

PRESERVATION OF THE ENVIRONMENT

Its influence on the conduction of military operations

The different attempts to civilize war have restricted military actions prohibiting the use of weapons that cause damage to the environment. There are international legal obligations and domestic laws that require countries to protect the environment against the effects of armed conflicts which are included in directives, instructions, manuals and military training programs. These legal obligations are restrictions for the Commander of a Theater of Operations in the planning and conduction of an armed conflict.

KEY WORDS: INTERNATIONAL HUMANITARIAN LAW / ENVIRONMENTAL DAMAGE / ARMED CONFLICT / LEGAL ADVISOR

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INTRODUCTION

In times of armed conflicts, damage to the environment is unavoidable. Wars have caused great damage, part of which has been long-lasting. Many battlefields of the First and Second World Wars cannot be used yet while others pose significant risks for the population due to the presence of war material such as mines or projectiles.

The effects of wars at the expense of the environment is an unknown topic although wars have caused species of plants and animals to have disappeared, soil erosion, and the pollution of air and water, among other things.

Nowadays, the destruction power of combat means used in armed conflicts and available in arsenals represents a threat for the environment as they may cause unprecedented serious damage to humankind.

This is why great importance is given to humanitarian law provisions related to the protection of the environment in times of conflict and, also, an ongoing review and improvement of said laws are required due to the appearance of new technology and combat means.

Although the issue of preserving the environment is present in the Argentine military doctrine, there is no clear prioritization between the preservation of the environment and the fulfillment of the mission within a Theater of Operations by the Operational Commander.

This situation leads to the question: What are the factors that an Operational Commander must consider in order to establish a priority between the fulfillment of the mission and the preservation of the environment during armed conflicts?

LEGAL FRAMEWORK

International law, and particularly international humanitarian law, has attempted to protect people and their belongings and to limit the powers of the parties at war with the purpose of protecting the environment.

International humanitarian law is a group of legal provisions included in treaties; even in common law (customs) that regulate rights and obligations of the parties at war and the protection of people and civil items that may be affected in armed conflicts. It is included in two sets of rules: the law of The Hague, the purpose of which

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is to restrict methods and means used in war and the law of Geneva which mainly aims at defending people and property affected by hostilities.

The law of Geneva is known as the fullest set of rules as it attempts to include both aspects of International Humanitarian Law and it is today the most important set of rules in force. Its universality lies in the number of countries that has ratified the four Geneva Conventions of 1949 and its two additional protocols of 1977².

Moreover, the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques³ is the only specific International Treaty regarding this aspect.

As regards the environment, the purpose of International Humanitarian Law is to limit damage caused by armed conflicts at a level that may be deemed as tolerable. For this reason, it prohibits, among other things, military means and methods that:

- › Do not differentiate among the people that take part in combats and the people that are not part of them in order to respect the lives of civil population, civilians and civilian items.
- › Consider the environment as a military target.
- › Use the environment as war means or method.
- › Cause unnecessary damage or suffering.

In particular, article 53 of the Geneva Convention on the protection of civilian persons in time of war sets forth the prohibition to destroy real or personal property belonging individually or collectively to private persons or to the State or to other public authorities, except where

1. Among the main instruments of the Law of The Hague, there are The Hague Conventions of 1899 and 1907; the Geneva Protocol of 1925, which prohibits the use of chemical and bacteriological weapons and the UN Convention of 1980 on prohibitions or restrictions of the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects.

2. Member states: Geneva Conventions (194); Additional Protocol I (163). Additional Protocol II (159). Available at <http://www.icrc.org/spa/>

3. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques. Available at <http://www.icrc.org/spa/resources/documents/misc/treaty-1976-enmod-convention-5tdm2l.htm>

4. Additional Protocol I to the 1949 Geneva Conventions relating to the protection of victims of international armed conflicts, 1977. Available at <http://www.icrc.org/spa/resources/documents/misc/protocolo-i.htm#8>

5. It includes all techniques that aim at the dynamics, composition or structure of the Earth, including its biotic, lithosphere, hydrosphere and its atmosphere or the outer space.

6. For this environmental modification to be prohibited, the use of prohibited techniques must cumulatively be for hostile purposes, cause destruction, damage or injury to any other State Party and to have widespread, long-lasting or severe effects.

such destruction is rendered necessary by military operations.

Moreover, article 147 also mentions this concept indicating that if extensive destruction was carried out unlawfully and wantonly and not justified by military necessity, it will be deemed as a serious breach and international criminal law will be applicable.

Also, article 35.3 of the Protocol I to the 1949 Geneva Conventions on the protection of international armed conflicts of the year 1977 prohibits methods and means which are intended, or may be expected, to cause widespread, long- lasting and severe damage to the natural environment. Article 55 sets forth that attacks by way of reprisals are prohibited and article 56 protects the environment by prohibiting the attack of works and installations containing dangerous forces (dams, dykes, nuclear electric generating stations), even where these objects are military objectives if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population and damage to the environment. Article 57, in this sense, establishes precautions in the conduct of military operations and attacks by stating the obligation to protect civilian objects, among which there is the environment.

Therefore, environmental protection is based on three key International Humanitarian Law principles: humankind, distinction and proportionality.

INTERNATIONAL PROVISIONS

Although international regulations mentioned contribute to the protection of the environment, the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD) is the specific international set of rules regarding these issues.

This Convention, which came into force on October 5, 1978, constitutes a response to the means used in Vietnam and has the purpose to actually prohibit the use of environmental modification techniques⁵, whether for military or any other hostile purposes in order to avoid risks posed by their use. Consequently, State Parties commit themselves not to use environmental modification techniques for military or any other hostile purposes that have widespread, long- lasting and severe effects as the means of destruction, damage or injury to any other State party⁶.

Although the agreements to construe the ENMOD Convention are not an integral part of it, they highlight the



magnitude of widespread, long- lasting and severe effects in the sense that:

- › Only one of those effects is enough for the Convention to be applicable.
- › Widespread effects refer to a surface of several hundred kilometers.
- › Long- lasting effects refer to a period of several months or a season.
- › Severe effects refer to serious or obvious damage for human life, natural and economic resources or other riches.

Although the ENMOD Convention is the specific international law instrument as regards this issue, its key complement is Additional Protocol I to the 1949 Geneva Conventions of the year 1977 mentioned before. However, there are many differences in the following terms:

- › The Convention refers to the use of environmental modification techniques and limits the deliberate manipulation of natural processes that may cause natural phenomena, such as hurricanes, earthquakes, tidal waves, rain or snow, while Additional Protocol I states the obligation to protect the environment prohibiting all means and methods that may break essential natural balances for the environment.
- › They give different meanings to the terms widespread,

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long- lasting and severe. Moreover, these concepts are cumulative in Additional Protocol I, while in the case of the ENMOD Convention, only one of them is enough for it to be applicable.

- › The ENMOD Convention sets forth a procedure for periodic revision of its development.

NATIONAL LAWS

The Argentine Constitution –as amended in 1994– establishes that treaties and conventions signed by the State are in a position higher than national laws. As regards the specific framework of National Defense, the ENMOD Convention is the one that regulates environmental protection.

Moreover, National Defense Law No. 23554 establishes that the Armed Forces abide by internal discipline



regulations and will adjust their actions to the national and international law applicable to armed conflicts.

In this sense, Law No. 26200 has included those crimes regulated by the International Criminal Court and, therefore, the list of war crimes of the Rome Statute with those included in the 1949 Conventions and the Additional Protocol I of 1977 (which were not included in the Statute) is now complete. All of this with the exception that breach of war laws does not constitute war acts and, therefore, they are sanctioned by the Criminal Code of the Nation (with the incorporation, replacement and modification of Annex I of the Law No. 26394) or by Law No. 26200, whichever is applicable.

However, some disciplinary sanctions and other administrative and/or civil liability provisions may be applied to some breach pursuant to Annex IV of Law No. 26394. Notwithstanding the provisions regarding breach of war laws, any other act that may pose a risk to the peace and dignity of the Nation may be sanctioned (Book Two, Title IX, Chapter II of the Criminal Code of the Nation and section 220 as amended by Article 7 of Annex I of Law 26394).

Results of the analysis of laws

From the analysis we have made of the International and Domestic laws in force, we can conclude that:

- › There are few International Humanitarian Law provisions that expressly refer to environmental protection during armed conflicts and, the ones that refer to them, are inadequate and they lack information. An example of this is the concept of widespread, long-lasting and severe damage as described in Additional Protocol I because it is not precise and it is not easy to measure.
- › As regards Domestic Laws, they do not give precision and do not contribute to assure and directly protect the environment, thus causing a lack of clear and precise legal guidelines for a Commander, assisted by his advisors, to be able to determine whether their decisions are within the legal framework.
- › There is no precision as to incidental damage against civilian property as a consequence of the attack to military targets. The lack of information in this case refers to proportionality practical questions when the damage to the environment is incidental damage⁷ caused by attacks against military targets.
- › There is uncertainty as to the protection of the environment established by International Humanitarian Law in case of non-international armed conflicts, taking into consideration that most current armed conflicts nowadays are not international.

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MILITARY DOCTRINE REGARDING ENVIRONMENTAL PROTECTION

The National Specific and Joint Military Doctrine that refers to the protection or damage to the environment in a Theater of Operations is the following:

International Law of Armed Conflicts (PC 08- 01)

Environmental protection in a Theater of Operations is established in the International Law of Armed Conflicts (PC 08- 01) of the year 2010. According to its purpose and characteristics, it is a set of basic doctrine regulations to be applied in military planning, both at joint and specific level, and that is compulsory for all levels of conduction. In this sense, it allows, in the conduction of operations, to inform about legal war means and procedures, regulations applicable to the behavior of military forces in operations and regulations to be complied with by population and civilian property.

These regulations are compulsory and based on International Conventions related to the International Law of Armed Conflicts (Conventions, Protocols, etc.), passed by the Argentine Congress and are at a higher level than domestic laws.

With respect to environmental protection regarding armed conflicts, it refers to the basic principles of:

- › *Principle of distinction:* In order to guarantee the protection of civilian property, to distinguish this from military targets.
- › *Principle of limitation:* As regards the election of methods or means of combat that cause widespread, long-lasting and severe damage to the natural environment.
- › *Principle of proportionality:* Methods or means cannot be indiscriminate or excessive with respect to the defined military advantage.

7. Incidental damage is any unintended or accidental damage resulting from a military operation.

› *Principle of military necessity*: Any combat activity must be justified by military necessity reasons. Therefore, military authorities are obliged to adopt the necessary measures so that their subordinates know the rights and obligations they have pursuant to the Conventions and Protocols.

As necessity, these Regulations establish that the Chief of the Joint Staff and of the respective Staffs of each force and, also, the Commander of a Theater of Operations, must have an entity or Legal Officer to advise on the application of Conventions and Protocols.

With respect to this, Major Jorge Jesús Antelo⁸, explains that these specialists must be aware of the planning method in order to interpret it and to be able to advise on the treatment that combatants, civilians and special property must receive and on those aspects regarding combat procedures that may be legally used and the conditions that legitimate a military target. These aspects are essential and must be assessed during the development of operational planning.

As regards property, military target refers to that property which, because of its nature, location, purpose or use, efficiently contributes to military action or whose total or partial destruction, capture or neutralization offers a defined military advantage in the circumstances of the case⁹.

The International Committee of the Red Cross specifies four key characteristics that condition the military target: Nature (specific value of the object for the armed forces), location (geographical value or position at strategic or tactical level), use (responds to the use of the object) and purpose (foreseeable use of the element with respect to its aptitude for military operations).

For the election of the military target with protection or immunity, the Operational Commander must consider that this protection is not complete as war operations do not guarantee absolute precision as there may be some accidental –involuntary- or incidental damage. The latter must be considered a foreseeable risk.

There are circumstances in which the attack to a protected military target will be legitimate: it has to respond to a military necessity and the principle of proportionality, which establishes that a military action is proportionate when it does not cause excessive damage with respect to a defined military advantage¹⁰, has to be respected.

Although military authorities are obliged to know the rights and obligations set forth in applicable Conventions and Protocols, it is necessary to have permanent advisors specialized in International Law of Armed Conflicts at Operational Level.

Regulations for the Conduction of the Land Military Instrument (ROB 00- 01)

These specific regulations from the year 1992 establish destruction as a complementary operation, attempting to limit or extinguish the operational possibilities of the enemy through evacuation, pollution or total or partial destruction of targets in a specific area using procedures and/or means, such as flood, fire, demolition (by means of mechanical or explosive means), removal and, eventually, the installation of certain type of obstacles¹¹.

Its scope may range from the destruction of facilities to the execution of a plan that involves the concept of destroyed land.

As these operations may affect civil population, they will be planned and executed so that they do not cause, in any case, unnecessary or excessive damage and, specially, additional suffering to population¹². Although they are conducted and executed at tactical level, the Military Strategic and Operational level will be responsible for establishing the rules for said operations and their limits aimed at preventing unnecessary or excessive damage.

Planning and Strategy Manual for Joint Military Action at Operational Level- The Campaign (MC 20- 01)

The version published in 2013 explains the planning method for the operational level called “Systemic Operational Design”. Stages 1 to 5 of the planning define the resolution of the commander and, based on this, the concept of operation. Based on the contribution made by Major Antelo, we can identify the intervention of the Legal Advisor specialized in International Law of Armed Conflicts during planning in the following manner:

1. In the analysis of the mission, it is necessary to highlight those activities, whether implicit or deducted, that show

8. Antelo, Jorge Jesús; “Derecho Bélico en el Planeamiento de Comando; Air & Space Power Journal”; edición 1999; First trimester. Rescatado de <http://www.airpower.maxwell.af.mil/apjinternational/apj-s/1999/1trimes99/antelo.htm>

9. Ministry of Defense; Joint Staff of the Armed Forces; Argentine Republic; Derecho Internacional de los Conflictos Armados; PC – 01; 2010.

10. Mullinen, Frédéric; *Manual sobre el derecho de la Guerra para las FFAA*; International Committee of the Red Cross; 1991; p. 89.

11. Ejército Argentino; *Reglamento de Conducción para el Instrumento Militar Terrestre (Regulations for the Conduction of Land Military Instrument)*; ROB 00-01; 1992; p. 214.

12. Argentine Army; op. cit.; p. 214.



difficulties to comply with the objective established without any breach. This allows to have criteria to state action modes; therefore, the respect for International Law of Armed Conflicts may be a determining factor.

2. During the analysis of the situation, it is necessary to include treaties agreed by the parties as they impose combat methods and means.
3. In the analysis of Modes of Action, it is necessary to consider the influence of International Law of Armed Conflicts as regards the analysis and selection of –not protected- targets and proper procedures to prevent incidental or accidental damage. This is due to the fact that, if there is any breach, it will be necessary to check that adverse consequences do not risk the fulfillment of the objective established. However, even when identifying the risk of breach, the Mode of Action cannot be disregarded as the Commander may accept it.
4. In the confrontation of the Tentative Modes of Action, it would be necessary to analyze the possibility for any breach to occur because of incidental or accidental damage and how this will influence on the sequence of the Mode of Action. The existence of breach during

confrontation does not prevent the retention of the Mode of Action. Acceptability is at the exclusive discretion of the Commander.

5. In the comparison of Retained Modes of Action, the use of International Law of Armed Conflicts as selection criteria may, in some situations, have a significant influence and be absolute for the selection of the best Mode of Action. In all cases, it is convenient to select the Mode of Action that, having a similar military advantage, implies less risk to cause damage to property and people.

When proposing the Mode of Action that is regarded as the most convenient, it is necessary to expose in a detailed and careful way the risk of breach of International Law of Armed Conflicts that each Mode of Action poses.

Underestimating the negative effects that this breach may cause is not only disloyal with the Commander, but also makes him adopt a resolution with consequences that could not be assessed properly.

After deciding to make this decision, the Commander explains his concept of operation which must include the particular criteria related to compliance with legal provisions, especially when it is possible to predict breach of war law in that resolution. These criteria must be included

although they may be a restriction to freedom of action of the level below planning.

Aspects of Joint and National Specific Military Doctrine

From the analysis of the Joint and National Specific Military Doctrine, we can draw the following conclusions:

- › Although military authorities are required to know the rights and obligations stated in the applicable Conventions and Protocols and to adopt the necessary measures so that their subordinates may be trained in relation with this, it is necessary to have the permanent presence of legal advisors specialized in International Law of Armed Conflicts at the Operational Level.
- › The legal advisor must know the planning method used at the operational level in order to interpret it and to participate in an integral way during its development and in the actions.
- › With respect to the advice to be provided, this will imply checking that the mission to be fulfilled does not have any breach to war law provisions; if there is risk to cause breach and there is a military necessity to carry out the operations planned; knowing the consequences of this allows to frame actions to fulfill the mission and its conciliation with statements admitted by International Law of Armed Conflicts.
- › Applying International Law of Armed Conflicts since planning has a decisive value for the fulfillment of the mission.
- › The analysis of the Military Objective allows to legitimate and justify it from the point of view of War Law. This analysis requires to define its use in order to detect possible dual uses, that is, civilian property may be used for war efforts, thus becoming a legitimate target that may be attacked. Its analysis, from the point of view of International Law of Armed Conflicts perfects and clarifies its knowledge.
- › The Commander needs to know the risk of possible breach of International Law of Armed Conflicts that imply operations planned by the tactical level in order to analyze to which extent they affect their desired effect or the fulfillment of the mission. Therefore, the recurrence among planning levels becomes significantly important.

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The greater commitment and awareness of international courts as regards issues of environmental damage, which is a tendency promoted by a growing presence of non-governmental organizations and more gravitation of environmental movements, will make future Commanders be prosecuted for war crimes.

The Commander must have as much details as possible regarding the operational objective that intelligence may provide him with. This will allow to make a proper decision before the attack, to choose the most proper tactics and techniques during the attack and to legally justify, if necessary, the military advantage after the attack and justify possible collateral damage as well as to carry out all necessary actions to mitigate and/or repair them.

ENVIRONMENTAL PROBLEMS CASES

The Vietnam War was an asymmetrical conflict that did not have defined war fronts with lightning attacks.

Between 1961 and 1971, the US Army carried out the Ranch Hand Operation with the purpose of preventing the enemy from natural means that helped them to hide themselves and to hide their actions and means and which also provided them with supplies. This is how it carried out a widespread defoliant spread (Agent Orange) that contained dioxin¹³, a chemical product that is toxic. The systematic application of this herbicide, the excessive tree felling, and the fire with napalm, phosphorus and magnesium have been the cause of irreversible changes in areas which were productive before. Environmental damage was long-lasting and its effects can be seen nowadays. (See Image 1).

In 2003, a group of American researchers estimated that the amount of defoliant spread was 77 million liters which affected 1.8 million hectares of farm surface and 20% of forests.

The bombing of NATO over Kosovo in 1999, also known by its code name, Operation Allied Force, was a military air operation that had the purpose of expelling the Serbian, get peace forces to have permanence and refugees to return. Attacks occurred between March 24 and June 11, 1999. The main strategy was a long and sustained campaign over strategic targets, such as bridges, factories and power stations.

According to the Serbia Environmental Protection Agency (SEPA), bombing by the NATO caused long-lasting damage to the environment as thousands of tons of toxic chemical products, which were stored in factories, were spread on the soil, the atmosphere and river basins, thus affecting human beings and fauna. In this war, NATO was accused of using air missiles with depleted uranium in order to increase its kinetic energy causing leukemia among allied land troops¹⁴. (See Image 2).

NATO stated that “dual use targets” were attacked – which were used by civilians and military men at the same time- explaining that these facilities were potentially useful for Serbian military men and, therefore, this bombing was justified.

In the actions prior to the Second Lebanon War, the Hezbollah organization arrested two Israeli soldiers to release Arab prisoners from Israeli prisons.

The Israeli Army, in response to the actions of said organization, started the Operation Just Reward with the purpose of destroying Hezbollah infrastructure in the south of the country and moving the armed group out to the north. The operation included bombing of transport, communications, energy, military and urban facilities, causing, in a few hours, dozens of civilian victims and great material damage.

According to the report submitted on January 23, 2007 by the United Nations Environment Program (UNEP), it was concluded that Lebanese authorities face serious environmental damage as a result of the armed conflict

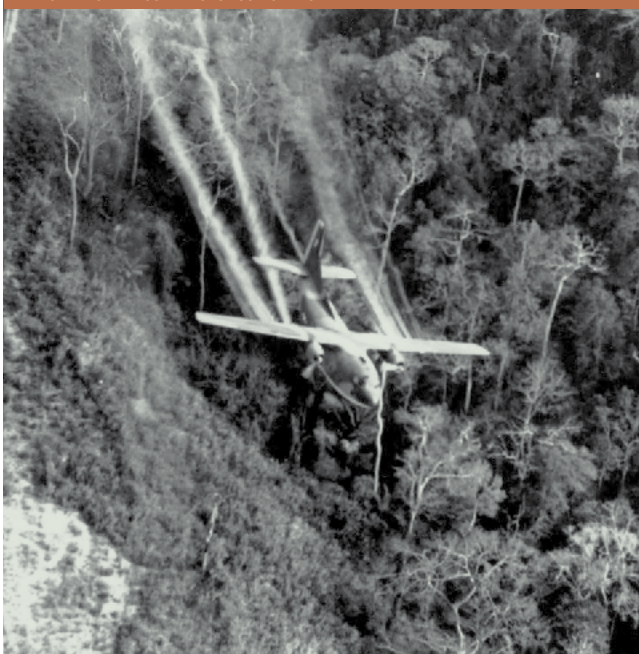
due to the strong bombing by Israel against civilian targets that are not part of the conflict, thus causing a negative environmental impact on the region. The report states: Many of the places bombed, burned factories and industrial buildings are contaminated with different toxic products and substances that are harmful for health. Subsequent analysis would confirm the use of phosphorus against civilians. Moreover, the Israeli government acknowledged to have used the controversial weapons with phosphorus in the attacks against its targets during the month war in Lebanon.

Apart from this, there was also an oil spill caused by the bombing of Israeli planes against the warehouses of a power station, the consequence of which was that the content of about 110,000 barrels was spilled in the Mediterranean Sea. This was defined as the greatest catastrophe in the Lebanon history.

In September 2013, the UN resolved that the state of Israel had to pay a billion dollars to the state of Lebanon as compensation for the environmental damage caused by the Israeli state. Lieutenant General Dan Halutz, commander in chief of the Defense Forces from Israel resigned on January 17, 2007 due to his liability for the mistakes made during the conflict. (See Image 3).

13. A very stable chemical product which can only be broken down slowly and that is part of the food chain.
14. Safont Resardi, Nuria; “¿Síndrome de los Balcanes?” Available at <http://www.dmedicina.com/vida-sana/actualidad/sindrome-de-los-balcanes>

1. AIRCRAFT OF THE US AIR FORCE USING DEFOLIANT IN VIETNAM



2. INDUSTRIAL FACILITIES IN ZASTAVA, SERBIA



In the context of the domestic armed conflict in Syria, which started in 2011, between the armed forces that are loyal to the president Bashar al Assad and the National Coalition for the Syrian Revolutionary and Opposition Forces (NCSROF), there had been during the year 2013 attacks with chemical weapons against civil population. The use of this type of weapons has caused an international reaction which may lead to an international armed conflict. Russia and Iran have threatened to make a military intervention if there is a US attack against Syria (See Image 4).

The United States had planned to bomb strategic targets, among which there may be air bases, launch tracks, command posts, but they would include chemical weapons storehouses as the risk to cause collateral damage would be very high.

As response to the international reaction, the UN Security Council unanimously approved the resolution that sets forth the destruction of Syrian chemical weapons in a joint mission with the Organization for the Prohibition of Chemical Weapons (OPAQ) and states the possibility to issue new resolutions with the purpose of imposing sanctions if the disarmament plan is not respected.

On October 14, Syria adhered to the Convention on Prohibition of Chemical Weapons within the framework of a US- Russia agreement made in Geneva. The Opposition Forces and the Syrian Revolution requested the Security Council to take the government of Assad to the

International Criminal Court (ICC) because of the attacks that took place.

SUMMARY

After having identified and analyzed the cases that represent environmental problems, we can make the following conclusions:

- › International courts have not sentenced any Operational Commanders nor have they been charged with war crimes as they have caused widespread, long-lasting and severe damage to the environment within the framework of armed conflicts, but states have been charged with that.
- › The greatest commitment and awareness of international courts as regards environmental damage, which is a trend promoted by a growing presence of non- governmental organizations and greater gravitation from environmental movements, will make future Commanders be charged with war crimes.
- › As regards bombing by NATO in Kosovo, it is clear that knowing breach in advance allows to prepare explanations in line with International Law of Armed Conflicts or the way to hide the operation. If there are no explanations, it is necessary to have sufficient political weight in the international community to approve legitimacy of the action in victory. It is also necessary to consider that in case of defeat, said action will be regarded as war crime.

3 . DAN HALUTZ RESIGNED ON JANUARY 17, 2007 BECAUSE OF HIS LIABILITY FOR MISTAKES MADE DURING THE CONFLICT IN LEBANON



4 . ATTACKS WITH CHEMICAL WEAPONS TO THE SYRIAN POPULATION



The Commander may fulfill his mission breaching conventions and protocols but accepting the risks implied: causing widespread, severe and long-lasting damage to the environment. It is true that this situation may “be detrimental to the fulfillment of the objective, even if there is a victory in war. History shows that, when war laws are observed, subsequent peace times are more stable” and, therefore, last longer.

- › In the cases analyzed, we can see that commanders preferred to fulfill their mission. This may be easier to achieve if War Law is breached but the consequences of this may be harmful even in the case of victory, respect for laws of war allows for a stable and long-lasting peace.
- › Last, we can see that the Operational Commander is the one that has authority to give priority to the fulfillment of the mission even when there is risk to affect the environment. This is based on the acknowledgment by Custom Law of its commitment to fulfill the mission (a basic principle of the military discipline and the exercise of command).

CONCLUSIONS

For the purposes of correctly analyzing problems, it is necessary to state the following concepts that allow to give grounds for the conclusions of this work:

- › Every armed conflict causes damage to the environment.
- › The first responsibility of an Operational Commander is to carry out all necessary actions for the fulfillment of the mission.
- › International law of armed conflicts guides the Commander on how to do that legally.

In order to give an answer to the initial question on what factors an Operational Commander must have into consideration in order to give priority to the fulfillment of the mission and the preservation of the environment during armed conflicts, we can conclude the following:

- › International law, which aims at limiting damage caused by armed conflicts at a level that may be considered as tolerable. This means that International Law of Armed Conflicts states and accepts that damage to the environment during armed conflicts are, *per se*, unavoidable.
- › National Law that implies environmental awareness due to the treaties and conventions which, directly or indirectly, protect the environment and which, as international law does, it accepts the possibility that it may be affected because of a military need by applying the principle of proportionality.
- › The doctrine itself which states the execution of operations in the fulfillment of the mission in order to affect the environment in a controlled way and without causing widespread, long-lasting and severe damage in the fulfillment of the mission.

Therefore, the main objective of an Operational Commander is the fulfillment of the mission, a task that implies knowledge of and respect for International Law of Armed Conflicts. He is expected to win the war, that is, to contribute to the achievement of the national objective through the use of weapons.

Because of imperative military need, the Commander may fulfill his mission by breaching conventions and protocols but taking the risks of causing widespread, long-lasting and severe damage to the environment. It is true that this situation may affect the achievement of the ultimate objective even when they succeed in war. History shows that, when war laws are respected, subsequent peace is more stable¹⁵... and, therefore, it lasts longer.

However, it is necessary to mention that there may be exceptional situations in which the magnitude of the damage to be caused to the environment makes the Commander give priority to the preservation of the environment and, therefore, redesign the mission.

This is why we do not aim at making judgments with respect to the decisions the Commander must make for the fulfillment of the mission as this will be based on the context in which he makes the decision. It is the Commander the one who has to analyze all factors that gravitate in each situation and common sense must prevail.

As the topic may be subject to further analysis, it will be necessary to state new research lines according to the permanent evolution and complexity of the topic.

As the then Mayor Jesús Antelo expressed: *Respect for war law will provide the conductor with the confidence that he has fought in a legitimate way and, if he had been defeated, not to cope with the shame to be accused of being a criminal by his winners.*

15. Antelo, Jorge Jesús; *op. cit.*