

NEGLECTED VICTIM OF THE
ARMENIA-AZERBAIJAN CONFLICT



ENVIRONMENTAL IMPACTS OF OCCUPATION





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Environmental Impacts of Occupation

Center of Analysis of International Relations
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Foreword

The Armenia–Azerbaijan conflict, caused by the former’s occupation of twenty percent of the internationally recognized territories of Azerbaijan, had an immensely negative impact on well-nigh all aspects of the conflicting states, including the daily lives of their citizens, their economies, their future prospects, and so on. Moreover, the environmental costs of this conflict, though often overlooked, may be of much greater importance for the future of the entire South Caucasus region.

The loss of Azerbaijan’s control over Nagorno-Karabakh and seven adjacent districts in the wake of Karabakh war (1988–1994) and the rule of an Armenian occupying regime over these lands for about thirty years until the end of 2020 inflicted substantial environmental damages that will likely endure into the years ahead. The fact that the formerly occupied territories host dense forests populated with native trees and shrubs, rare species of animals and plants, and abundant water reserves augmented the scope of the damage the occupation caused to the climate of the region and the lives of thousands, if not millions, of people.

This publication is an update of a report published by the Center of Analysis of International Relations (AIR Center) in October 2020, when the two countries were in the middle of the 44 Day War (September 27 – November 10, 2020). The report, prepared in cooperation with distinguished experts from Germany and Italy, is an attempt to revitalize the debate about the environmental costs of the occupation and the obligations of Armenia from the perspective of international law. The damage that has already been done and the legal obligations that Armenia has refused to observe should be given due attention in any scholarly or political discussions about the consequences of the former conflict.

This publication consists of four sections. The first, authored by Dr. Vasif Huseynov, a senior research fellow at the AIR Center, provides a brief overview of the environmental costs of the former occupation by referring to the studies of researchers from non-partisan backgrounds who represent international institutions and also to Azerbaijani and Armenian sources. The findings of this section clearly demonstrate the terrifying extent of the

environmental crime committed by the Armenian government vis-à-vis the formerly occupied territories of Azerbaijan.

The subsequent two sections provide important insights into the provisions of international law concerning the obligations of an occupying state with regard to the territories under its control. Prof. Hans-Joachim Heintze of the University of Bochum, through drawing a comparative analysis oriented around comparable cases in international law, concludes that international humanitarian law (IHL) and human rights law should be applied in a unified way to ensure the protection of the environment in armed conflicts.

A comprehensive analysis by Prof. Natalino Ronzitti, Professor Emeritus of International Law at LUISS University, examines the legal possibilities for holding Armenia accountable for the depletion of natural resources and the environmental crimes committed in the Azerbaijani territories that Armenia kept under illegal occupation until the 44 Day Armenia – Azerbaijan War.

This new edition includes a section by Mr. Fuad Chiragov, Head of Department at the Center of Analysis of International Relations (AIR Center) about the post-conflict situation in the region. Unfortunately, environmental crimes by Armenia and some of the Armenia-based foreign companies against the Azerbaijani territories have not come to an end after the liberation of Karabakh in 2020. Mr. Chiragov primarily provides details about the pollution of the Okhchuchay River, a transboundary river shared with Armenia and outlines Azerbaijan's efforts to draw the attention of international community to this environmental crime.

Dr. Farid Shafiyev

Chairman, The Center of Analysis of International Relations (AIR Center)

1

The Environmental Costs of the Armenian Occupation of Azerbaijani Territories

*Vasif Huseynov*¹

Interstate armed conflicts often cause extensive destruction and degradation of the natural environment in addition to their immediate catastrophic implications for the lives of people in the conflict zones. The International Committee of the Red Cross (ICRC) reports that such conflicts have been the single most important predictor of the decline of certain wildlife populations between 1946 and 2010.² The environment, often, as the ICRC aptly puts it, a neglected victim of such conflicts, is damaged not only in the course of the war, but also in its aftermath, owing to the collapse of the institutions tasked with the protection of nature.

The environmental cost of a conflict soars dramatically when the region is covered with dense forests rich with endemic flora and fauna. The nature of Azerbaijan's Karabakh region is such that they can be included in this category. In the wake of the fully-fledged war that Armenia waged against Azerbaijan in 1988–1994, Baku lost control over this region, which constituted about 20 per cent of Azerbaijan's internationally recognized territories. The four UN Security Council resolutions of 1993 that demanded the immediate withdrawal of Armenian troops from the occupied Azerbaijani territories had not been implemented up until the 44-day Karabakh war of 2020, when Baku forced Armenia to implement them.

According to the studies that Azerbaijan made prior to the occupation, there were more than 460 native tree and shrub species in the occupied territories' 260,300 hectares of forests, of which more than 15 per cent existed only in this region. Previously, 24 rare species of animals and 27 species of plants were protected in the state reserves (Basut-Chay and Garagol) and other protected areas (Arazboyu, Lachin, Gubadly, and Dashalty) before the war.

For around three decades, Azerbaijan exercised no control over this region; this created favorable conditions for the ruthless exploitation and pillage of the natural resources by the occupying forces. This illegality, coupled with the inaction of the local authorities when there were threats to the environment, such as fires, caused by the activities of the people settled in the region inflicted often irreparable damages to the environment of the region.

¹ Dr. Vasif Huseynov is a senior advisor at the Center of Analysis of International Relations (AIR Center).

² International Committee of the Red Cross (2019), "Natural environment: Neglected victim of armed conflict", available at: <https://www.icrc.org/en/document/natural-environment-neglected-victim-armed-conflict> (Accessed: 28 September 2020).

Illegal activities and their environmental costs

The post-Soviet leaders of Armenia have a notorious reputation for exploiting the environment to generate economic benefits.³ A 2015 study titled “Environmental Crime in Armenia,” prepared by western experts with funding from the European Union, revealed the disastrous consequences of this situation for the environment of the country.⁴ The authors reported that:

“Despite the fact that the Republic of Armenia (RA) is signatory to several international environmental treaties and conventions, environmental laws are weak, contradictory, and rarely enforced. The victims of a lax regulatory framework and environmental crime are often ordinary citizens, the economy at large and even the country’s national security. Common problem areas linked to environmental crime include RA’s vast mining sector, the logging industry and the hydroelectric sector.”

Unfortunately, the environmental crimes carried out by the Armenian authorities did not end with the forced change of government in 2018 that brought a new political elite to power. The initiative to expand the mining industry in southern Armenia, in total disregard of its potential impact on the local environment, is a distressing example.⁵ It is important to note that, in the face of strong opposition from environmental activists, the government did not shy away from changing the national environmental information law, giving the authorities the right, *inter alia*, to withhold “information that can negatively affect the environment.”⁶

The Armenian government’s pledge⁷ to double the country’s tree cover by 2050 sounds like a promising contribution to reversing the ecological downturn in the region.⁸ However, a quick review of all the populist promises that Armenian Prime Minister Nikol Pashinyan has made since he took power in 2018 (e.g., the FIFA World Cup, a 15-fold increase in GDP, almost doubling the population by 2050)⁹ casts doubt on the true nature of this plan, which has already been postponed.¹⁰

3 European Union Action to Fight Environmental Crime (2015), “Environmental Crime in Armenia”, available at: https://efface.eu/sites/default/files/EFFACE_Environmental%20crime%20in%20Armenia_A%20case%20study%20on%20mining.pdf (Accessed: 28 September 2020).

4 Ibid.

5 The Armenia Weekly (2019), “PM Pashinyan Approves Amulsar Mining”, available at: <https://armenianweekly.com/2019/08/19/pm-pashinyan-approves-amulsar-mining/> (Accessed: 28 September 2020).

6 Eurasianet (2020), “Armenia seeks to weaken environmental information law”, available at: <https://eurasianet.org/armenia-seeks-to-weaken-environmental-information-law> (Accessed: 28 September 2020).

7 HETQ (2019), “Pashinyan Unveils Project to Double Armenia’s Forests by 2050”, available at: <https://hetq.am/en/article/108907> (Accessed: 28 September 2020).

8 ArmInfo (2020), “Armenia is a vulnerable territory in terms of climate change”, available at: https://arminfo.info/full_news.php?id=49933&fbclid=IwAR2N3ZzI3YcZNFvL3yTS2cMEURt1F40vCD08mH04uiMAfrjex8msAhj2RiE&lang=3 (Accessed: 28 September 2020).

9 Caucasus Watch (2019), “FIFA World Cup, at least 5 Million Population and Nagorno-Karabakh as Part of Armenia: Pashinyan presents long-term Goals of his Government”, available at: <http://caucasuswatch.de/news/1895.html?fbclid=IwAR0dO7Z1GeH-VAWyvqCmvGWxuFMSI8ET4qaLX0bPgrCPAUZkFad5ff2BZHfl> (Accessed: 28 September 2020).

10 HETQ (2020), “Armenia Postpones Plan to Plant Ten Million Trees”, available at: <https://hetq.am/en/article/115880> (Accessed: 28 September 2020).

It is important to note these facts from Armenia’s domestic politics here to illustrate what a government that does not take proper care of the environment in its own territories would do *vis-à-vis* the environment of a territory that it has unlawfully occupied and that is not subject to any strict oversight. The answer is self-evident: It would loot its natural resources at the maximum speed possible! This is what Armenia in fact did in Azerbaijan’s occupied territories.

In 2008, Armenian reporters Edik Baghdasaryan and Armine Petrosyan of the Hetq media agency of Armenia found out that the wood exports of Armenia had been constantly rising since the end of the Soviet period:¹¹

“According to the Customs Department and the Statistical Office of Armenia, the volume of wood exported from Armenia has risen sharply over the last four years. During the Soviet era, the republic imported, rather than exported, wood. Today the nearly forestless Armenia exports not only wood products but raw timber as well.”

There is no doubt that the exported woods were derived not only from the Armenian forests, but also from those located in Azerbaijan’s occupied regions, or, more probably, the Azerbaijani forests were the only source. This is confirmed by the Armenian reporters of Hetq, who revealed in November 2018 that 2.3 times more trees were cut down in the formerly occupied territories of Azerbaijan than in the Republic of Armenia in 2012-2016.¹²

Satellite imagery of the region obtained by Azerbaijan’s satellite operator Azercosmos allows us to get a clear understanding of the environmental degradation in the region. This observation demonstrates an alarming rate of deforestation, including in those areas populated with endangered tree species.¹³ A few years ago, Azerbaijan’s ecology experts warned that:

“Upon the occupation of the Azerbaijani territories by Armenia, walnut, oak and other tree species were cut down and sold to foreign countries, and forests for cattle grazing were massively destroyed in some of the occupied regions. Some tree and shrub species, which were protected for many years such as yew-tree, Araz oak, Eastern plane, pomegranate, forest grapes, Buasye pear, box(-tree), Eldar pinewood, persimmon (date-palm), willow leafed pear, etc. are now on the edge of vanishing. From the mid-1980s to mid-1990s, the amount of forest and woodland declined by 12.5%.”

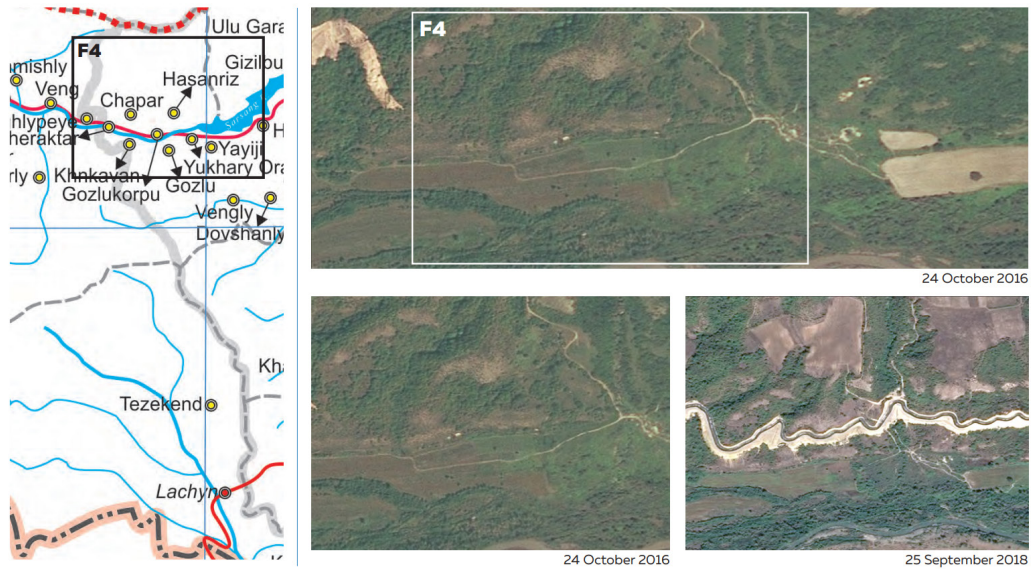
Notably, this observation was confirmed by Armenian sources. For example, a report dated September 2003 revealed that walnut trees cut down *en masse* in Azerbaijan’s occupied territories were being exported to Italy and Spain, adding that the claims of local authorities

11 HETQ (2008), “Armenia cuts down its forests for export”, available at: <https://hetq.am/en/article/7007> (Accessed: 28 September 2020).

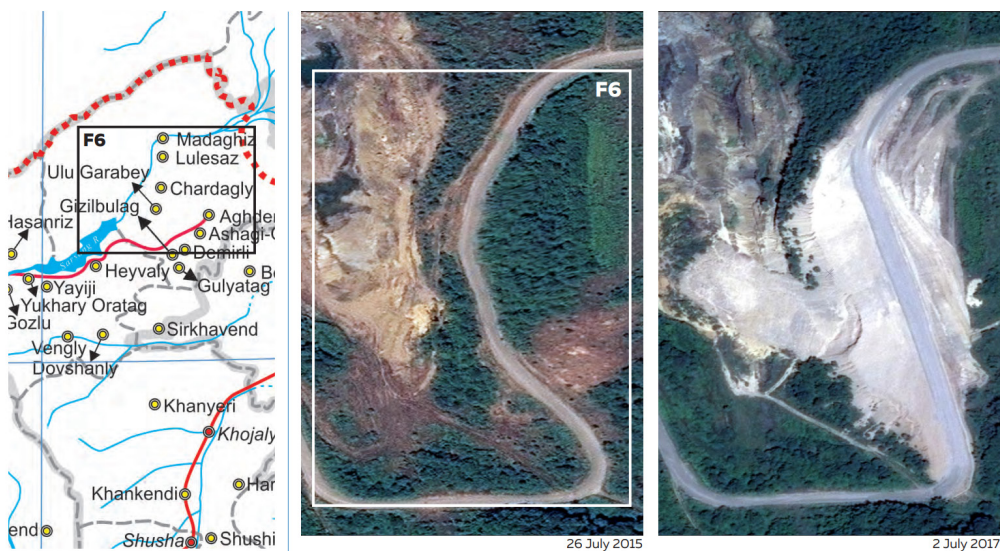
12 HETQ (2018), “The volume of deforestation in Artsakh is 2.3 times more than in Armenia” (Արցախում անտառահատումների ծավալը 2,3 անգամ ավել է, քան Հայաստանում), available at: <https://hetq.am/hy/article/97849> (Accessed: 9 September 2021).

13 Azercosmos (2019), “Illegal Activities in the Territories of Azerbaijan under Armenia’s Occupation: Evidence from Satellite Imagery”, available at: <https://azercosmos.az/storage/brochures/February2019/dx2c0FfrOG1j1ml7pRH7.pdf> (Accessed: 28 September 2020).

about the export of damaged or rotten trees sounded unconvincing.¹⁴ The report showed that the exported wood was “of the highest quality, and [was] used for luxury car interiors and gun hilts,” citing a local expert who stated that “even trees in cemeteries had been torn up by the roots. Some gravestones had been damaged as a result.”



1. Satellite imagery of forest cutting for the construction of a canal near the Sarsang Reservoir in the occupied part of the Tartar district (46°30'30.882"E, 40°8'45.486"N) obtained by Azercosmos.¹⁵



2. Satellite imagery of deforestation caused by mining activities near Chardagly village in the occupied part of the Tartar district (46°41'33.965"E, 40°14'9.393"N) obtained by Azercosmos.¹⁶

14 HETQ (2003), “Walnut trees cut down in Karabakh”, available at: <https://hetq.am/en/article/7083> (Accessed: 28 September 2020).
 15 Azercosmos (2019), “Illegal Activities in the Territories of Azerbaijan under Armenia’s Occupation: Evidence from Satellite Imagery”, available at: <https://azercosmos.az/storage/brochures/February2019/dx2c0FfiOG1j1ml7pRH7.pdf> (Accessed: 28 September 2020).
 16 Ibid.

Pollution of water resources and disruption of water flow

The formerly occupied regions of Azerbaijan are also rich with water resources which are rapidly shrinking in the entire South Caucasus, thus posing a variety of challenges to the lives of the region's people and maintenance of agriculture. While in the rest of the region local states can take some measures to ameliorate the situation, the Azerbaijani government had no access to water resources in the Karabakh region up until the end of the 44 Day War.

According to some records, there are seven environmentally significant large or small surviving lakes in the formerly occupied Azerbaijani territories that were subject to anthropogenic impacts.¹⁷

The Sarsang Reservoir, located in the Karabakh region, was unavailable for appropriate agricultural use, thus resulting in irrigation problems, eradication of flora, and other serious environmental problems. This reservoir is of great importance to the agriculture of the surrounding areas. Built in 1976 and containing 560 million cubic meters of water, the reservoir has the capacity to provide irrigation water for 100,000 hectares of agricultural land in six regions in Azerbaijan – Tartar, Agdam, Barda, Goranboy, Yevlakh, and Aghjabadi.

Azerbaijan long complained that the occupation regime in Karabakh stopped the outflow from the Sarsang Reservoir to the above-named regions in summer, when people and agriculture most needed water. In contrast, in winter, when the need dropped, the water from the dam was released, flooding agricultural land and eroding roads. This seriously damaged Azerbaijan's agriculture and regional ecological situation during the occupation period.

Describing this as "green genocide," Azerbaijan sought to draw international attention to the rapid deterioration of the ecological situation in the regions under occupation.

The Council of Europe, in its resolution 2085 (2016) confirming the distressing level of water-related environmental problems in the Karabakh territories, stressed that "the lack of regular maintenance work for over twenty years on the Sarsang reservoir, located in one of the areas of Azerbaijan occupied by Armenia, poses a danger to the whole border region."¹⁸ The Assembly emphasized that "the state of disrepair of the Sarsang dam could result in a major disaster with great loss of human life and possibly a fresh humanitarian crisis."

The pollution of rivers in the region is another problem that has long-since been raised by the Azerbaijani government but has only recently attracted the attention of other neighboring countries.

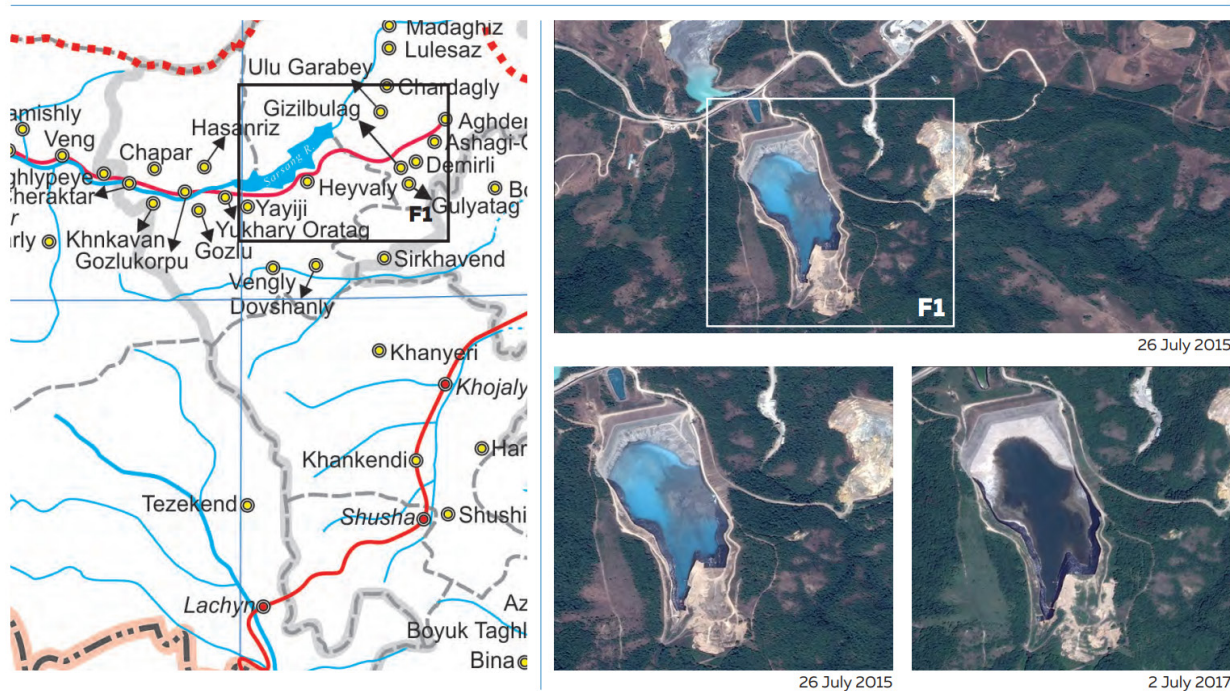
For example, in 2004, Azerbaijan became alarmed that "2.1 million cubic meters of polluted water is thrown down without preliminary purification in the Aras, first of all in its tributaries,

17 Trend News Agency (2013), "Armenia commits 'green genocide' against Azerbaijan", available at: <https://en.trend.az/azerbaijan/2146432.html> (Accessed: 28 September 2020).

18 Council of Europe (2016), "Inhabitants of frontier regions of Azerbaijan are deliberately deprived of water", available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=22429&lang=en> (Accessed: 28 September 2020).

running on the territory of Armenia and Azerbaijan occupied territories every day.”¹⁹ This not only destroys the flora along the river’s course, but also exterminates fish species living in its waters.

Threatened by the environmental impacts of the pollution of the Aras and similar ecological issues, Iran has recently started to express its concerns more loudly and lambasted Yerevan for the contamination of the river. A study by Iranian scientists conducted over the last few years discovered that the Aras was very highly contaminated with heavy metals.²⁰



Satellite imagery of the tailing dump caused by the exploitation of the Gyzybulag underground copper-gold mine near Heyvaly village in the occupied Kalbajar district (46°35'43.645"E , 40°8'34.632"N) obtained by Azercosmos.²¹

In November 2019, an Iranian agricultural researcher, Ahmad Baybordi, stated in a report in the *Tehran Times* that “Aluminum, copper, iron and arsenic have been found in the river which were 10 times the safe limits,” adding that “I have closely watched the activity of Armenian factories, I would definitely say that the industrial effluent flows into Aras and the color of water is turning green because of the high concentration of heavy metal.”²²

19 Polish Political Science Yearbook (2016), “The Consequences of the Nagorno-Karabakh War for Azerbaijan and the Undeniable Reality of Khojaly Massacre: A View from Azerbaijan”, available at: <https://marszalek.com.pl/yearbook/docs/45/pps2016022.pdf> (Accessed: 28 September 2020).

20 *Tehran Times* (2019), “Armenia should be more responsible for polluting Aras River”, available at: <https://www.tehrantimes.com/news/442262/Armenia-should-be-more-responsible-for-polluting-Aras-River> (Accessed: 28 September 2020).

21 Azercosmos (2019), “Illegal Activities in the Territories of Azerbaijan under Armenia’s Occupation: Evidence from Satellite Imagery”, available at: <https://azercosmos.az/storage/brochures/February2019/dx2c0FfrOG1j1ml7pRH7.pdf> (Accessed: 28 September 2020).

22 *Tehran Times* (2019), “Armenia should be more responsible for polluting Aras River”, available at: <https://www.tehrantimes.com/news/442262/Armenia-should-be-more-responsible-for-polluting-Aras-River> (Accessed: 28 September 2020).

Another Iranian researcher explained in the same report that the source of contamination was Armenia, not the Iranian industrial units, and he therefore called on the Ministry of Foreign Affairs of Iran to intervene.

The issue has been on the agenda of the highest-level talks between the two countries on several occasions, but apparently with no practical consequences. During his 2016 visit to Yerevan, Iran’s President Hassan Rouhani declared that they had also discussed environmental issues and the contamination of the Aras river, highlighting that “I hope that by the directive of [Armenian President] Mr. Serge Sargsyan, the issue will be resolved.”²³ Nevertheless, the above-mentioned report by Iranian scientists in 2019 demonstrates that the problem was not put right by then.

Inaction of Armenia and its subordinate authorities in formerly occupied Karabakh in times of natural disaster

The environment in the Karabakh region of Azerbaijan was also threatened during the occupation period by the indifference shown by local Armenian authorities with respect to the natural disasters that undermined the region’s natural balance. This was most painfully observed when wildfires erupted in the region and spiral out of control because of the lack of an effective fire-management system.

This was well-documented thanks to the cooperation of the OSCE during the first series of massive wildfires that overran an area amounting to 163.3 km² in the eastern part of the then occupied Azerbaijani territories in summer 2006. The fact that the Armenian authorities appeared to be rather apathetic regarding taking immediate measures to extinguish the fires in time outraged the Azerbaijani people, and they called for international intervention.

On September 7, 2006, the UN General Assembly adopted a resolution titled “The situation in the occupied territories of Azerbaijan” proposed by Azerbaijan in regard to the incidents of massive fires taking place in the formerly occupied territories. The resolution of the General Assembly stressed the necessity of urgently conducting an environmental operation and called for an assessment of the short- and long-term effects of the fires on the environment of the region and measures for its rehabilitation.

The OSCE fact-finding mission, carried out from October 4 to 12, 2006, assessed the fires’ short- and long-term impacts on the environment in the affected territories and confirmed, *inter alia*, that “the fires resulted in environmental and economic damages and threatened human health and security.” The assessment also concluded that the damage caused by wildfires could partially be attributed also to the absence of effective forest fire management systems.²⁴

23 Aravot-en.am (2016), “The President of Iran made a correct remark in Yerevan” Silva Adamyam”, available at: <https://www.aravot-en.am/2016/12/27/186456/> (Accessed: 14 October 2020)

24 Global Fire Monitoring Center (2019), “OSCE and GFMC Activities in Southeast Europe, Eastern Europe, the South Caucasus,

This negligence, violating international humanitarian law including the Geneva Conventions of 1949, resulted in the devastation of wildlife and destruction of fertile areas in the region and transformed the entire fire-affected territories into a burned desert in less than two months. An assessment by Azerbaijani experts lamented that:

“The productive humus layer of the soil has been destroyed and it will take many years to rehabilitate this fertile layer. Many trees constituting the microclimate together with grasses and bushes have been burned as well. The area has become black. Extermination or migration to other territories of numerous fauna species caused a great, and in many cases an irreversible damage to the biodiversity of the fire-affected territories.”

Concerns relating to environmental hazards in the region have also been voiced by European institutions. For example, the Council of Europe, in its resolution 2085 (2016), noted that it “deplores the fact that the occupation by Armenia of Nagorno-Karabakh and other adjacent areas of Azerbaijan creates... humanitarian and environmental problems for the citizens of Azerbaijan living in the Lower Karabakh valley.”²⁵

The resolution also stressed that the lack of regular maintenance work on the regional water reservoirs poses a danger to the whole border region and “could result in a major disaster with great loss of human life and possibly a fresh humanitarian crisis.”

The ramifications of environmental destruction cannot be localized

The depredatory exploitation of natural resources, the millions of tons of waste in tailing dumps saturated with heavy metals and other dangerous substances, and the massive felling of trees literally destroyed the regional environment in the territories of Azerbaijan occupied by Armenia until the end of 2020. A report prepared on behalf of the UNDP, UNEP (Regional Office of Europe), and OSCE concluded that “These areas [i.e., Karabakh], out of the control of the central authorities, represent a major challenge for the environment and security of Azerbaijan.”²⁶

The environmental threats posed by the destruction of the flora and fauna are not, however, confined to these territories, but also threaten the wider region of the South Caucasus. It is expected that the region will be among those most affected by climate change, even though the share of the region’s countries in global carbon dioxide emissions is insignificant. Expert estimates show that the temperature increase in the region is exceeding the global average and this is likely to be exacerbated if the deforestation is not reversed.²⁷

and Central Asia 2006-2019”, available at: http://gfmco.online/GlobalNetworks/%20%20SEEurope/SEEurope_8.html (Accessed: 28 September 2020).

25 Council of Europe (2016), “Inhabitants of frontier regions of Azerbaijan are deliberately deprived of water”, available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=22429&lang=en> (Accessed: 28 September 2020).

26 UNDP, UNEP, OSCE (2004), “Environment and Security: Transforming Risks Into Cooperation - The Case of the Southern Caucasus”, available at: <https://www.iisd.org/publications/environment-and-security-transforming-risks-cooperation-case-southern-caucasus> (Accessed: 28 September 2020).

27 ArmInfo (2020), “Armenia is a vulnerable territory in terms of climate change”, available at: https://arminfo.info/full_news.

The massive exploitation of forests and other natural resources in Karabakh territories caused an environmental threat on a wider scale. This concern was also shared by the United Nations Environment Programme (UNEP), whose Director of Regional Office for Europe drew attention to the environmental impacts of the Armenia–Azerbaijan conflict, stating that “The environment is under serious threat as a result of the conflict. Natural pearls of the region belong to all mankind. They should be protected and no conflict should affect it.”²⁸

Also relevant is the breach of international legal provisions that characterize destruction of the environment and pillage of natural resources as a war crime, alongside crimes against humanity and genocide. The violation of these provisions is subject to criminal liability and prosecution by the International Criminal Court. Parties in conflicts should therefore be held accountable for their disregard of international environmental law in all instances—not only when this is in line with the interests of some global powers.

php?id=49933&fbclid=IwAR2N3ZzI3YcZNFvL3yTS2cMEURt1F40vCD08mH04uiMAfrjex8msAhj2RiE&lang=3 (Accessed: 28 September 2020).

28 Trend News Agency (2010), “UN concerns over burning of green space in Azerbaijan’s occupied territories”, available at: <https://en.trend.az/azerbaijan/society/1698827.html> (Accessed: 28 September 2020).

2

Protection of the Environment and International Humanitarian Law²⁹***Hans-Joachim Heintze³⁰***

Armed conflicts are one of the most devastating experiences of mankind and affect almost every area of life. They have economic, political and cultural effects and also environmental impacts.³¹ Such conflicts have been and remain a source of risks and threats to the environment. The conflicts cause both direct and indirect environmental damage and establish dangers to the health of the population, livelihood and security. The conflicts take place in the environment and make it vulnerable to destruction caused by military means and used by armed forces. Environmental degradation takes place in three directions: the ruin of the territory from troop movements, the use of weapons and resources which leads to destruction and the contamination of water and soil as well as deforestation. These consequences of armed conflicts are often overlooked.³²

The example of the armed conflict between Azerbaijan and the subsequently occupied Azerbaijani territories show the devastating effects of the war on the environment. The question therefore arises as to which legal provisions should be taken into account in armed conflicts.

International Humanitarian Law (IHL) is a legal body that applies after the outbreak of armed conflict. IHL was formerly known as “Law of War” and supersedes or supplements the rules of international law of peace. It does not comment on the background of an armed conflict, i.e. it does not differentiate between the role of the involved conflict parties. IHL is neutral and impartial and therefore it is irrelevant whether a party is an aggressor or a defender. This legal system recognizes the use of force within the framework of the IHL. It rules in accordance with the principle of military necessity, but also demands respect for the principle of humanity in all military actions. This includes that “the right of the Parties to the armed conflict to choose methods and means of warfare is not unlimited.”³³ IHL is

²⁹ This section, submitted in September 2020, has not been updated.

³⁰ Prof. Hans-Joachim Heintze is a Professor at the University of Bochum (Germany).

³¹ Environment History (2008), “The Environmental Footprint of War”, available at: <https://www.jstor.org/stable/20723680?seq=1> (Accessed: 28 September 2020).

³² William and Mary Environmental Law & Policy Review (2018), “An Environmental No Man’s Land: The Often Overlooked Consequences of Armed Conflict on the Natural Environment”, available at: <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1716&context=wmelpr> (Accessed: 28 September 2020).

³³ United Nations Treaty Series (1977), “Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I)”, available at: <https://treaties.un.org/pages/showdetails.aspx?objid=08000002800f3586> (Accessed: 28 September 2020).

used with the fighting and ends after a peace agreement. As long as there are occupied territories, IHL applies. Consequently, IHL standards apply to the territories of Azerbaijan occupied by Armenia. Both states are bound by international treaty law in the form of the Geneva Conventions of 1949 and customary international law. Armenia is also a State Party to Additional Protocol to the Geneva Conventions I (AP I).³⁴ The application of the provisions of AP I for the environment is according to the International Committee of the Red Cross's (ICRC) Customary Law Study not disputed.

Natural environment and IHL

Environmental problems and natural resources were the trigger for wars in the past. If scarcity prevails and access to resources is to be achieved, wars can occur. In the past, the decision to go to war was often a consequence of the need of resources or an expression of expansionary urge. Modern international law, however, bans the use of force in international relations and IHL prohibits any method or means of warfare which is intended or may be expected to cause serious damage to the natural environment. It is quite obvious that war can have severe and long-lasting negative consequences to the environment. This prohibition of the use of force is to be seen against the background of the health or survival of the inhabitants.

The Vietnam War in the early 1970s and the public health effects of the use of herbicides (particularly Agent Orange) determined the civil society and some governments addressing environmental protection generally and also during armed conflicts.

Thus, IHL recognizes the environment as a legal asset to be protected. AP I declares in Art. 55:

“Protection of the natural environment

1. 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.

2. Attacks against the natural environment by way of reprisals are prohibited”.

According to the wording, this article applies to the protection of the civil population. Art. 35 (3) has a broader approach:

“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.”

³⁴ Ibid.

In this context, it is also worth mentioning the Convention on the Prohibition of Military or Any Hostile Use of Environmental Modification Techniques of 10 December 1976 (ENMOD).³⁵ This treaty and AP I provides for a wide ranging and comprehensive protection of the environment. However, the objective of these conventions is not only the protection of the natural environment as such against the use of weapons. The ICRC Commentary underlines that it not only protects the environment and “the population and the combatants of the countries at war against any of these effects”, but also “the natural environment itself, taking into account the inevitable overflow effect inherent in these incidents and the resulting ‘transnational’ aspect of this problem.”³⁶

According to AP I, the parties to the conflict are obliged to protect the environment to avoid harmful effects on the physical and mental health of the inhabitants. However, there are unfortunately repeated breaches of this obligation. Even NATO troops, in 1999, caused immense damages to the environment in Former Yugoslavia, due to the bombing of oil refineries and industrial sites.³⁷

Therefore, the Red Cross and Red Crescent Societies are involved in the international and national struggle to improve the protection of the environment. This struggle takes place not only in situations of armed conflicts but also after the end of the hostilities. Landmines and booby traps which are not exploded are examples of the threats to the environment and the inhabitants after the war is over. These devices as well as chemical components of weapons can have permanent harmful effects on humans, animals, vegetation, water, land and the ecosystem.

The Rio Declaration on Environment and Development of 1992³⁸ declared warfare as inherently destructive of sustainable development: “States shall therefore respect international law providing protection for the environment in times of armed conflict and co-operate in its further development, as necessary.” This document reflects that the environment gains importance globally.

The next step in the codification was the establishment of the International Criminal Court (ICC) by the Rome Statute of 1998.³⁹ Art. 8 (2)(b)(iv) is related to AP I and considers some attacks a violation of the protection of the environment in armed conflicts as war crimes:

“Intentionally launching an attack in the knowledge that such attack will cause incidental

35 United Nations Treaty Series (1976), “Convention on the prohibition of military or any other hostile use of environmental modification techniques”, available at: https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800385c9&clang=_en (Accessed: 28 September 2020).

36 United Nations Treaty Series (1977), “Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I)”, available at: <https://treaties.un.org/pages/showdetails.aspx?objid=08000002800f3586> (Accessed: 28 September 2020).

37 Cambridge University Press (2010), “Central and Southeast European Politics since 1989”, available at: https://books.google.az/books?id=oFXdiS25N78C&pg=PA78&redir_esc=y#v=onepage&q&f=false1 (Accessed: 28 September 2020).

38 United Nations General Assembly (1992), “Report of The United Nations Conference on Environment and Development”, available at: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151 (Accessed: 28 September 2020).

39 United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (1998), “Rome Statute of the International Criminal Court”, available at: <https://undocs.org/en/A/CONF.183/9> (Accessed: 28 September 2020).

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.”

This ICC Statute holds individuals personally and criminal liable for committing such a crime. However, not all states are a party to AP I and to the ICC Statute. Therefore, it is important that the ICRC raised the question of environmental protection under customary humanitarian law and published a study in 2005 and declared a simplified version of the provisions of AP I and the ENMOD to constitute customary law.⁴⁰ Rule 44 of that study states:

“Methods and means of warfare must be employed with due regard to the protection and preservation of the natural environment. In the conduct of military operations, all feasible precautions must be taken to avoid, and in any event to minimise, incidental damage to the environment. Lack of scientific certainty as to the effects on the environment of certain military operations does not absolve a party to the conflict from taking such precautions.”

Vöneky/ Wolfrum underline that many authors⁴¹ are doubtful whether this assessment of the ICRC indeed is justified.⁴² The opinions of international bodies allow different conclusions: The Review of the NATO Bombing Campaign against Yugoslavia opined that Art. 55 AP I reflects customary law, but the International Court of Justice (ICJ) had some doubts.⁴³

ILC’s draft principles on armed conflicts and the environment

The International Law Commission (ILC) is a part time but permanent subsidiary organ of the UN General Assembly and plays an important role concerning the progressive development and codification of international law.⁴⁴ According to Art. 13 (1)(a) of the UN Charter it is up to the General Assembly to initiate the improvement of the existing law. One of the gaps of international law are the rules on the protection of the environment in armed conflicts. Therefore, the topic was proposed by the UN Environment Programme and the idea was, according to recommendation 4.6., to examine the existing international law and to recommend how it can be clarified, codified and expanded.⁴⁵ ILC decided in

40 Cambridge University Press (2005), “Customary International Humanitarian Law,” available at: <https://www.icrc.org/en/doc/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf> (Accessed: 28 September 2020).

41 International Affairs (1994), “The Gulf War 1990-91 in International and English Law,” available at: <https://academic.oup.com/ia/article-abstract/70/3/549/2470958?redirectedFrom=fulltext> (Accessed: 28 September 2020).

42 Max Planck Encyclopedias of International Law (2016), “Environment, Protection in Armed Conflict,” available at: <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e440?rskey=lm3VZf&result=3&prd=MPIL> (Accessed: 28 September 2020).

43 International Legal Materials (2000), “International Criminal Tribunal for the Former Yugoslavia (Icty): Final Report to the Prosecutor by the Committee Established to Review the Nato Bombing Campaign Against the Federal Republic of Yugoslavia,” available at: <https://www.jstor.org/stable/20694045?seq=1> (Accessed: 28 September 2020).

44 Max Planck Encyclopedias of International Law (2017), “International Law Commission (ILC),” available at: <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1425?rskey=oQGycK&result=1&prd=MPIL> (Accessed: 28 September 2020).

45 United Nations Environment Programme (2009), “Protection the Environment during Armed Conflict. An Inventory and Analy-

2013 to include the topic “Protection of the Environment in Relation to Armed Conflicts” in its agenda. In 2019 the ILC adopted in the first reading 28 draft principles.⁴⁶ Important is the formulation of the title because the words “in relation to” make it obvious that the topic “is not limited to the situation of the armed conflict but seeks to enhance the protection of the environment throughout the conflict cycle: before, during and after the armed conflict.”⁴⁷ Particularly, the chosen temporal approach makes the draft articles of special interest for the conflict between Azerbaijan and Armenia. Post-conflict provisions are devoted to sharing of and granting access to environmental information (draft principle 24), post conflict environmental assessments and remedial measures (draft principle 25), relief and assistance (draft principle 26). Thus, the ILC deals with all issues that are relevant to wartime environmental damage. The draft principles on Corporate due diligence and Corporate liability underline that states should take legislative and other measures aimed to ensure “that corporations and business enterprises operation in areas of armed conflict or in post-conflict situations exercise due diligence with regard to the protection of the environment and human health.”⁴⁸ Moreover, the principles ask the states also to ensure that corporations and enterprises can be held liable for damages caused by them. The draft principle is inspired by the judgment of the ICJ in the “Certain Activities (Costa Rica v. Nicaragua)” case, in which the ICJ found that “it is consistent with the principles of international law governing the consequences of internationally wrongful acts, including the principle of full reparation, to hold that compensation is due for damage caused to the environment, in and of itself”.⁴⁹

Part Four of the draft principles deals with situations of occupation and reflects the great variety of circumstances that may qualify as a situation of occupation. Occupations differ from armed conflicts in many respects. Most notably, occupations are typically not characterized by active hostilities. However, the authority over a certain territory is transferred from a territorial state, without its consent, to the Occupying Power. Occupation is regulated in Art. 42 of the Hague Regulations, which apply when the territory is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.⁵⁰ The law of occupation is applicable to situations that fulfil the factual requirements of effective control of a foreign territory irrespective of whether the Occupying Power invokes the legal regime of occupation.

sis of International Law”, available at: https://wedocs.unep.org/bitstream/handle/20.500.11822/7813/-Protecting%20the%20Environment%20During%20Armed%20Conflict_An%20Inventory%20and%20Analysis%20of%20International%20Law-2009891.pdf?sequence=3&BisAllowed= (Accessed: 28 September 2020).

46 International Court of Justice (2018), “Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)”, available at: <https://www.icj-cij.org/en/case/150> (Accessed: 28 September 2020).

United Nations General Assembly (2019), “Report of the International Law Commission”, available at: <https://undocs.org/A/74/10> (Accessed: 28 September 2020).

47 Review of European, Comparative and International Environmental Law (2020), “Armed conflicts and the environment: The International Law Commission’s new draft principles”, available at: <https://onlinelibrary.wiley.com/doi/full/10.1111/reel.12324> (Accessed: 28 September 2020).

48 Ibid.

49 International Court of Justice (2018), “Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)”, available at: <https://www.icj-cij.org/en/case/150> (Accessed: 28 September 2020).

50 Cambridge University Press (2011), “The International Law of Belligerent Occupation”, available at: <https://www.cambridge.org/core/books/international-law-of-belligerent-occupation/31439F10654C631ACB60B7A86074461C> (Accessed: 28 September 2020).

Authority in this context is a fact-based concept: occupation “does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty”. Such authority underscores the obligation of the Occupying Power to take appropriate steps to prevent transboundary environmental harm. Negative obligations – mostly prohibitions – under the law of occupation apply immediately, whereas the implementation of positive obligations depends on “the level of control exerted, the constraints prevailing in the initial phases of the occupation, and the resources available to the foreign forces.”

Protracted occupations remain governed by the law of occupation,⁵¹ other bodies of law, such as human rights law and international environmental law, gain more importance as time goes by.⁵² Given the variety of different situations of occupation, the draft principles with a view to enhancing the protection of the environment in the event of an armed conflict, remain relevant whether or not an armed conflict takes place and whether or not it includes an occupation. The draft principles addressing post-armed conflict situations would primarily have relevance for situations of prolonged occupation. For each part, the draft principles may require some adjustment, hence the phrase *mutatis mutandis*.

On the basis of the above general considerations on the right of occupation, the ILC comes into principle 20 on the following general obligations of an Occupying Power:

1. An Occupying Power shall respect and protect the environment of the occupied territory in accordance with applicable international law and take environmental considerations into account in the administration of such territory.
2. An Occupying Power shall take appropriate measures to prevent significant harm to the environment of the occupied territory that is likely to prejudice the health and well-being of the population of the occupied territory.
3. An Occupying Power shall respect the law and institutions of the occupied territory concerning the protection of the environment and may only introduce changes within the limits provided by the law of armed conflict.

From these general findings the ILC derived in detail:

- An Occupying Power is permitted to administer and use the natural resources in an occupied territory, however, there is an obligation of an Occupying Power with respect to the sustainable use of natural resources and to respect the various limitations set forth

⁵¹ Oxford University Press (2012), “The International Law of Occupation”, available at: <https://global.oup.com/academic/product/the-international-law-of-occupation-9780199588893?cc=us&lang=en&> (Accessed: 28 September 2020).

⁵² International Review of the Red Cross (2012), “The application of international humanitarian law and international human rights law in situations of prolonged occupation: only a matter of time?”, available at: <https://international-review.icrc.org/sites/default/files/irrc-885-koutroulis.pdf> (Accessed: 28 September 2020).

by the law of armed conflict and other international law to the exploitation of the wealth and natural resources of the occupied territory.

- Art. 55 of the Hague Regulations considers the Occupying Power “only as administrator and usufructuary” of immovable public property in the occupied territory.
- This description has traditionally been interpreted to forbid “wasteful or negligent destruction of the capital value, whether by excessive cutting or mining or other abusive exploitation”.
- From the nature of the occupation as temporary administration of the territory prevents the Occupying Power from using the resources of the occupied country or territory for its own domestic purposes.
- Any exploitation of property is permitted only to the extent required to cover the expenses of the occupation, and “these should not be greater than the economy of the country can reasonably be expected to bear”.
- The Occupying Power’s administration and use of natural resources in the occupied territory may only be “for the benefit of the population of the occupied territory and for other lawful purposes under the law of armed conflict”.
- Protection to the natural resources and certain other components of the environment of the occupied territory is contained in the provision, also the general prohibition of destruction or seizure of property, whether public or private, movable or immovable, in the occupied territory unless such destruction or seizure is rendered absolutely necessary by military operations (or, with respect to seizure of movable public property, is necessary for military operations).
- The prohibition of pillage of natural resources is furthermore applicable in situations of occupation.
- An “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” is also defined as a grave breach in article 147 of Geneva Convention IV and as a war crime of “pillage” in the Rome Statute of the ICC.
- The principle of permanent sovereignty over natural resources also has a bearing on the interpretation of Art. 55 of the Hague Regulations: in no case may a people be deprived of its own means of subsistence.
- The principle of self-determination may be invoked in relation to the exploitation of natural resources in territories under occupation, particularly in the case of territories that are not part of any established.
- Each state has an obligation not to cause significant harm to the environment of other states or to areas beyond national jurisdiction; the ICJ referred to this principle in the

case “Legality of the Threat or Use of Nuclear Weapons” and confirmed its customary nature, stating that the general obligation of states to ensure that activities within their jurisdiction and control respect the environment of other states and of areas beyond national control constitutes as “part of the corpus of international law relating to the environment”.⁵³

IHL, environment and armed forces

In 1993 the ICRC published a recommendation to include an article in the military handbooks of the national armed forces which deals with the environment:

“Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause such damage and thereby prejudice the health or survival of the population.”⁵⁴

This proposal was supported by the UN General Assembly. Resolution 49/50 invited all states “to disseminate widely the revised guidelines for military manuals and instructions on the protection of environment in times of armed conflict [...] and [...] incorporating them into their military manuals [...]”⁵⁵

The legal regulations do need interpretation. Environment is an essential element of human existence. According to the ICJ is the term “environment” not an abstraction but represents “the living space, the quality of life and very health of human beings, including generations unborn.”⁵⁶ The term as such implies the earth, land, water and air as well as the living organisms that live in these spaces.

However, the wording of Art. 25 and 55 allows possible interpretations of the terms “widespread”, “long-term” and “severe damage”. Moreover, the State parties have not made any declarations on the definitions of these terms. The cumulative linkage of these terms is also unclear, so that it could be argued that environmental damage is only covered by the prohibition if it meets all three criteria. Some authors argue that the IHL standards suffer from drawbacks and support the UN Development Programme’s (UNDP) approach. UNDP considers that IHL is not effective enough to tackle the problem.⁵⁷ This assessment is a consequence of the lack of definitions of the above-mentioned terms which are vague and ambiguous.

53 International Court of Justice (1996), “Legality of the Threat or Use of Nuclear Weapons”, available at: <https://www.icj-cij.org/en/case/95> (Accessed: 28 September 2020).

54 Bochum (1993), “Naturwissenschaftliche und völkerrechtliche Perspektiven für den Schutz der Umwelt im bewaffneten Konflikt”.

55 Ibid.

56 International Court of Justice (1996), “Legality of the Threat or Use of Nuclear Weapons”, available at: <https://www.icj-cij.org/en/case/95> (Accessed: 28 September 2020).

57 United Nations Environment Programme (2009), “Protecting the Environment During Armed Conflict”, available at: https://postconflict.unep.ch/publications/int_law.pdf (Accessed: 28 September 2020).

Against this background some authors argue that this “unclear” threshold has fallen into desuetude.⁵⁸ Bothe argues that the gap of the restrictive formulations of AP I presents also two opportunities because it allows on the one hand the application of the “due regard” principle and the prohibition of ‘wanton’ destruction of the environment.⁵⁹ On the other hand, it allows to consider the environment being a civilian subject and to prevent the transformation of environmental elements into military objectives. This can be achieved by declaring non-defended localities and demilitarized zones according to Articles 59 and 60 of AP I. The UN Security Council could designate such status and oblige parties to conclude such agreements.⁶⁰

The obligations of AP I are supplemented by ENMOD Convention. Art. 1 (1) of that convention prohibits artificial climatic changes during wartime, “as the US attempted during the Vietnam War.”⁶¹ The Convention prohibits

“the deliberate manipulation of natural processes in order to change ‘the dynamics, composition or structure of the Earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space’, with the intention of damaging the armed forces of another State Party to the Convention, its civilian population, towns, industries, agriculture, transportation and communication networks, or its natural resources and wealth.”⁶²

The Martens Clause may provide protection of the environment in armed conflicts “until a more complete code of laws of war is issued, in cases not included in the conventions of international humanitarian law, populations and belligerents remain under the protection and the rule of the principles of international law, as they result from the usages established between civilized nations, from the law of humanity, and dictates of the public conscience.”⁶³

IHL applies to armed conflicts, especially after the outbreak of armed hostilities. But IHL has an effect before the hostilities because States are obliged to disseminate the knowledge of IHL already in peacetime. IHL applies also after the end of the war, for example if prisoners of war are still in the hands of the adverse party. The same is also true for situations of occupation (see above).

In the last years, environmental considerations are being taken into account in the context of the end of hostilities and peace processes. One can find measures to protect and restore the

58 International Review of the Red Cross 92 (2010), “International Law Protection the Environment During Armed Conflicts”, available at: <https://international-review.icrc.org/sites/default/files/irrc-879-bothe-bruch-diamond-jensen.pdf> (Accessed: 28 September 2020).

59 Ibid.

60 Ibid.

61 Environmental Policy and Law (2015), “Law of Armed Conflict and the Environment”.

62 United Nations Treaty Series (1977), “Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I)”, available at: <https://treaties.un.org/pages/showdetails.aspx?objid=08000002800f3586> (Accessed: 28 September 2020).

63 Vöneky/Wolfrum, op. cit, para. 48.

environment in transitional justice processes.⁶⁴ The ILC argues that modern armed conflicts have a variety of outcomes that do not necessarily take the form of formal agreements. For example, at the end of an armed conflict, a ceasefire agreement, an armistice or a situation of de facto peace with no agreement could be reached. Environment matters in such processes because it suffered serious and severe damage which is immediately apparent and which may need to be addressed as a matter of urgency.

Comprehensive approach needed: the new humanitarian order

One of the sources of IHL is the principle of humanity. Therefore, the preamble of the Hague law states that “the people and the warriors shall remain under the protection of the rule of the principles of international law, as the result from the customs established among common peoples, from the laws of humanity and from the demands of the public conscience.” This demand of the Hague law led to a comprehensive codification of IHL, which is exemplified by the prohibition of particularly inhuman weapons and certain means of warfare.⁶⁵ It is clear that not everything is allowed in armed conflicts because the principle of humanity sets barriers. These codifications of IHL have had a considerable impact on general international law precisely because of their commitment to the principle of humanity. This resulted in an interaction between the different branches of international law that Meron calls the “Humanization of Humanitarian Law.”⁶⁶ He focusses on the relationship between human rights and IHL, sees the progress and warns: today the visibility and immensity of violation of IHL highlight issues of compliance that raise cynicism and doubt. In the long run, humanitarian norms must become a part of public consciousness everywhere.⁶⁷ This cannot be achieved by law alone, but requires the support of other sciences in order to achieve a social consensus and a corresponding public opinion.

The UN General Assembly also follows this approach and agrees with the Resolution 63/147 of 27.01.2009 on a “new international humanitarian order” based on strict compliance with human rights law, refugee law and IHL. The resolution called on the UN Secretary General to report on the problems of the interrelationship between IHL and human rights law, access to people in need and humanitarian assistance. The report identifies the existing problems and particularly calls for a combination of human rights law and humanitarian activities of the World Organization.⁶⁸ It is on this line that the UN ILC decided in 2007 to include the

64 United Nations (2004), “Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies”, available at <https://www.un.org/ruleoflaw/blog/document/the-rule-of-law-and-transitional-justice-in-conflict-and-post-conflict-societies-report-of-the-secretary-general/> (Accessed: 28 September 2020).

65 International Review of the Red Cross 97 (2015), “How warfare has evolved – a humanitarian organization’s perception: The case of the ICRC, 1863-1960”, available at <https://international-review.icrc.org/articles/how-warfare-has-evolved-humanitarian-organizations-perception-case-icrc-1863-1960> (Accessed: 28 September 2020).

66 American Journal of International Law (2000), “The Humanization of Humanitarian Law”.

67 Ibid.

68 United Nations General Assembly (2006), “New International Humanitarian Order. Report of the Secretary-General”, available at <https://undocs.org/A/61/224> (Accessed: 28 September 2020).

topic of “Protection of Persons in the Event of Disasters” in its agenda and concluded the first reading of the draft articles in 2014.⁶⁹

The momentum that is interesting for this subject of inquiry is the fact that the ILC decided to apply the principle of humanity approach of IHL to access to victims applicable in armed conflicts to human-made or natural disasters attributable to the law of peace. This brings the international community closer to the call for a unified “new humanitarian order.” It is therefore necessary to look at examples of what has been achieved so far in invoking the principle of humanity in codification. Undoubtedly, one has to see the codification process of the protection of the environment in armed conflicts being part of the merger process of human rights law and IHL.

Against this background, occupation can not only be seen from the perspective of IHL and human rights law, but also from the perspective of the right to self-determination. This is also true for the issue of the protection of the environment. The duration of the occupation does affect the enjoyment of these rights and a protracted occupation is illegal per se, as it amounts to the de facto annexation.⁷⁰ In its opinion on the legality of nuclear weapons, the ICJ also dealt with the destructive effects on the environment:

“The environment is under daily threat and [...] the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn.”⁷¹

Conclusion

The protection of the environment in armed conflicts makes it necessary from the legal viewpoint to apply IHL and human rights law in a complementary and not mutually exclusive way.⁷² This was endorsed in the judgements of the ICJ in the case of “Democratic Republic of Congo” v. Uganda⁷³ and in the “Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation)”.⁷⁴ The complementary application leads to the harmonization of the two legal bodies: “The best

69 United Nations General Assembly (2016), “Report of the International Law Commission”, available at <https://undocs.org/A/71/10> (Accessed: 28 September 2020).

70 International Court of Justice (2004), “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion. Separate Opinion of Judge Al-Khasawneh”, available at <https://www.icj-cij.org/en/case/131> (Accessed: 28 September 2020).

71 International Court of Justice (1996), “Legality of the Threat or Use of Nuclear Weapons”, available at: <https://www.icj-cij.org/en/case/95> (Accessed: 28 September 2020).

72 United Nations International Covenant on Civil and Political Rights (2016), “General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant”, available at <https://undocs.org/CCPR/C/21/Rev.1/Add.13> (Accessed: 28 September 2020). UN-Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 11.

73 International Court of Justice (2005), “Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)”, available at: <https://www.icj-cij.org/en/case/116> (Accessed: 28 September 2020).

74 International Court of Justice (2008), “Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)”, available at: <https://www.icj-cij.org/en/case/140> (Accessed: 28 September 2020).

alternative for the implementation and enforcement of laws of war is to amalgamate them with human rights laws [...]”⁷⁵.

This method should be also applied regarding the protection of the environment in the occupied areas of Azerbaijan. IHL and human rights law must be seen as a unity in the struggle for the environment and for human conditions. The advantage is that the approach of human rights law is broader and that there are different implementation mechanisms. This is a way to put legal pressure on the occupying power. The judgement of the European Court of Human Rights in the case of “Chiragov and Others v. Armenia” is an example of legal procedures which clarify the legal situation.

⁷⁵ Environmental Policy and Law 44 (2014), “Laws of War and Environment”, available at: <http://heinonline.org/HOL/LandingPage?handle=hein.journals/envpola44&div=46&id=&page=> (Accessed: 28 September 2020).

3. **Illegal Exploitation and Environmental Damage in the Occupied Territories of Azerbaijan**⁷⁶

Natalino Ronzitti⁷⁷

Introduction: The Current Status of Nagorno-Karabakh

Under the current situation, Armenia exercises effective control of the occupied territories of Nagorno-Karabakh and seven adjacent regions of the Republic of Azerbaijan, whether directly, through its own armed forces, or indirectly, through a subordinate local regime that survives by virtue of Armenia’s overall support, as pointed out by the European Court of Human Rights.⁷⁸ The case was about the notion of jurisdiction under Article 1 of the European Convention on Human Rights and a claim brought against Armenia for a limitation of the right of property located in Nagorno-Karabakh. The Court stated:

All of the above reveals that Armenia, from the early days of the Nagorno-Karabakh conflict, has had a significant and decisive influence over the ‘NKR’, that the two entities are highly integrated in virtually all important matters and that this situation persists to this day. In other words, the ‘NKR’ and its administration survive by virtue of the military, political, financial and other support given to it by Armenia which, consequently, exercises effective control over Nagorno-Karabakh and the surrounding territories, including the district of Lachin. The matters complained of therefore come within the jurisdiction of Armenia for the purposes of Article 1 of the Convention.

The Government’s objection concerning the jurisdiction of Armenia over Nagorno-Karabakh and the surrounding territories is therefore dismissed.

The self-proclaimed Republic of Nagorno-Karabakh (NKR) is not an independent state as

⁷⁶ This section, submitted in September 2020, has not been updated.

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⁷⁸ Council of Europe: European Court of Human Rights (2015), “Chiragov and Others v. Armenia”, available at: <https://www.icj-cij.org/en/case/140> <https://www.refworld.org/cases,ECHR,5582d29d4.html> (Accessed: 28 September 2020).

it does not meet the criteria set out by the 1933 Montevideo Convention on Rights and Duties of States and, in particular, lacks the requisite of independence. As a matter of fact, no state has recognized Nagorno-Karabakh as an independent entity; even Armenia has not extended its recognition.

Both the UN Security Council and the General Assembly have stated, directly or indirectly, that Nagorno-Karabakh is under foreign occupation (see, for instance, GA 62/243-2008; S/882-1993; S/853-1993; S/874-1993; S/884-1993).

The International Law of Occupation

The sources of international law of occupation are the Regulations annexed to the Hague Convention IV on War on Land of 1907 (specifically, Articles 42–56),⁷⁹ the Geneva Convention (IV) of 1949 on the Protection of Civilian Persons in Time of War (namely, Articles 47–78),⁸⁰ and the Additional Protocol I of 1977.⁸¹ Other specific conventions should also be taken into account, such as that on the Protection of Cultural Property (1954) and its Additional Protocol of 1999. Most of the provisions enshrined in the above-mentioned treaties are now customary international law and the custom has also influenced the old law of occupation, thereby reconciling it with the Charter of the United Nations and the developments of international law. Also, the jurisprudence of the International Court of Justice (ICJ) should be quoted, in particular the *Advisory Opinion on the Wall in Palestine* (2004) and *DRC v. Uganda* (2005). It should also be taken into account that often, nowadays, the occupation is no longer a temporary phenomenon, but a semi-permanent status of certain territories, and this has consequently caused a change, in some respects, of the old law of occupation.

The main rules of the law of occupation may be summarized as:

- a. The occupier is not the sovereign of the occupied territory. The sovereignty remains under the dispossessed State.
- b. The occupier cannot annex the territory under occupation. An annexation *pendente bello* is void. Nowadays, annexation is also forbidden by the prohibition of the use of force that has become peremptory international law. Similarly, it is forbidden to install a puppet government to mask a real annexation.
- c. It is forbidden to deport or expel the local population. It is likewise forbidden to transfer the population of the occupier into the occupied territory.

⁷⁹ Hague Convention (1907), “Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land.”, available at: <https://ihl-databases.icrc.org/ihl/INTRO/195> (Accessed: 28 September 2020).

⁸⁰ Geneva Convention (IV) (1949), “Relative to the Protection of Civilian Persons in Time of War.”, available at: https://www.loc.gov/rr/frd/Military_Law/pdf/GC_1949-IV.pdf (Accessed: 28 September 2020).

⁸¹ United Nations Treaty Series (1977), “Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I)”, available at: <https://treaties.un.org/pages/showdetails.aspx?objid=08000002800f3586> (Accessed: 28 September 2020).

- d. According to the Hague Regulations, the occupier is not the owner, but only the usufructuary of the occupied territory. It should handle the territory as a good *pater familiae*. For instance, it cannot deforest the country and exploit the territory in a manner inconsistent with the canons of good agriculture.
- e. According to the Hague Law, the occupier may exploit natural resources for its own profit. Now, however, this rule, as we shall see, should be adapted to the evolution of international law. First of all, the occupier cannot open new mines. Secondly the exploitation of the existing mines should be carried out having in mind the well-being of the local population.
- f. The occupier should respect the private property of the local population.
- g. The occupier should take care of cultural property.

The International Law Commission Project of Articles on the Protection of the Environment in Times of Armed Conflict

Since 2013, the International Law Commission (ILC) of the United Nations has been dealing with a draft article on the protection of the environment in times of armed conflicts. The working committee has already drafted a number of Principles, three of them specifically related to the protection of the environment in occupied territories (Principles 20–23).⁸²

Principle 20 sets out the duty to respect the obligations of the existing treaties on protection of the environment and to take into account environmental considerations in administering the territory. It also establishes that the occupier should take into account the environmental principles for fostering the well-being of the local population. In so doing, the occupier should not change or eliminate the environmental legislation that applies in the territory or the institutions implementing it.

Of utmost importance is the principle, enshrined in Article 21, dealing with sustainable use of natural resources. In so far as the law of occupation allows the occupier to use them for the benefit of the local population and other lawful uses, natural resources should be exploited in a manner that does not prejudice their sustainability. The Explanatory Report, in commenting on Principle 21, points out that the occupier cannot use the natural resources of the occupied territory for its own personal benefit. This means that the principle of usufruct embodied in the Hague Regulations should be reconciled and interpreted, taking into account the principle of a people's sovereignty over its own resources, such that they are subject to customary international law, and the principle of sustainable exploitation of natural resources already mentioned.

⁸² International Law Commission (2019), “Protection of the Environment in Relations to Armed Conflicts”, available at: <https://legal.un.org/ilc/reports/2019/english/chp6.pdf> (Accessed: 28 September 2020).

A role is also played by the principle of self-determination, as set out in Article 1 of both the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights, because, as we shall see, human rights apply also in times of armed conflict.

Lastly, Principle 22 sets out a duty of due diligence, thus establishing that the occupier, through its activity in the occupied territory, should not cause any environmental harm to the territories of countries outside the occupied territory.

The Application of Human Rights in Occupied Territories and the Right to a Healthy Environment

The ICJ has had occasion to assess the application of human rights law in occupied territories in the *Opinion on the Wall in Palestine* as well in the judgment on *RDC v. Uganda*. The Opinion, unlike the judgment, is related to a case of long-standing occupation and is thus particularly relevant for this paper.

In its Opinion on the Palestinian wall, the Court stated that the following instruments should be applied in the Palestinian occupied territories: the UN Covenant on Civil and Political Rights, the UN Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child (1989).⁸³ The problem is that the occupier is not the sovereign of the territory under occupation. The Court rightly made reference to the concept of jurisdiction that ‘is primarily territorial but may sometimes be exercised outside national territory.’ This is also the practice of the Human Rights Committee for the application of the Covenant on Civil and Political Rights. Much more interesting is the question of the application of the Covenant on Economic, Social and Cultural Rights, since it does not contain a clause on its scope of application. According to the Court, the applicability of that treaty to occupied territories is a matter of interpretation. Moreover, the applicability cannot be ruled out in cases of long-standing occupation, as was the case in Palestine, occupied for 37 years at the time of the ICJ deliberations. This line of reasoning may be easily applied to Nagorno-Karabakh, which has been under occupation for 30 years.

The right to a healthy environment is not embodied as a human right, either in the two Covenants or in the European Convention on Human Rights. It is considered as a human right in other regional treaties, such as the 1981 African Charter on Human and People’s Rights. However, several authors recognize the existence of the right to a healthy environment as a human right stemming from customary international law. The controversial point is only whether the right in question is a collective or an individual right, or both. The drafting of an instrument on the protection of the right to a healthy environment is advocated within the Council of Europe. It could take the form of a Convention or a Protocol additional to the European Convention on Human Rights. The latter solution is preferable because of the application of the judiciary regime set forth by the European Convention.

⁸³ International Court of Justice (2004), “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion.”, available at <https://www.icj-cij.org/en/case/131> (Accessed: 28 September 2020).

Occupation and Corporate Responsibility

The ILC draft on the protection of the environment in times of armed conflicts embodies two principles devoted to Due Diligence (Article 19) and Corporate Liability (Article 11).⁸⁴ The two principles set out obligations for states whose enterprises operate in zones of conflict to enact legislation for imposing respect for the environment. The duty is imposed to the state on whose territory the enterprise operates or to the state hosting the enterprise which operate in a conflict zone. This is in line with a dualistic approach to international law, since the enterprise cannot be directly titular of such rights and duties under the international legal order.

A wider approach on corporate responsibility is followed by both the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. EU Regulation 2017/821 also deserves to be mentioned. This deals with the import of minerals, including gold, from conflict zones, and thus also applies to occupied territories. The Regulations, which will enter into force on January 1, 2021, set out due diligence obligations to importers of minerals and to enterprises interested in their exploitation.

It is not clear whether the exploitation of natural resources in the occupied territories requires the ‘free, informed and previous’ consent of the local population. The principle of consent has been formulated by the UN General Assembly in relation to the exploitation of natural resources in colonial and non-self-governing territories. However, it is not excluded that it could be applied to occupied territories as a corollary of the principles of self-determination and permanent sovereignty over natural resources, especially in cases of long-standing occupation.

The “Cherry Blossom” Jurisprudence

Is it possible for the sovereign to apply to a foreign tribunal for seizing non-renewable resources excavated by the occupier or by enterprises licensed by the occupier and sold abroad? There is a precedent that is relative to a non-self-governing territory illegally occupied by a foreign state.

The case in question is that of the NM *Cherry Blossom*, decided by the High Court of South Africa on February 23, 2018. The *Cherry Blossom* was a ship laden with a cargo of phosphates extracted in Western Sahara, a territory that is occupied by Morocco, which claims to be the sovereign of the territory. The Saharawi Democratic Republic (SADR), which is the entity legally representing the Western Sahara, claimed ownership of the cargo, destined for a New Zealand corporation, as soon as the ship called at Port Elisabeth. The High Court in very short order established that the SADR was the real owner of the cargo, not the corporation that

⁸⁴ International Law Commission (2019), “Protection of the Environment in Relations to Armed Conflicts”, available at: <https://legal.un.org/ilc/reports/2019/english/chp6.pdf> (Accessed: 28 September 2020).

mined the phosphates or the New Zealand recipient. The order applied, within the admiralty law competence, a more elaborated judgment by the High Court of June 15, 2017.⁸⁵

Even though the case deals with a non-self-governing territory, it is relevant for the status of occupied territories. As a matter of fact, the Western Sahara is entitled to exercise the right of self-determination and Morocco is only the occupier and not the sovereign of the country. The principle of permanent sovereignty of peoples over their natural resources implies that they should be exploited for the benefit of the people of the territory. This is a limit to the power of the entity administering the territory, especially in case of exploitation of non-renewable resources, as already pointed out.

The Exploitation of Nagorno-Karabakh according to the Report Annexed to the Letter Addressed by Azerbaijan to the UN Secretary General (2016)

On February 15, 2016, the Permanent Representative of Azerbaijan to the United Nations addressed a letter to the Secretary General with an annex embodying a report from his government on the activities carried out by Armenia in Nagorno-Karabakh.⁸⁶ The annex to the report of the Ministry of Foreign Affairs of Azerbaijan is titled 'Illegal economic and other activities in the occupied territories of Azerbaijan.' The annex is very detailed, and the claimed illegal activities are thoroughly analyzed from both factual and legal points of view. The following is a sample of the most representative activities listed.

Transfer of Armenian population from Armenia's territory and attraction of people belonging to the Armenian diaspora abroad, including Armenian Syrian refugees. Expulsion of Azerbaijani residents.

Exploitation of mineral resources including precious metals, such as gold, and very valuable metals, such as copper. Mining activity is being carried out including through the opening of new sites.

Exploitation of rare/precious trees, such as timber, carried out in such a way as to cause serious damage to forests and the environment.

Depletion of water reservoirs caused by intensive agriculture, with the aim of attracting Armenians and expelling local people.

Opening new archaeological excavations and manipulating the existing sites, with the purpose of eliminating the Azerbaijani cultural inheritance.

⁸⁵ Southern African Legal Information Institute (2017), "Letter dated 15 August 2016 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General", available at: <http://www.saflii.mobi/za/cases/ZAECPEHC/2017/31.html> (Accessed: 28 September 2020).

⁸⁶ United Nations General Assembly Security Council (2016), "Letter dated 15 August 2016 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General", available at: <https://un.mfa.gov.az/files/file/N1626110.pdf> (Accessed: 28 September 2020).

It is worth noting that mining is carried out not only by enterprises based in Armenia, but also by entities registered abroad, especially those involved in mining precious metals.

Legal Evaluation of Activities Carried out in Nagorno-Karabakh

As already pointed out, the activities carried out in Nagorno-Karabakh should be attributed to Armenia, since the self-proclaimed Republic of Nagorno-Karabakh cannot be considered an independent state. According to information drawn from the letter of the Representative of Azerbaijan to the UN Secretary General and the list of activities described above, the works carried out in Nagorno-Karabakh should be considered as contrary to both treaties and customary international law.

- a. The transfer of the population of the occupier is contrary to the Geneva Convention (IV). The same is true for the expulsion of the local population (Art. 49, Geneva Convention (IV)).
- b. The intensive exploitation of mineral resources and the opening of new mines by the occupier is contrary to customary international law.
- c. The economic activities have damaged and are still damaging the environment. The protection of the environment stems both from conventional and customary international law. Protocol I, additional to the 1949 Geneva Conventions, embodies two provisions on the protection of the environment: Article 35, para. 2 and Article 55.

It is also necessary to take into account other sources of treaty law. According to the ILC Draft Articles on the Effect of War on Treaties, treaties on the protection of the environment remain in force between belligerents, unless otherwise stated in the treaty itself.⁸⁷ For instance, Armenia and Azerbaijan are parties to the UN Convention on Biological Diversity, which should continue to be applied in the occupied territories. The principle of application of conventional and customary international law is confirmed by the work of the ILC on draft principles on the protection of the environment in times of armed conflicts. The ICJ has confirmed the continuing application of norms on environmental protection in its advisory opinion on the threat or use of nuclear weapons.⁸⁸ Declarations of principles, such as the Stockholm Declaration on Human Environment (1972) and the Rio Declaration on Environmental Development (1992), have laid down principles that are now considered part of customary international law.

- a. The intensive exploitation of the occupied territory is not only contrary to the principle of usufruct embodied in the Hague Regulations, but also to other principles that have

⁸⁷ United Nations General Assembly Security Council (2016), “Letter dated 15 August 2016 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General”, available at: <https://un.mfa.gov.az/files/file/N1626110.pdf> (Accessed: 28 September 2020).

⁸⁸ International Court of Justice (1996), “Legality of the Threat or Use of Nuclear Weapons”, available at: <https://www.icj-cij.org/en/case/95> (Accessed: 28 September 2020).

emerged from the evolution of customary international law, such as the permanent sovereignty of peoples over their natural resources. Expropriation/confiscation of private property is forbidden by a well-settled principle of the international law of armed conflict.

- b. Lastly, attempts to cancel the cultural heritage of the occupied territory are contrary to the Hague Convention of 1954 and its Additional Protocol of 1999 (respectively, Art. 5 and Art. 1) as well to Article 53 of Protocol I in so far as it enshrines a general principle on respecting cultural property.

Conclusion

The violations of international law committed by Armenia as the occupier of Nagorno-Karabakh are manifold and are not confined only to the infringement of international environmental law. These violations fall under the law of international responsibility, and the ILC draft articles on states' responsibility indicate possible remedies, including third-party action such as countermeasures if serious violations of international law are committed.⁸⁹

The point has been illustrated by other commentators, in particular Professor Alain Pellet in his 'Legal opinion on third party obligations with respect to the legal, economic and other activities in the occupied territories of Azerbaijan,' annexed to the letter, already quoted, of the Permanent Representative of Azerbaijan to the UN Secretary General.⁹⁰ It is also necessary to take into account the opinions given by Professor Yoram Dinstein⁹¹ and Professor Malcom N. Shaw⁹², as well as the recent document embodied as an annex to the letter addressed by the Permanent Representative of Azerbaijan to the UN Secretary General in 2020.⁹³

Here, by way of concluding remarks, it is convenient to raise an almost neglected issue, that is, whether the *Cherry Blossom* jurisprudence may be applied to the case of Nagorno-Karabakh and the depletion of its natural resources. As a consequence of the principle of permanent sovereignty of peoples over their natural resources, the greater part of the licenses issued by the occupier or by the Nagorno-Karabakh entity should be considered as void. This implies that the resources mined in the Nagorno-Karabakh territory belong to Azerbaijan. It means that Azerbaijan may bring a civil action against those companies

89 International Law Commission (2001), "Responsibility of States for Internationally Wrongful Acts", available at: https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf (Accessed: 28 September 2020).

90 United Nations General Assembly Security Council (2008), "Letter dated 22 December 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General", available at: <https://undocs.org/S/2008/812> (Accessed: 28 September 2020).

91 United Nations General Assembly Security Council (2008), "Letter dated 26 December 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General", available at: <https://undocs.org/S/2008/812> (Accessed: 28 September 2020).

92 United Nations General Assembly Security Council (2009), "Letter dated 23 January 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General", available at: <https://undocs.org/S/2009/51> (Accessed: 28 September 2020).

93 United Nations General Assembly Security Council (2020), "Letter dated 4 June 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General", available at: <https://undocs.org/S/2020/503> (Accessed: 28 September 2020).

in possession of the resources. An action may be brought before an Armenian court, but it seems unrealistic. However, there is a possibility of bringing an action before a tribunal of a third state where the assets are located (or before a tribunal of the state of nationality of the enterprise). The main hurdles are the principle of sovereign immunity and the political question, as the proceedings involve a sovereign state, that is, Armenia. A possible way out might be the disapplication of those principles, since in this case they conflict with a peremptory norm of international law (the prohibition of aggression).

4

Continuing Crimes against the Natural Environment: The Case of Okhchuchay River

*Fuad Chiragov*⁹⁴

The formerly occupied territories of Azerbaijan had been one of the “grey zones” of Eastern Europe for more than 27 years. As discussed in the previous chapters, the loss of Azerbaijan’s control over these territories and the lack of adequate international monitoring enabled crimes to be committed against the natural environment.

After the liberation of the occupied territories, Azerbaijan has been trying to evaluate and quantify all of the damage to residential areas, infrastructure, and the environment and to clear the territories of the landmines that had been laid across thirty years. This is a costly and time-consuming activity that will probably take many years.

At the same time, Azerbaijan is appealing to the international community to stop the continuing pollution of and damage to the environment in the region. The Gajaran copper-molybdenum plant and the Gafan ore refinery in Armenia continue ruthlessly to contaminate the drinking water source that is the Okhchuchay River (called the Voghji River in Armenia) that flows into the Aras River, thence into the Kura River and finally into the Caspian Sea. That is, the pollution of the Okhchuchay River puts at risk the well-being of millions of people as well as the fauna and flora of the region. The German company CRONIMET[†] is an active player in the Armenian mining sector and the main shareholder (60%) in the Gajaran copper-molybdenum plant and the Gafan ore refinery. Many environmentalists remain completely dissatisfied with CRONIMET’s response to the environmental impact of the company’s activities. The German Embassy in Azerbaijan claims that the German company sold its shares in 2019. Moreover, according to the German Ambassador when the concerns were addressed to the German Embassy, the company is a private one and thus CRONIMET cannot bear any legal and/or criminal responsibility. In fact, according to German laws and regulations, a criminal offence leading to corporate criminal liability does not necessarily have to be committed in Germany. If a company has its seat in Germany, corporate criminal liability can also arise from criminal offences committed abroad if they are linked to the company’s business.

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Brief Information about the Okhchuchay River

The Okhchuchay River is the western tributary of the Aras River (83-km long and with a catchment area of 1,175 km²) and originates from Gapijig mountain (3,285 m) in the Zangazur range, the greater part of which is located within the Syunik region of Armenia (a historical region of Azerbaijan called Zangezur). The lower course of the river flows through Zangilan, in the territories recently liberated from the Armenian occupation, and enters the Aras River.

Its flow is formed by snow (46%), rain (10%) and groundwater (44%). The average water flow is 10.0 m³/s and the mean annual volume is 315 million m³. Of the annual flow, 40% is observed in spring, 43% in summer, 10% in autumn, and 7% in the winter.

Transboundary Water Pollution

In Azerbaijan, about 70% of the country's surface water resources originate as inflow waters from neighboring countries. The water resources of the Okhchuchay River are widely used for irrigation purposes, but the Okhchuchay is a transboundary river that is constantly affected by severe pollution from industrial discharges on Armenian territory and the river acts as a collector from industrial facilities along its course, thus making the water resources unusable in the territory of Azerbaijan.

Pollution of the Okhchuchay also directly impacts the quality of the water resources of the Aras River—the second largest river in the South Caucasus—into which it flows. The Aras River is also a transboundary river shared with Armenia and is the largest right tributary of the Kura River. It plays a crucial role in irrigating the farmlands of Azerbaijan. However, given the quality of the water in the river, its use for domestic and agricultural needs can lead to extreme negative impacts.

It is a commonly known fact that most of the salts of heavy metals that enter the environment do so as a result of the activities of mining and processing enterprises. There is therefore reason to believe that one of the largest mining enterprises in Armenia, located in Syunik province at the head of the Okhchuchay River (called the Voghji River in Armenia), is, by dumping its production wastes directly into the river without any preliminary treatment, failing in any way to comply with any environmental standards.

Excessive release of heavy metals into the river by the Gajaran copper-molybdenum plant and the Gafan ore refinery in Armenia not only ruins the fluvial fauna but is also extremely dangerous for human health. Use of the contaminated water can have detrimental consequences, from disorders of the gastrointestinal tract to destructive processes in kidneys and bone tissue, up to disorders of the cardiovascular, nervous, and hematopoietic systems of the body.

Results of Monitoring the Okhchuchay River: Laboratory Analysis of Water Samples and Visual Observations

The liberation of the Azerbaijani lands previously occupied by Armenia has given Azerbaijani ecologists access to the local rivers, in particular those flowing through the territories of the Zangilan district. The results for the water test samples from the Okhchuchay River taken from January to March 2021 have revealed high contents of heavy metals, specifically copper, molybdenum, manganese, iron, zinc, and chromium.

According to a report by the Ministry of Ecology and Natural Resources (MENR) of Azerbaijan, the content of copper-molybdenum compound was up to 2 times the norm; iron, 4 times; and nickel was as high as 7 times the norm. Periodically, the color of the Okhchuchay River was changing either to white or acid yellow. A mass mortality of trout was recorded in the river in March 2021.

Specific results were:

- 09.01.2021: Nickel was 7.1 times higher than normal.
- 28.01.2021: Manganese was 3.6 times; iron 4.6 times; nickel 5.7 times; cadmium 3.5 times; ammonium 1.6 times; lead 1.3 times; zinc 1.2 times; and molybdenum 2.5 times higher than the norm.
- 05.02.2021: Manganese 2.0 times; iron 3.5 times; nickel 3.6 times; and molybdenum 1.7 times higher than the norm.
- 09.02.2021: Iron 1.8 times; molybdenum 1.4 times; and manganese 1.9 times higher than the norm.
- 26.02.2021: Manganese 3.2 times; iron 5.2 times; nickel 1.4 times; and molybdenum 1.3 times higher than the norm.
- 04.03.2021: Iron 2.8 times and manganese 3.6 times higher than the norm.
- 10.05.2021: Iron 1.8 times and cadmium 1.4 higher than the norm.
- 07.03.2021: During visual monitoring of the Okhchuchay River in the Shayifli and Jahangirbeyli villages of Zangilan region, a massive die off of 227 small trout (salmonid species) and 330 perch was observed; these species are included in the "Red Book" of the Republic of Azerbaijan. The reason for the death of the fish was excess iron, copper, nickel, molybdenum, and other heavy metals in the river water.

The latest river-water and sediment sample analyses were conducted at the internationally accredited and certified SGS laboratory in Germany on the basis of an order by the Ministry of Ecology and Natural Resources of Azerbaijan through an agreement with the Société

Générale de Surveillance Azeri Ltd LLJ. The results of tests of water samples taken from the Okhchuchay River revealed high contents of heavy metals, specifically iron, copper, manganese, molybdenum, zinc, chromium, nickel, and others, in river surface waters, while the excessive concentration of hazardous substances in sediment sampling shows that the level of contamination of the river is critical.

The Role of International Organizations

Unfortunately, Armenia, from where the majority of rivers flow into the territories of Azerbaijan, has not yet joined to the Helsinki Convention on Transboundary Watercourses. This international document, adopted in 1992 in Helsinki (Finland), serves as a mechanism for strengthening national measures and international cooperation aiming at achieving environmentally sound management and protection of transboundary surface and ground waters.

Considering this, MENR appealed to international organizations about the environmental hazards and critical situation of the Okhchuchay River, including attempts to raise public awareness on the environmental risks expected for the river and its ecosystem in the context of continuing pollution by Armenia.

Specifically, letters to Mr. Bruno Pozzi, UN Environment Director Europe Office and Ms. Olga Algayerova, Executive Secretary United Nations Economic Commissions for Europe, informed them about the significance of the environmental pollution of the Okhchuchay River and called on them to prevent the transboundary water pollution that is leading to irrevocable degradation of the region’s unique ecosystem.

The message regarding the environmental degradation of the Okhchuchay and a request for urgent action preventing Armenia from continuing pollution was also conveyed to the UNECE secretariat servicing the Convention: Ms. Sonja Koeppel, Secretary of the Convention on the Protection of Transboundary Watercourses and International Lakes, and Ms. Tea Aulavuo, Secretary of the Convention on Environmental Impact Assessment in a Transboundary Context.

At the same time, a similar letter was sent to Mr. Isa Kalantari, Vice President and Head of the Department of Environment of the Islamic Republic of Iran, thus reflecting the necessity of joint action to prevent this negative transboundary impact that is affecting both countries’ environments. This included a proposal to form a joint working group that will focus on tackling this problem together.

Along with international organizations, MENR applied to the Green Party faction the German Bundestag to draw its attention to this matter, in particular considering the serious threat to the environment and human health caused by the Zangezour Copper Molybdenum Combine operating the Gajaran mine, in which the German CRONIMET Holding GmbH is the major shareholder.

In the German Bundestag, letters were sent to Ms. Sylvia Kotting-Uhl, Chair of the Environment, Nature Conservation, Construction and Reactor Safety Committee; Ms. Steffi Lemke, Speaker of the Committee of the German Bundestag on the Environment, Nature Conservation and Nuclear Safety; and Dr. Bettina Hoffmann, Speaker on Environmental Policy of Green Party faction in the German Bundestag. A relevant letter has also been sent to the German Federal Minister for the Environment, Nature Conservation and Nuclear Safety.

In the letter, MENR expressed its expectation that the German government, civil society, and environmental community would react to this issue in an urgent manner. The recipients were also informed about several concerns raised by numerous Armenian environmental organizations, including relevant facts obtained from Armenian web media sources on environmental pollution.

What we see is that the government of Armenia and the German company are trying to avoid any kind of legal or moral responsibility for the continuing damage to the environment. The people of Azerbaijan expect that other nations and international institutions will demonstrate the same sensitivity to environmental crimes as they demonstrate to allegations from the Armenian side about damage to the churches and Christian heritage of the region. The people of Azerbaijan also hope that the environmental costs of the conflict and the obligations of all responsible parties will be evaluated with due attention to the principles of international law.



NEGLECTED VICTIM OF THE ARMENIA–AZERBAIJAN CONFLICT

*Environmental Impacts
of Occupation*

Center of Analysis of International Relations
(AIR Center)

Baku, Azerbaijan
2021



CENTER OF ANALYSIS OF INTERNATIONAL RELATIONS
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NEGLECTED VICTIM OF THE
ARMENIA-AZERBAIJAN CONFLICT

ENVIRONMENTAL IMPACTS OF OCCUPATION