or religion.ⁱⁱⁱ But the UN Charter does not identify the human rights and fundamental freedoms nor it does provide any support for a clean and healthy environment. The first international human rights instrument UDHR^{iv} who adopted by the General Assembly in 1948 and the declaration was subsequently supplemented in 1966 by two treaties namely ICCPR^v and ICESCR^{vi}. Only ICESCR recognises a link between the environment and human rights but it fails to identify environmental rights as being subject to specific rules of protection.^{vii}

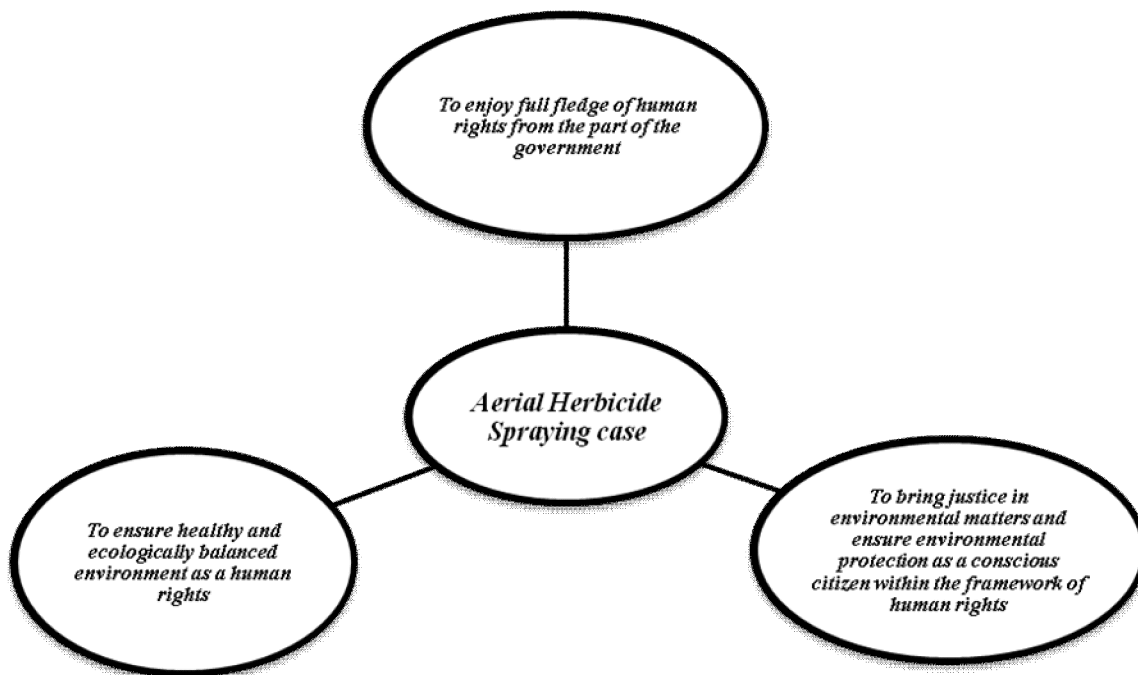
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Military activities may have significant impacts upon the environment.^{viii} The environmental impacts of military activities are well documented in many armed conflicts like conflicts in Afghanistan and Iraq. International environmental law addresses the link between military activities and the environmental protection. Recent treaties have addressed environment protection during the conflict situation. This paper examines the fiduciary relationship of environment with human rights and international humanitarian law as a comparative mode of study.

Relations with Human Rights

The linkage between human rights and the environment are now widely recognised. The issues of relations were raised in the *Aerial Herbicide Spraying case*^{ix} filed at the ICJ by Ecuador against Colombia which instituted proceedings against Colombia in respect of a dispute concerning the alleged “aerial spraying [by Colombia] of toxic herbicides at locations near, at and across its border with Ecuador”. If we go by the judgement of the mentioned case, following things have been narrated specifically therein. The environment is essential:



Like many international disputes, Aerial Herbicide Spraying Case raised a large number of issues “beyond simply Ecuador’s environmental claims, such as potential third-party liability and Colombia’s unauthorized unilateral uses of force in Ecuadorian territory. However, it was an unprecedented opportunity for the ICJ to examine the substantive and procedural aspects of a State’s sic utere obligation of prevention, and to balance two competing essential interests in the

event Colombia adopts a state of necessity defence.”^x These two issues have the potential to restructure the future of lawsuit relating to transnational contamination and the body of international environmental law for the twenty first century. In this case the ICJ recognised that environment is essential for human existence and for enjoying full fledge of human rights from the part of the government and for ensuring healthy and ecologically balanced environment as human rights. Furthermore, ICJ in this case acknowledged that protection of environment is needed for ensuring justice in ecological matters and for ensuring ecological safety as a conscious citizen within the framework of human rights.

The UN general assembly first recognised the relationship between the quality of the human environment and enjoyment of basic rights by UNGA resolution no 2398.^{xi} The 1972 Stockholm Declaration^{xii} proclaimed that natural and man-made environment is essential to human beings and to enjoyment of basic human rights. Principle 1 says *‘Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.’*^{xiii}

The UN Declaration on Indigenous Peoples rights^{xiv} emphasises a close relationship of indigenous people with their environment, recognising rights over lands and other natural resources. From time immemorial, indigenous peoples have maintained a special relationship with the land, their source of livelihood and sustenance and the basis of their very existence as communities. The issues of land, territory and access to natural resources remain central to observing the human rights and fundamental freedoms of indigenous peoples.^{xv} The nature and importance of those relationships is fundamental for both the material subsistence and the cultural integrity of many indigenous peoples.^{xvi}

Therefore, the constitutions of more than 100 states expressly recognise the right to clean environment like the Charter of Fundamental Rights of the European Union article 37^{xvii}. A state has a duty to protect and preserve the environment, says the constitution of China, Germany, Greece, Honduras, Mexico, Netherland, Nigeria, Panama, Romania, Taiwan, and Thailand.^{xviii} But, neither the fundamental rights nor the preamble or the state policies in Constitution of Bangladesh mentions any right to healthy and clean environment.

Relations with Economic and Social Rights

Accepting general, economic, social and cultural rights into specific environmental standards is not an easy task. Environmental issues are mentioned in Articles 22,^{xix} 25^{xx}, of UDHR, Articles 11(1)^{xxi}, 12(1)^{xxii} and 2(b)^{xxiii}, 1(2)^{xxiv}, 7(b)^{xxv}, 15(1) (b)^{xxvi} of ICESCR. Only two regional human rights treaties expressly recognise environmental rights namely, African Charter^{xxvii} 1981 and San Salvador Protocol^{xxviii} 1969. The Salvador Protocol distinguishes between the right of individual

'to live in healthy environment' and the positive obligation of the states to protect, preserve and improve the environment.^{xxxix}

However in the absence of specific, binding international standards, it may be more difficult to claim environmental justice within the jurisdiction of a court. In *Lopez Ostra vs Spain*^{xxx} case Mrs Lopez Ostra lived twelve meters from a plant treating liquid and solid waters, which had been built on municipal land with the support of state subsidy and had been operated without licence. The plant gave off fumes that cause a nuisance to Mrs Lopez Ostra and her daughter and caused them to temporarily leave their home. Having failed in proceedings in Spain, she brought proceedings before the European Court of Human Rights on the grounds that she was the victim of violation of the right to respect for her home that made her private and family life impossible. The court says, "Naturally, severe environmental pollution may affect individuals well being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, seriously endangering their health."^{xxxi} Whether the question is analysed in terms of positive duty of the state- to take reasonable and appropriate measures to secure the applicants right...or in terms of an 'interference by the public authority' to be justified...the applicable principles are broadly similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, and in any case the states enjoy a certain margin of appreciation."^{xxxii}

The court found that the plant caused nuisance and serious health problems and Spain had not succeeded in striking a fair balance between the interest of the town's economic well being – that of having a waste - treatment plant and the applicant's effective enjoyment of her right to respect for her home and her private and family life.

In *Guerra and Others vs Italy*^{xxxiii} the applicants were citizens living near to a factory that produced fertilizers, realised large amount of inflammable gas and other toxic substances into the atmosphere, and had been the source of an explosion realising arsenic trioxide and causing 150 people to be hospitalized with acute arsenic poisoning. The court held that the direct effect of the toxic emissions on the applicant's rights to respect for their private and family life made impossible. The court awarded 10 million as damages for each applicant. Similarly in Bangladesh, the Supreme Court has interpreted the right to life to include the protection and preservation of the environment and ecological balance free from pollution of air and water.^{xxxiv}

Relations with Civil and Political Rights

Civil and political rights and obligation are established by several environmental treaties and other international instruments at the global and regional level.^{xxxv} Civil and political rights which are relevant to environment protection are included in Articles 6(1)^{xxxvi}, 7^{xxxvii}, 25^{xxxviii}, 3^{xxxix}, 14(1)^{xl}, 17^{xli}, 27^{xlii} of ICCPR Articles 7^{xliii}, 8^{xliv}, 10^{xlvi}, 12^{xlvi}, 17^{xlvi}, of UDHR. The inter American court of Human Rights has developed the notion of procedural rights in its case laws. In *San Mateo de Huanchor vs Suriname*^{xlvi} Admissibility Decision of 15 October 2004, Para 12, it required an environmental impact assessment to be carried out. As it was related to pollution from

a field of toxic waste sludge, the commissions adopted precautionary measures requiring an environmental impact assessment for the removal of the sludge.^{xlix}

In *Samaraka vs Suriname*¹, Case no 172, Para 129, relation to indigenous rights, the court upheld rights of participation, consultation and information, as well as obligation to carry out an environmental impact assessment. The court emphasised the importance of participation, consultation, environmental impact assessments, access to information and prior informed consent.^{li} Many of the principles set out in the 1992 Rio Declaration^{lii} and the 1972 Stockholm Declaration^{liii}, which reflect state practice at global and regional levels, will be familiar to the human rights lawyers who have worked on civil and political rights.

Relations with Armed Conflict

Military activities may have significant impacts upon the environment.^{liv} The environmental impacts of military activities are well documented in many armed conflicts like conflicts in Afghanistan.^{lv} International Law addresses the link between military activities and the environmental protection.^{lvi} Recent treaties have addressed environment protection during the conflict situation. The main aim of IHL is to protect the civilian population during armed conflict and also to ensure its survival.^{lvii} So it also seeks to protect the natural environment because, without which human life is impossible. IHL protects the environment in two ways:

- ✓ The environment is civilian in nature and cannot be attacked, unless it has been turned into a military objective. In addition, environmental destruction has to be taken into account when assessing the proportionality of an attack at time of conflict.^{lviii}
- ✓ Making military personnel aware of their obligation to respect and protect the environment during armed conflict by the way of Guidelines.^{lix}

Furthermore, As Principle 26^{lx} of Stockholm Declaration 1972 and the principle 24^{lxi} of the Rio Declaration have little relation for the protection of environment, the 1997 Watercourses Convention^{lxii} adopt a different approach in its article 26.

General and Special Rules of Environmental Protection

International Law of the war limits the means and methods of warfare.^{lxiii} These rules and customary law were developed to protect humans and their property including environment; the preamble of 'Martens Clause'^{lxiv} is the example of this. The Additional Protocol I to the 1949 Geneva Conventions provides that- In any armed conflict, the right of the parties to the conflict to choose methods or means of warfare is not unlimited. There are some provisions of international instruments which have referred environmental protection; few are direct and are general in nature.

Direct provisions for environmental protection:

- Convention on the prohibition of military or any hostile use of environmental modification techniques (ENMOD), 10 December 1976, Article I , Article 2
- Additional protocol 1 to the Geneva Conventions, Article 35 (3) and Article 55 (1)
- Convention on certain conventional weapons (CCW)

General provisions:

- The principle of proportionality
- The principle of humanity
- The principle of distinction
- The principle of military necessity

Indirect provisions:

- Protection of civilian objects and property
- Protection of cultural heritages
- Protection of industrial installations containing dangerous forces
- Limitation on means and methods of warfare
- Limitations based on targeted area

Treaty obligations prohibit certain forms of weaponry and warfare that are particularly harmful to the environment, although these rules are designed to protect people rather than the environment.^{lxv} The article 36 of Additional Protocol I 1977 states that parties must assess new weapons and means and methods of warfare to determine whether, in their employment they would be prohibited by the protocol or by any other applicable rule of International Law. Moreover, the preamble of Inhumane Weapons Convention 1980 identifies the environment protection.^{lxvi} More specific provisions to the environment protection are mentioned in Articles 56(1) (2)^{lxvii}, 85(3) (5)^{lxviii} of Additional Protocol I 1977, Article 8(2) Statute of International Criminal Court 1998, and the Article 15^{lxix} of Additional Protocol II 1977. The Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques 1977 (ENMOD Convention^{lxx}) defines rules for protecting environment from consequence of military activities. The Convention defines in Article II '*environmental modification techniques*'. The Article 35(3)^{lxxi} of Additional Protocol I mentioned '*prohibited to employ methods and means of warfare which are intended to cause widespread, long term and severe damage to the natural environment.*'

In the Advisory Opinion on nuclear weapon 1996 reports 242 para 31, the ICJ noted that the provisions of Additional Protocol I provide additional protection for the environment, and impose powerful constraints for all the states having subscribed these provisions.^{lxxii} Iraq's invasion of Kuwait in August 1990 led the Security Council to consider, for the first time, the responsibility of the states for the adverse environmental consequences of unlawful military acts.^{lxxiii} Security Council Resolution 687/1991^{lxxiv} reaffirmed that Iraq was liable under International Law for environmental damage and the depletion of natural resources, resulting from the unlawful invasion and occupation of Kuwait.

Conclusion

Most of the human rights treaties do not expressly refer the relations, but few conventions recognise that the failure to protect the environment may give rise to individual human rights violation^{lxxxv} particularly in relation to rights associated with the enjoyment of person's home and property. Some convention recognises that the collective interest of the community in taking steps to protect the environment may justify reasonable interference with property or other rights.^{lxxxvi}

The existence of norms of global environmental law as a custom and that they may be relevant equally within the time of armed conflict has to be referred to in the advisory opinion of legality of the use of nuclear weapon case. The principle problems remain to be reconciled, because most of the current and ongoing conflicts are internal. If we need to ensure the protection of environment inside the IHL framework, we will have to apply general concepts of customary law for filling this gap of relevant law to internal conflicts.

All the States are not party of many global treaties, so it is therefore essential for the nation to turn out to be party to the fundamental treaties to ensure environmental safety in real and active manner. A fiduciary relationship should be set up for giving environmental safety each International Armed Conflict (IAC) and Non International Armed Conflict (NIAC) that can be possible by updating ICRC recommendation in domestic legislation. The applicability of environmental law within the framework of Humanitarian law during internal conflicts is contentious because the IHL treaties are *lex specialis* in nature. Therefore, the connection among these two needs is to be clarified to ensure the protection of environmental safety. One of the extensive implications would be the clear utility of IEL to the all situation along with non international armed conflicts.

Endnote

- i Philippe Sands, Jacqueline Peel, Ruth MacKenzie, *Principles of International Environmental Law* (Revised Edition, Cambridge University Press, 2012) 777
- ii Preamble of the United Nations Charter
- iii Article 1 (3) of UN Charter
- iv The Universal Declaration of Human Rights (Universal Declaration) is an international document that states basic rights and fundamental freedoms to which all human beings are entitled. The Universal Declaration was adopted by the General Assembly of the United Nations on 10 December 1948. Motivated by the experiences of the preceding world wars, the Universal Declaration was the first time that countries agreed on a comprehensive statement of inalienable human rights.
- v The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and in force from 23 March 1976. It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. As of April 2014, the Covenant has 74 signatories and 168 parties
- vi This Covenant spells out in more detail the economic, social and cultural rights enumerated earlier in the Universal Declaration on Human Rights and is legally binding on those countries that have ratified it. The ICESCR includes the right to work, to just and favorable conditions of work, to form and join trade unions, to family life, to an adequate standard of living, to the highest attainable standard of health, to education, and to take part in cultural life. It prohibits all forms of discrimination in the enjoyment of these rights, including on the basis of sex, and requires that countries ensure the equal rights of women and men
- vii Interights (Organization), *Interights Bulletin* (Volume 6, Issue 1 International Centre for the Legal Protection of Human Rights, 1991) 63
- viii Michael J. Lawrence, Holly L.J. Stemberger, Aaron J. Zolderdo, Daniel P. Struthers, and Steven J. Cooke, 'The effects of modern war and military activities on biodiversity and the environment' (2015) 23 *Environ. Rev.* < <http://www.nrcresearchpress.com/doi/pdf/10.1139/er-2015-0039>> accessed 10 February 2017
- ix Aerial Herbicide Spraying (Ecuador v. Colombia), Order of 25 June 2010, I.C.J. Reports 2010 ,p.307
- x Robert Esposito, The ICJ and the future of transboundary harm disputes: a preliminary analysis of the case Concerning Aerial Herbicide Spraying (Ecuador V. Colombia), *Pace Int'l L. Rev. Online Companion* [Vol. 2:1 2010], 7
- xi XXIII, Problems of the Human Environment
- xii The United Nations Conference on the Human Environment, having met at Stockholm from 5 to 16 June 1972, having considered the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment. The meeting agreed upon a Declaration containing 26 principles concerning the environment and development; an Action Plan with 109 recommendations, and a Resolution
- xiii Principle 1 of Stockholm Declaration 1972
- xiv On September 13, 2007 the UN General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples. This followed more than twenty years of discussion within the UN system. Indigenous representatives played a key role in the development of this Declaration. There are over 370 million indigenous people in Africa, the Americas, Asia, Europe and the Pacific. They are

among the most impoverished, marginalized and frequently victimized people in the world. This universal human rights instrument is celebrated globally as a symbol of triumph and hope. While it is not legally binding on States, and does not, therefore, impose legal obligations on governments, the Declaration carries considerable moral force. The text recognizes the wide range of basic human rights and fundamental freedoms of indigenous peoples. Among these are the right to unrestricted self-determination, an inalienable collective right to the ownership, use and control of lands, territories and other natural resources, their rights in terms of maintaining and developing their own political, religious, cultural and educational institutions along with the protection of their cultural and intellectual property. The Declaration highlights the requirement for prior and informed consultation, participation and consent in activities of any kind that impact on indigenous peoples, their property or territories. It also establishes the requirement for fair and adequate compensation for violation of the rights recognised in the Declaration and establishes guarantees against ethnocide and genocide. The Declaration also provides for fair and mutually acceptable procedures to resolve conflicts between indigenous peoples and States, including procedures such as negotiations, mediation, arbitration, national courts and international and regional mechanisms for denouncing and examining human rights violations

xv A Manual for National Human Rights Institutions, The United Nations Declaration on the Rights of Indigenous Peoples 2013, <<http://www.ohchr.org/Documents/Issues/IPeoples/UNDRIPManualForNHRIs.pdf>> accessed 10 February 2015

xvi Ibid

xvii A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development

xviii Robert Esposito, The ICJ and the future of transboundary harm disputes: a preliminary analysis of the case Concerning Aerial Herbicide Spraying (Ecuador V. Colombia), *Pace Int'l L. Rev. Online Companion* [Vol. 2:1 2010], 13

xix Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality

xx (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection

xxi 1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent

xxii 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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- xxiii (b) The improvement of all aspects of environmental and industrial hygiene
- xxiv 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence
- xxv The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (b) Safe and healthy working conditions
- xxvi 1. The States Parties to the present Covenant recognize the right of everyone: (b) To enjoy the benefits of scientific progress and its applications
- xxvii The African Charter on Human and Peoples' Rights was adopted in June 1981 and entered into force in October 1986. Alternatively referred to as the Banjul Charter, it is an international human rights instrument created to protect the human rights and basic freedoms of people living on the African Continent. Although, the need for the Charter has been questioned in light of the already universal application of United Nations instruments for upholding human rights, its creation follows in footsteps of other regional bodies in the creation of their own unique regional human rights systems, notably the European Convention on Human Rights (ECHR) Since its creation, the Charter has had significant normative impact on the status of human rights on the African continent
- xxviii The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights ("Protocol of San Salvador") was opened for signature on November 17, 1988 and entered into force on November 16, 1999
- xxix Philippe Sands, Jacqueline Peel, Ruth MacKenzie (n 1)
- xxx 1995 judgement of 9 December 1994
- xxxi Dr Gabriela Kütting, 'Conventions, Treaties And Other Responses To Global Issues' (Volume II, EOLSS Publications, 2009) 53
- xxxii Ibid
- xxxiii *Guerra and Others v Italy: ECHR 19 Feb 1998*
- xxxiv *Dr. Mohiuddin Farooque v. Bangladesh, represented by the Secretary, Ministry of Irrigation, Water Resources and Flood Control and Others, 48 DLR 1996 (SC of Bangladesh, 1996) and Dr. Mohiuddin Farooque v. Secretary Ministry of Communication, Government of the People's Republic of Bangladesh and 12 Others, SC of Bangladesh, High Court Division, Writ Petition No. 300 of 1995*
- xxxv Dinah Shelton, 'PROTECTING HUMAN RIGHTS IN A GLOBALIZED WORLD' Boston College Law Review https://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bciclr/25_2/06_FMS.htm accessed 11 February 2017
- xxxvi Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life
- xxxvii No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation
- xxxviii Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot,

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- guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country
- xxxix The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant
- xl 1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children
- xli 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation 2. Everyone has the right to the protection of the law against such interference or attacks
- xlii In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language
- xlili All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination
- xliv Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law
- xlvi Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him
- xlvi No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks
- xlvi (1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property
- xlvi Case 12; 471
- xlvi Philippe Sands, Jacqueline Peel, Ruth MacKenzie (n 1) 786
- l Samaraka vs Suriname IHRL 3058 (IACHR 2008)
- li Emily Greenspan, 'Free, Prior, and Informed Consent in Africa: An emerging standard for extractive industry projects' OXFAM AMERICA RESEARCH BACKGROUNDER <<https://www.oxfamamerica.org/static/media/files/community-consent-in-africa-jan-2014-oxfam-americaAA.PDF>> accessed 11 February 2017
- lii The 1992 Rio Declaration on Environment and Development defines the rights of the people to be involved in the development of their economies, and the responsibilities of human beings to safeguard the common environment. The declaration builds upon the basic ideas concerning the attitudes of individuals and nations towards the environment and development, first identified at the United Nations Conference on the Human Environment (1972). The Rio Declaration states that long term

economic progress is only ensured if it is linked with the protection of the environment. If this is to be achieved, then nations must establish a new global partnership involving governments, their people and the key sectors of society. Together human society must assemble international agreements that protect the global environment with responsible development

- liii The United Nations Conference on the Human Environment, having met at Stockholm from 5 to 16 June 1972, having considered the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment. The meeting agreed upon a Declaration containing 26 principles concerning the environment and development; an Action Plan with 109 recommendations, and a Resolution
- liv Michael J. Lawrence, Holly L.J. Stemberger, Aaron J. Zolderdo, Daniel P. Struthers, and Steven J. Cooke (n 8)
- lv Philippe Sands, Jacqueline Peel, Ruth MacKenzie (n 1) 308
- lvi United Nations Environment Programme, 'Protecting the Environment During Armed Conflict : An Inventory and Analysis of International Law' 2009 < http://www.un.org/zh/events/environmentconflictday/pdfs/int_law.pdf> accessed 11 February 2017
- lvii UN, 'INTERNATIONAL LEGAL PROTECTION OF HUMAN RIGHTS IN ARMED CONFLICT' < http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf> accessed 11 February 2017
- lviii ICRC, 'Environment and international humanitarian law' < <https://www.icrc.org/eng/war-and-law/conduct-hostilities/environment-warfare/overview-environment-and-warfare.htm>> accessed 11 February 2017
- lix Ibid
- lx Man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons
- lxi Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary
- lxii The 1997 United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses is the only treaty governing shared freshwater resources that is of universal applicability. It is a framework convention, in the sense that it provides a framework of principles and rules that may be applied and adjusted to suit the characteristics of particular international watercourses. This introductory note will describe the historical background of the convention and significant developments in its negotiating history. It will then summarize the key provisions of the convention and, finally, touch upon its influence on subsequent legal developments, including both treaties and jurisprudence
- lxiii ICRC, 'Methods and means of warfare' < <https://www.icrc.org/eng/war-and-law/conduct-hostilities/methods-means-warfare/overview-methods-and-means-of-warfare.htm>> accessed 11 February 2017
- lxiv The Martens clause aims to offer some protection to individuals caught up in armed conflict even when there is no specific applicable rule of international humanitarian law. The Martens clause, as set out in 1977 Additional Protocol II, recalls that in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public

conscience. The clause was introduced in the preamble to 1899 Hague Convention II on the Laws and Customs of War on Land, taking its name from a statement by Fyodor Fyodorovich Martens, the Russian delegate at the Hague Peace Conferences of 1899. The original text read as follows: Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience. In paragraph 78 of its 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, the International Court of Justice mentioned

lxv Philippe Sands, Jacqueline Peel, Ruth MacKenzie (n 1) 312

lxvi UN (n 55)

lxvii 1. Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population. Other military objectives located at or in the vicinity of these works or installations shall not be made the object of attack if such attack may cause the release of dangerous forces from the works or installations and consequent severe losses among the civilian population. 2. The special protection against attack provided by paragraph 1 shall cease: (a) for a dam or a dyke only if it is used for other than its normal function and in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support; (b) for a nuclear electrical generating station only if it provides electric power in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support; (c) for other military objectives located at or in the vicinity of these works or installations only if they are used in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support

lxviii 3. In addition to the grave breaches defined in Article 11, the following acts shall be regarded as grave breaches of this Protocol, when committed willfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health: (a) making the civilian population or individual civilians the object of attack; (b) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a) (iii); (c) launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a) (iii); (d) making non-defended localities and demilitarized zones the object of attack; (e) making a person the object of attack in the knowledge that he is 'hors de combat'; (f) the perfidious use, in violation of Article 37, of the distinctive emblem of the red cross, red crescent or red lion and sun or of other protective signs recognized by the Conventions or this Protocol. 5. Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes

lxix Protection of works and installations containing dangerous forces Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population

lxx Adopted by Resolution 31/72 of the United Nations General Assembly on 10 December 1976, the ENMOD Convention, of which the UN Secretary-General is the Depositary, was opened for signature

at Geneva on 18 May 1977 and entered into force on 5 October 1978. It consists of ten articles and an Annex concerning the Consultative Committee of Experts. In its Article I the Convention, which is part of disarmament efforts, prohibits the Contracting Parties from engaging 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”. Article 2 specifies what is meant exactly by the term “environmental modification techniques”.

lxxi 1. In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited. 2. It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering. 3. 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

lxxii Philippe Sands, Jacqueline Peel, Ruth MacKenzie (n 1) 796

lxxiii Christopher Greenwood, ‘State Responsibility and Civil Liability for Environmental Damage Caused by Military Operations’ 69 *International Law Studies* <<http://stockton.usnwc.edu/cgi/viewcontent.cgi?article=1521&context=ils>> accessed 11 February 2017

lxxiv Welcoming the restoration of Kuwait of its sovereignty, independence and territorial integrity and the return of its legitimate government

lxxv Dinah Shelton (n 33)

lxxvi Ibid