

**THE RELATIONSHIP BETWEEN CLIMATE CHANGE AND
ARMED CONFLICT IN INTERNATIONAL LAW:
DOES THE PARIS CLIMATE AGREEMENT ADD ANYTHING NEW?**

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ABSTRACT: This article examines the relationship between climate change and armed conflict, and considers whether the Paris Climate Agreement adopted in December 2015 adds anything to the existing international legal framework applicable to the prevention of climate-related armed conflict. It first provides an overview of how the relationship between climate change and armed conflict is currently reflected in international law, focusing on both international humanitarian law, and international environmental law. Subsequently, it discusses to what extent the link between climate change and armed conflict is recognized in the Paris Climate Agreement. The article concludes that while this Agreement does not mention any specific commitments in this regard, it does (i) call for specific proposals on how to address climate-driven migration, and it (ii) includes several references to the need to 'reduce vulnerability' and to 'strengthen resilience' to the adverse effects of climate change, thereby leaving sufficient scope to take measures aiming at preventing climate-driven conflicts.

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CHRISTINE BAKKER

SUMMARY: 1. Introduction. 2. The international Legal Context. - 2.1. *The Relationship between Climate Change and Armed Conflict in International Humanitarian Law* - 2.1.1. *Specific provisions on environmental protection* - 2.1.2. *General provisions* - 2.2. *The Relationship between Climate Change and Armed Conflict in International Environmental Law* - 2.2.1. *Applicable Norms of International Environmental Law* - 2.2.2. *International Legal Norms on Climate Change-related Migration* - 2.2.3. *Applicable Rules of Customary International Law?* - 2.2.3. *Applicable Rules of Customary International Law?* - 2.2.4. *Conclusion*. 3. Does the Paris Climate Agreement Recognize the Relationship between Climate Change and Armed Conflict? 3.1. *Introduction: the Paris Climate Conference* - 3.1.2. *Outcome in Two Parts: Decision and Agreement* - 3.2. *Explicit or Implicit Recognition of the Nexus: Climate Change - Armed Conflict?* - 3.2.1. *References to the 'vulnerability' of certain states or situations* - 3.2.2. *References to migrants and displaced persons* 4. Concluding remarks

1. Introduction

According to a recent study, severe drought exacerbated by climate change, is one of the main factors that ultimately led to the current conflict in Syria.¹ The study provides evidence that the extreme drought of 2006-2010 led to mass migrations to the cities, and that the ensuing social unrest resulted in the Syrian uprisings in 2011, which were violently suppressed by government forces and eventually spiraled into a large-scale conflict. The role of climate change as a contributing factor to the initiation, or intensification of an armed conflict has also been highlighted in relation the conflict in

¹ KELLEYA, C. P., MOHTADIB, S., CANEC, M., SEAGER, R., and KUSHNIRK, Y., "Climate change in the Fertile Crescent and implications of the recent Syrian drought", in *Proceedings of the National Academy of Sciences of the United States of America*, Vol. 112, No. 11, March 2015.

Peace Processes Online Review

www.peaceprocesses.it

Vol. 2 N. 1

Winter Spring 2016

CLIMATE CHANGE AND ARMED CONFLICT

Darfur,² and many other armed conflicts, both of an international, or non-international nature.³

However, questions concerning the relationship between climate change and armed conflict are still controversial, both in terms of scientific evidence, and in terms of the appropriateness of emphasizing this link, which may 'distract attention' from other fundamental causes of violence.⁴ Nevertheless, the International Committee of the Red Cross (ICRC) has emphasized the importance of recognizing this relationship during the Paris Conference on Climate Change (COP-21), urging governments to take it into account in the new agreement.⁵

This article aims to examine whether, and how this relationship is indeed recognized in the Paris Climate Agreement adopted in December 2015, and to critically consider if the adopted approach is likely to have any impact on the prevention of violence or armed conflict. To this end, it will first provide a brief overview of the international legal context, discussing how the relationship between climate change (or environmental risks more generally) and armed conflict is reflected in international law. It will focus on the questions whether States have an obligation under international law: (i) to reduce climate-related, or environmental risks during the hostilities in an armed conflict, based on international humanitarian law; and (ii) to prevent that the effects of climate change contribute to or exacerbate armed conflict, based on international environmental law (Section 2). Subsequently, the extent to which the link between climate change and armed conflict is recognized in the Paris Climate Agreement will be critically discussed (Section 3). The article concludes that while the outcome of the Paris Climate Conference does not explicitly refer to the relationship between climate

² UNEP, *Sudan: Post-Conflict Environmental Assessment* (Geneva: UNEP, 2007)

³ UNEP, *From Conflict to Peacebuilding: The Role of Natural Resources and the Environment* (Geneva: UNEP, 2009), p.8.

⁴ E.g. SOLOW, A., "Woods Hole Oceanographic Institute in Massachusetts", cited by ZASTOW, M., "Climate change implicated in current Syrian Conflict", available at <http://www.nature.com/news/climate-change-implicated-in-current-syrian-conflict-1.17027>

⁵ For further details, see section 2, below.

CHRISTINE BAKKER

change and armed conflict, it does include several references the need to 'reduce vulnerability' and to 'strengthen resilience' to the adverse effects of climate change, which leaves sufficient scope for states to take specific measures aiming at preventing climate-driven conflicts.

2. The International Legal Context

The link between environmental issues - in particular climate change -, and armed conflict can be considered from several perspectives.⁶ A first perspective is that of considering how specific means of warfare can cause environmental harm, and what States must do to avoid or minimize environmental damage during an armed conflict. This perspective, which concerns "the protection of the environment from armed conflict",⁷ is especially the subject of *jus in bello*, or international humanitarian law.

A second perspective is that of "environmental threats as conflict drivers", considering what States must do to prevent that environmental degradation has an impact on "the triggering, amplification or duration of conflicts or their resumption".⁸ A related phenomenon is that of climate-related migration, which may also cause security threats and could contribute to violence or even armed conflict. In this section, both perspectives will be discussed, examining what are the international legal obligations of States in this regard, both under international humanitarian law, and under international environmental law.

⁶ A third perspective, that of the *jus ad bellum*, the body of norms regulating the recourse to force in international law, which may also be relevant for the protection of the natural environment, will not be discussed in this contribution. For an analysis on this perspective, see DUPUY, P.M., and VIÑUALES, J., *International Environmental Law* (Cambridge, 2015), p. 363-366. See also BEYERLIN, U., and MARAUHN, T., *International Environmental Law* (Oxford and Portland (OR), 2011) p. 412 - 417, and HULME, K. "Climate Change and International humanitarian law", in RAYFUSE, R., and SCOTT, S.V., *International Law in the Era of Climate Change*, (Cheltenham and Northampton (MA)), pp. 190 - 218.

⁷ DUPUY and VIÑUALES, *supra* note 6, at p. 340.

⁸ *Ibidem*.

CLIMATE CHANGE AND ARMED CONFLICT

2.1. The Relationship between Climate Change and Armed Conflict in International Humanitarian Law

Under international humanitarian law (IHL), there are two types of provisions that are applicable to the protection of the environment in armed conflict. These are (i) specific provisions on environmental protection, and (ii) general provisions, regarding the protection of civilian objects, military necessity, and proportionality. Far from presenting a complete picture of these provisions, in the following section only the main provisions will be highlighted, while briefly discussing their adequacy for protecting the environment.

2.1.1. Specific provisions on environmental protection

The main provisions of IHL that specifically aim to protect the environment during armed conflict are Articles 35(3) and 55 of the First Additional Protocol to the Geneva Conventions, which applies to *international* armed conflicts.⁹ Article 35(3) contains a general formulation, stating that:

It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.

Article 55 repeats the same terms, but adds the element that the damage affects "the health or survival of the population".¹⁰ However, it is generally considered that the

⁹ First Additional Protocol to the Geneva Conventions of 12 August 1949 Relating to the Protection of Victims of International Armed conflicts, 6 August 1977, 1125 UNTS 3.

¹⁰ Article 55: "Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition to 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.*" (Emphasis added).

CHRISTINE BAKKER

threshold for the operation of Articles 35(3) and 55, in particular the conditions that the damage must be 'widespread, long-term and severe', is so high that it has proven to be of little practical effect.¹¹ It has been convincingly argued that, "(w)hile an amendment to the Protocol is unlikely, what is required in practice is more akin to a consensus-based 'interpretation', or 're-interpretation', if such is possible. That interpretation could include quite detailed guidance on means and methods scenarios, and could have the clear effect of lowering the threshold."¹²

Another instrument of IHL that is relevant in this context is the Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques (ENMOD),¹³ which was adopted in 1976 in response to the use by the United States of defoliants during the war in Vietnam. This convention prohibits engaging in "military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as a means of destruction, damage or injury to any other State Party"(Article 1). Thus, the object and purpose of this convention is preventing the use and modification of the environment as a means of warfare. Although the same criteria apply as those in the abovementioned Article 35(3) of Additional Protocol I, the ENMOD convention requires that only one of the conditions (widespread, long-lasting *or* severe effects) are met, whereas these conditions are cumulative in Article 35(3) AP-I. Nevertheless, as put forward by several legal scholars, "most uses of the environment as a means of warfare will be below the threshold envisaged".¹⁴

¹¹ For a detailed analysis, see HULME, K., *War Torn Environment; Interpreting the Legal Threshold*, Leiden, Martinus Nijhoff, 2004; see also DUPUY and VIÑUALES, *supra* note 6, at pp. 342-342, for an account of how this threshold was interpreted, *inter alia*, in the Final Report to the Prosecutor of the ICTY by the Committee established to Review the NATO Bombing Campaign against the Federal Republic of Yugoslavia, 13 June 2000.

¹² HULME, K., "Climate Change and International Humanitarian Law", *supra* note 6, at p. 210-11.

¹³ Adopted by UNGA Res 31/72 (10 December 1976).

¹⁴ BEYERLIN and MARAUHN, *supra* note 6, at p. 415, also referring to OETER, S., "Methods and Means of Combat" in D. Fleck (ed.), *The Handbook of International Humanitarian Law* (2nd ed, Oxford, 2008), para 403.

CLIMATE CHANGE AND ARMED CONFLICT

The need for a higher level of protection of the environment in armed conflict is directly related to the effects of climate change. In particular, the vulnerability of the environment during armed conflict is likely to increase as a result of climate change. For example, climate change impacts will further affect the resilience of the environment to cope with eco-system level changes that may occur in armed conflict (e.g. through the destruction of forests, or the use of weapons with a heavily polluting effect). As a result, the vulnerability of the civilian population due to the dangers caused by the hostilities themselves is often exacerbated by the additional vulnerability caused by the effects of climate change (severe drought and water shortages; rising sea-levels; extreme weather events). Therefore, at the Paris Climate Conference, the International Red Cross and Red Crescent Movement has called for a more stringent application of the existing rules of international humanitarian law, in order to better protect the civilian population from this 'double vulnerability'.¹⁵

2.1.2. General provisions

International humanitarian law encompasses a wide range of general rules, both in treaty-law and in customary international law, which can be interpreted to provide some degree of protection of the environment. Here, only the most important provisions will be mentioned that are related to (i) the protection of civilian objects, and (ii) proportionality.

The protection of civilian objects, or the 'principle of distinction', is laid down in Articles 48 and 52 of Additional Protocol I. Article 52 states that:

1) Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2.

2) Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction,

¹⁵ BURGESS, L. "The relationship between climate change and conflict", Report from the International Committee of the Red Cross, 6 January 2016, available at <http://intercrossblog.org/blog/4gqwb4xa0dqrpefnxmab5bcc1zq9i#sthash.vsWqJcCd.dpbs=>.

CHRISTINE BAKKER

capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

However, as noted by Bothe a.o., "the gap here is that elements of the environment are likely to become military objectives."¹⁶ Indeed, "(o)nce armed forces are located in a protected area, the area may contribute effectively to military action and its neutralization may offer a definite military advantage. Thus, it becomes a military objective."¹⁷ The question of what constitutes 'civilian objects' is also relevant with regard to "installations being constructed by states to mitigate their contribution to climate change and adapt to its projected impacts, including forests, carbon sequestration facilities, dams, flood defences, renewable energy installations, nuclear power stations and early warning systems for coastal defences."¹⁸ Again, these installations and areas (e.g. forests) may become military objectives, when they contribute effectively to military action, and their destruction offers a definite military advantage. Here the 'principle of proportionality' becomes relevant.

The proportionality principle is laid down in Articles 51 (protection of the civilian population) and Article 57 (Precautions in attack), of Additional Protocol I.

Its purpose is to avoid indiscriminate warfare, and requires the military commander to assess the harm (or 'collateral damage') expected to be caused to civilian persons and objects. Article 57(2) states:

With respect to attacks, the following precautions shall be taken:

(a) those who plan or decide upon an attack shall: (...)

(iii) refrain from deciding to launch an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

¹⁶ BOTHE, M., BRUCH, C., DIAMOND, J., and JENSEN, D., "International law protecting the environment during armed conflict: gaps and opportunities", in *International Review of the Red Cross*, Vol. 92, No. 879, September 2010, at p. 579.

¹⁷ *Ibidem*, p. 576.

¹⁸ HULME, "Climate change and International Humanitarian Law", *supra* note 6, at p. 196.

CLIMATE CHANGE AND ARMED CONFLICT

However, there is "a lack of clarity about the practical issues of proportionality where environmental damage is collateral damage, caused by attacks against military objectives."¹⁹ Indeed, questions arise regarding the foreseeability of the damaging effects, and their 'reverberating effects', further down the chain of causation, such as the suffering of civilians caused by the destruction of electricity supplies.²⁰

Finally, it should be mentioned in this context that IHL does contain specific provisions prohibiting the targeting of dams and dykes, which are increasingly important for the protection against the effects of climate change (dykes protecting against rising sea-levels and floods), and for adaptation measures (dams providing for clean electricity generation, clean drinking water, and water for irrigation).²¹ The relevant provisions are Article 56 of Additional Protocol I (international armed conflicts), and Article 15 of Additional Protocol II (non-international armed conflicts).

They prohibit the attack of dykes and dams, even when they can be considered as a military objective. However, the protection is limited to an attack that is likely to cause 'consequent severe losses among the civilian population'.²² As noted by Hulme, it is not clear, however, how far into the future the effects of the floods will still be considered as 'consequent' on that initial attack. This is important with respect to climate change-impacts, since "the inevitable delay in fixing the dam or dyke during the conflict is likely to cause continuous flooding due to more intense weather events and/or rising river or sea levels".²³

In sum, while IHL offers a certain degree of protection of the environment and of facilities/installations that are essential for the protection against the effects of climate change, their scope and applicability is not sufficiently clarified, and therefore substantial gaps remain. Another limiting factor is that most of the specific and general provisions discussed above only apply in international armed conflicts (except for

¹⁹ BOTHE a.o., *supra* note 16, at p. 578.

²⁰ See HULME, *supra* note 6, at p. 197.

²¹ *Ibidem*.

²² Article 56(1), Additional Protocol I.

²³ HULME, *supra* note 6, at p. 200.

CHRISTINE BAKKER

Article 15 of Additional Protocol II), whereas many, if not most, armed conflicts occur within the territory of one state.²⁴

2.2. The Relationship between Climate Change and Armed Conflict in International Environmental Law

The second perspective of the relationship between climate change and armed conflict, that of "environmental threats as conflict drivers", prompts the question whether and how international law regulates how states must prevent that the effects of climate change have an impact on the triggering or intensification of such conflicts. As mentioned above (Section 1), a related phenomenon is that of climate-related migration, which may also contribute to violence or armed conflict.

2.2.1. Applicable Norms of International Environmental Law

Despite the increasing attention given to this topic as evidenced by international policy initiatives and studies,²⁵ to date there is no international treaty that specifically addresses the prevention of environment-induced armed conflict. Nevertheless, some relevant principles and provisions in environmental treaties can be

²⁴ On this point, it should however be noted that some of these provisions may be considered to have become rules of customary international law which also apply in non-international armed conflicts, but it would go beyond the scope of this Article to discuss this in detail. See, for example, DUPUY and VIÑUALES, *supra* note 6, at p. 344-5, referring to a study undertaken under the aegis of the ICRC, HENCKAERTS, J.M., and DOSWALD-BECK, L. *Customary International Humanitarian Law* (Cambridge, 2009).

²⁵ E.g. UN-EU Partnership on Natural Resources and Conflict Prevention, www.un.org/en/land-natural-resources-conflict/; RÜTTINGER, L., SMITH, D., STANG, G., TÄNZLER, D., VIVEKANANDA, J., *A New Climate for Peace: Taking Action on Climate and Fragility Risks*, an independent study commissioned by the G7 (G7 Schloss Elmau, Germany: 2015), available at <https://www.newclimateforpeace.org>.

Peace Processes Online Review

www.peaceprocesses.it

Vol. 2 N. 1

Winter Spring 2016

CLIMATE CHANGE AND ARMED CONFLICT

mentioned. In the first place, the Rio Declaration on Environment and Development states in its Principle 24:

Warfare is inherently destructive of sustainable development.
States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.

Moreover, the Rio Declaration recognizes in its Principle 25: "Peace, development and environmental protection are interdependent and indivisible."²⁶ Although this declaration does not have any legally binding force, it is generally considered to reflect the main principles that should guide the actions within the international community in the field of the environment and sustainable development. However, no mention is made of armed conflict in the 1992 United Nations Framework Convention on Climate Change (UNFCCC), even though it was opened for signature at the Rio Conference on Environment and Development, where also the abovementioned Rio Declaration was adopted.²⁷

Furthermore, the UN Convention to Combat Desertification (UNCCD)²⁸ is of relevance in so far as it addresses one of the main environmental phenomena that can cause or intensify violation or armed conflict, and which is amplified by climate change. The UNCCD is a framework convention, and its provisions -and therefore also the obligations of states under this convention-, are formulated in general terms. More specific Protocols, annexes to the UNCCD, provide guidelines for the adoption of

²⁶ Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26, 13 June 1992 (hereafter: "Rio Declaration").

²⁷ UNFCCC, 1771 UNTS 107, adopted on 9 May 1992.

²⁸ United Nations Convention to Combat Desertification in those countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, UN Doc. A/AC.241/15Rev.7 (1994), 17 June 1994, 33 ILM 1328, referred to by Dupuy and Viñuales, *supra* note 6, at p. 367. For further details, see Chapter 6 in that volume.

national, sub-regional or regional programmes. The implementation of this convention has not been very effective, and a strategy to improve this was adopted in 2007.²⁹

2.2.2. International Legal Norms on Climate Change-related Migration

Despite the growing recognition of the seriousness and widespread nature of migration as a result of the effects of climate change,³⁰ the international legal framework to protect such migrants is incomplete and fragmented. The main international relevant convention is the 1951 Convention relating to the Status of Refugees.³¹ However, as noted by Edwards, "it is generally accepted that in ordinary cases 'environmental refugees' (and by extension, 'climate refugees') will not be able to meet the strict terms of the 1951 convention definition."³² Indeed, Article 1A(2) of this convention defines a refugee as an individual who is outside his/her country of origin, and who is unable or unwilling to return there because of "a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion." Because of this restrictive definition, two regional instruments were adopted: the 1969 Organization of African Union Convention governing the Specific Aspects of Refugee Problems in Africa, and the 1984 Cartagena Declaration on Refugees, applying in Latin-America. The definitions of refugees are clearly broader, and even though they do not explicitly mention environmental reasons for seeking refuge in another country, it has been argued that climate-refugees could be considered to fall within their scope of applicability. On the other hand, it has also been put forward that "while an interpretation of the OAU Convention, in particular the

²⁹ *Ibidem* at p. 185-6.

³⁰ UNHCR, *Forced Displacement in the Context of Climate Change: Challenges for States under International Law*, submission to the 6th session of the Ad-Hoc Working Group on Long-Term Cooperative Action under the Convention (AWG-LCA6), of 20 May 2009, cited by EDWARDS, A., 'Climate change and international refugee law', in RAYFUSE and SCOTT, *supra* note 6, pp. 58-83, p. 59.

³¹ 189 UNTS 137, adopted on 28 July 1951; entered into force on 22 April 1954.

³² EDWARDS, *supra* note 30, at p. 66.

CLIMATE CHANGE AND ARMED CONFLICT

'public order' ground, could theoretically encompass climate displacement, it is not (yet) supported by the *opinio juris* of African states, nor is there any case law to confirm such an interpretation."³³ The same is true for the Cartagena Declaration, in the Latin-American context.

Moreover, the Guiding Principles on Internal Displacement (GDIP) should be mentioned, which -as their title indicates-, apply to displacement within the territory of a state. Even though they are not legally binding, "they are accepted as reflecting existing binding obligations under international human rights and humanitarian laws."³⁴

Internally displaced persons are defined as:

(...) persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of ... natural or human-made disasters, and who have not crossed an internationally recognized state border.³⁵

The GDIP provide a relatively solid protection (when applied at the national level), since they recognize the rights of internally displaced persons to return voluntarily or to resettle in another part of the country, as well as the duty for the authorities to 'provide or assist these persons to obtain appropriate compensation or another form of just reparation' when property or possessions are not recoverable.³⁶ On the other hand, these guidelines focus on sudden disasters, and not on gradual environmental change, such as land degradation, which may also be an effect of climate change. Nevertheless, the legal protection for internally displaced persons fleeing the effects of climate change seems to be somewhat better regulated (again, if implemented at the national level, which may be a problem in regions with limited availability of resources and capacity to do so) than that of international climate refugees. Moreover,

³³ *Ibidem*.

³⁴ KÄHLIN, W., *Guiding Principles on Internal Displacement: Annotation* (2nd ed., 2008), available at <http://www.asil.org/pdfs/stlp.pdf>.

³⁵ *Guiding Principles on Internal Displacement (GDIP)*, General Assembly Resolution 53/125, of 9 December 1998, at para 2.

³⁶ *Ibidem*, Principles 28 and 29.

the link between climate-migration and armed conflict has, so far, not been explicitly regulated in an international legal instrument.

2.2.3. Applicable Rules of Customary International Law?

Finally, the question must be considered whether there are any rules of customary international law that contain any obligations for states to prevent that the effects of climate change contribute or intensify conflicts. Considering, on the one hand, the criteria for the formation of such rules, i.e. consistent state practice and *opinio juris*, and on the other hand, the apparent lack of consensus (or rather a lack of priority) among states on the need to regulate climate change related effects, including international climate migration, it would seem unlikely that such rules have evolved to date. However, two principles of international environmental law might be worth mentioning in this regard: the (i) 'prevention principle' and (ii) the 'precautionary principle', or 'precautionary approach'.

(i) The principle of no harm, or *principle of prevention* refers to the duty of a state not to allow or tolerate any activity within its jurisdiction that may cause damage to the environment of other states or of areas beyond its national jurisdiction, unless the trans-boundary environmental impacts of this activity prove to be insignificant.³⁷ This principle was first enunciated in the 1941 *Trail Smelter* case.³⁸ It was later incorporated in the 1972 Stockholm Declaration³⁹ (Principle 21) and in the 1992 Rio Declaration

³⁷ See FRANCONI F., and BAKKER, C., "The Evolution of the Global Environmental System: Trends and Prospects in the EU and the US", in BAKKER, C., and FRANCONI, F., (eds.), *The EU, the US and Global Environmental Governance* (2014).

³⁸ *Trail Smelter* Case (The United States v Canada), Reports of International Arbitral Awards, Vol. III, pp 1905–1982.

³⁹ *Declaration of the United Nations Conference on the Human Environment, United Nations Environment Programme*. UN Doc. A/CONF. 48/14, 1972.

CLIMATE CHANGE AND ARMED CONFLICT

(Principle 2), and has been included in various international legal instruments ever since. The International Court of Justice (ICJ) confirmed that this principle has acquired the status of customary international law in its 1996 *Advisory Opinion on the Legality of Threat or Use of Nuclear Weapons*, and applied it also in its 1997 Judgment in the *Gabcikovo-Nagymaros Project* case,⁴⁰ while further explaining its content in the *Pulp Mills* case.⁴¹ According to the ICJ in this latter case, the prevention principle entails a 'due diligence obligation', which covers "(i) an obligation of conduct, and more particularly, of co-operation for the implementation and application of appropriate measures for the protection of the environment, as well as (ii) an obligation to conduct an environmental impact assessment where the proposed activity is likely to have a significant adverse impact in a trans-boundary context, especially with respect to a shared resource."⁴² It follows from the present international case law that the prevention principle primarily concerns the prevention of environmental *damage* in another state or to the environment as such ('beyond a state's national jurisdiction'). It has not been interpreted to cover also a broader duty of states to prevent the trans-boundary effects of environmental degradation or disasters, such as trans-boundary migration, or even conflicts. Nevertheless, the duty of co-operation, as mentioned above, may provide some scope for a wider interpretation of this principle, in future practice.

(ii) The precautionary principle (or 'precautionary approach') has two faces. It entails, firstly, the obligation of a state not to allow activities within its jurisdiction which might prove to be environmentally harmful until an environmental impact assessment has been undertaken, which permits transparent and democratic participation in the decision on whether to allow such activities to proceed. This side of the principle is widely accepted as international law and may be considered to have the status of a custom. It finds its origin in domestic law and was later enshrined in the 1992 Rio Declaration (Principle 15). It was subsequently incorporated in international conventions (1985 Vienna Ozone Convention; 1987 Montreal Protocol) and in

⁴⁰ *Gabcikovo-Nagymaros Project Case (Hungary v Slovakia)*. ICJ Reports (1997) 7.

⁴¹ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, ICJ Reports 2010, p.14, para 101.

⁴² DUPUY and VIÑUALES, *supra* note 6, p. 60.

constitutional texts at the regional level, in particular in the European Union. The second aspect of the principle entails the more radical duty to abstain from proceeding with the performance or permission of activities when they pose an environmental risk that the society is unwilling to run, and on which there is no conclusive scientific evidence. This is a more controversial interpretation of the precautionary principle, and for the time being is part only of treaty law (1991 Madrid Protocol on the Protection of the Arctic Environment; 2000 Cartagena Protocol on Biosafety).⁴³ Since it is especially this latter aspect which distinguishes the precautionary principle from the prevention principle, mentioned above, and considering that this interpretation has not acquired the status of customary international law, it has no further relevance for the question addressed in this section (whether states have a duty under customary international law to prevent that environmental risks related to climate change may cause or intensify armed conflicts).

2.2.4. Conclusion

It can be concluded that international environmental law does not provide any specific norms, neither in the form of treaty law, nor in the form of a rule of customary international law, that contain an obligation for states to prevent that climate change, or environmental changes/degradation more generally, contribute to or amplify armed conflicts, nor to provide any remedies if such a situation occurs. Nevertheless, the relationship between peace, environmental protection and development is recognized as a basic principle that should guide the actions and policies of states, as confirmed in the 1992 Rio Declaration.

3. Does the Paris Climate Agreement Recognize the Relationship between Climate Change and Armed Conflict?

⁴³ See FRANCONI and BAKKER, *supra* note 37, at p.CHECK

CLIMATE CHANGE AND ARMED CONFLICT

3.1. Introduction: the Paris Climate Conference

The Paris Climate Conference, held from 30 November to 11 December 2015, has resulted in the adoption of a new international agreement that will replace the Kyoto Protocol from 2020 onwards. The Paris Agreement was adopted by 195 states, and by the European Union as such. It differs from its predecessor on the following main points. On the one hand, in the new agreement, all 195 states commit themselves to reducing their greenhouse gas emissions, whereas in the Kyoto Protocol, only 37 industrialized states had agreed to such emission reductions. In the Paris Agreement, also the US -which had not ratified the Kyoto Protocol -, and the main economies in transition, China, Brazil, South-Africa and India, which account for a large share of global GHG emissions, and which had not taken up any quantified obligations under the Kyoto Protocol, have agreed to play their part.

On the other hand, the new agreement is based on voluntary commitments on GHG emission reductions by the participating states, so-called 'Intended Nationally Determined Commitments, (INDCs)', instead of legally binding emission reduction commitments as included in Annex B of the Kyoto Protocol.

The new agreement, once entered into force, will be legally binding for its Parties. However, the INDCs themselves are not included in the agreement itself, but in a separate, non-legally binding document, based on the official announcements of individual states to the UNFCCC Secretariat. The agreement envisages the creation of a robust transparency system with strict monitoring obligations in accordance with commonly agreed indicators, in order to ensure states' compliance with their voluntary INDCs. To this end, a committee for facilitating compliance with the agreement will be created, that shall be "expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive. The committee shall pay particular attention to the respective national capabilities and circumstances of Parties." (Agreement, Article 15(2)). The exact competences of this monitoring mechanism still need to be determined and agreed by the Conference of the Parties.

CHRISTINE BAKKER

3.1.2. Outcome in Two Parts: Decision and Agreement

The outcome of the Paris Conference on Climate Change⁴⁴ is composed of two parts: (i) a Decision, containing a large number of provisions covering a broad range of issues ranging from the objective of keeping the rise of global temperature below 1,5 degrees Celsius, to climate financing for developing countries, and the main principles of the envisaged monitoring mechanism, and (ii) the Agreement itself, which is relatively concise, annexed to this Decision. This format has been adopted to respond to two opposing concerns of states parties at the conference: on the one hand, the concern of developing states to have detailed provisions on climate financing, monitoring mechanisms, and the need to take account of the special situation of the poorest nations; and on the other hand, the concern of the United States and (to a lesser extent) China and some other 'Economies in Transition', to keep the Agreement itself short, covering only the essential points.

Moreover, the points that are included in the Agreement itself, which has a legally binding force, are all confirmations or restatements of provisions that were already included in previous international instruments, that are already ratified by (*inter alia*) the US, in particular the UNFCCC. In this way, the new Agreement, according to the US delegation at COP 21, does not need to be ratified by the US Congress, which, considering the reluctant attitude of the Republican majority in the Senate, would almost certainly not receive the required majority of votes. Indeed, the Obama administration envisages not presenting the new agreement to the US Congress for ratification, but instead to leave it to the individual American states to implement its provisions directly, without an additional legal commitment at the federal level.

3.2. Explicit or Implicit Recognition of the Nexus: Climate Change - Armed Conflict?

⁴⁴ UNFCCC, FCCC/CP/2015/L.9/Rev.1, 12 December 2015.

CLIMATE CHANGE AND ARMED CONFLICT

Turning to the question how the relationship between climate change and armed conflict is recognized, both the decision and the Agreement itself will be considered. In fact, in neither of these documents, the term 'armed conflict' as such is even mentioned. Indeed, there is no explicit reference to what states commit to do to prevent that the effects of climate change contribute to, or intensify armed conflicts. However, there are several provisions that can be interpreted to implicitly recognize this relationship.

3.2.1. *References to the 'vulnerability' of certain states or situations*

In several provisions of the Decision, and of the Agreement itself, reference is made to the 'vulnerability' of certain states, or of certain situations. These references are, in the first place, directed to developing countries and small island states. However, they can be interpreted to cover also states and situations that are 'vulnerable' because the effects of climate change may have a multiplier effect on other factors that could potentially lead to climate-migration, or even armed conflict. Examples of such provisions are the following:⁴⁵

– Article 7(1) Agreement: "Parties hereby establish the global goal on adaptation of enhancing adaptive capacity, *strengthening resilience and reducing vulnerability to climate change*, with a view to contributing to sustainable development and ensuring an adequate adaptation response in the context of the temperature goal referred to in Article 2. "

– Article 7(9), Agreement: "Each Party shall, as appropriate, engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions, which may include: (...)

(c) *The assessment of climate change impacts and vulnerability*, with a view to formulating nationally determined prioritized actions, *taking into account vulnerable people, places and ecosystems*"

⁴⁵ In the following citations, the emphasis (italics) is added.

CHRISTINE BAKKER

– Paragraph 135, Decision: (The Conference of the Parties) "(i)nvites the non-Party stakeholders (...) to scale up their efforts and support actions to reduce emissions *and/or to build resilience and decrease vulnerability* to the adverse effects of climate change (...).

The terms 'strengthening resilience' and 'reducing vulnerability' to the adverse effects of climate change are also systematically mentioned by experts and stakeholders who have been drawing attention to the need to more explicitly recognize the relationship between climate change and armed conflict. Indeed, the Red Cross and Red Crescent, in their communications at COP 21, stressed that:

The double hit of conflict and climate change is significantly increasing the vulnerability of civilian populations experiencing the long-term threats of protracted conflict and increasing climate risk. This double hit makes it extremely challenging to build resilience in conflict affected communities. Building effective resilience in armed conflict requires much greater respect for IHL and sustained investment in the natural assets, agricultural inputs and expertise essential to ensure sustainable survival in climate changing regions.⁴⁶

Considering the nature of the Decision and the Agreement adopted at COP 21, which are formulated in relatively general terms -also because they are the result of negotiations among 190 states-, it could be argued that the above mentioned provisions provide sufficient scope for states to take measures aimed at reducing the vulnerability, and strengthen the resilience in places where the effects of climate change may increase the risks of climate-migration, or tensions that could evolve into violence or an armed conflict.

3.2.2. References to migrants and displaced persons

The Decision adopted at the Paris Conference establishes a task force to "develop recommendations" on displacement.⁴⁷ According to a press report, "an earlier draft included the creation of a 'coordination facility' presumably with more powers.

⁴⁶ ICRC Report, *supra* note 15.

⁴⁷ Decision, *supra* note 44, at paragraph 50.

CLIMATE CHANGE AND ARMED CONFLICT

This was only removed in the last days of the summit."⁴⁸ The provision states that the Conference of the Parties:

50. Also requests the Executive Committee of the Warsaw International Mechanism to establish, according to its procedures and mandate, a task force to complement, draw upon the work of and involve, as appropriate, existing bodies and expert groups under the Convention including the Adaptation Committee and the Least Developed Countries Expert Group, as well as relevant organizations and expert bodies outside the Convention, to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change.

In the following paragraph, the Conference of the Parties requests the Executive Committee of the Warsaw International Mechanism to initiate its work, at its next meeting, to operationalize, *inter alia*, this provision, and to report on progress thereon in its annual report. This clearly confirms the recognition of the need to adopt such 'integrated approaches' to respond to displacement of people as a consequence of the impacts of climate change. The recommendations of this task force must be awaited before any further conclusions can be drawn.

Moreover, both in the Decision, and in the Agreement itself, reference is also made in the Preamble to the need to take account of the specific situation and rights of migrants in the context of the relationship between climate change and human rights. The relevant provision states:

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and

⁴⁸ BETTINI, G., 'Climate migration' proved too political for the Paris agreement - and rightly so, 17 December 2015, available at <http://theconversation.com/climate-migration-proved-too-political-for-the-paris-agreement-and-rightly-so-52133>

CHRISTINE BAKKER

the right to development, as well as gender equality, empowerment of women and intergenerational equity⁴⁹.

Here too, the formulation is extremely general and does not indicate exactly which 'obligations on human rights' it refers to. Nevertheless, the inclusion of this reference to the need to ensure that in their action to address climate change, states should respect, promote and consider their obligations on human rights, including the rights of several specific groups, including migrants, is in itself significant. It provides the possibility for, *inter alia*, civil society, NGOs and other interested parties to insist with their own governments to ensure respect for these human rights in their national climate policies. It also supports claims that are brought before national courts, and possibly before regional human rights courts, alleging violations of human rights (especially non-compliance with 'due diligence' obligations under human rights law to prevent certain harm). The reference to the rights of migrants supports the earlier conclusions on the reference to 'displaced persons', mentioned above.

4. Concluding remarks

This article examines the relationship between climate change and armed conflict in international law, and discusses whether the 2015 Paris Climate Agreement adds any new elements to the existing legal framework. It analyses the obligations of states under international law: (i) to reduce climate-related, or environmental risks during the hostilities in an armed conflict, based on international humanitarian law; and (ii) to prevent that the effects of climate change contribute to or exacerbate armed conflict, based on international environmental law. It concludes that while humanitarian law contains both specific and general provisions that can be invoked to protect the environment during armed conflict, there are several gaps, which render the overall protection inadequate to reduce climate-related risks. At the same time, the evolving,

⁴⁹ Decision, *supra* note 44, Preamble, para 7, and the Agreement annexed to this decision, Preamble, para 9.

CLIMATE CHANGE AND ARMED CONFLICT

but relatively 'young', body of international environmental law contains a number of principles and legally binding norms, which can help prevent "climate-driven conflicts" or climate-related migration, but no specific treaty or customary norms exist that specifically, and adequately address this challenge.

Moreover, while the outcome of the Paris Climate Conference (Decision and Agreement) does not explicitly refer to the relationship between climate change and armed conflict, it does include several references the need to 'reduce vulnerability' and to 'strengthen resilience' to the adverse effects of climate change, which leaves sufficient scope for states to take specific measures aiming at preventing climate-driven conflicts. Regarding climate-related migration, the Conference of the Parties decided, as laid down in the Agreement, to establish a task force with a view to formulating recommendations for 'integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change'. It also explicitly recognized the need for states to respect and promote human rights, including the rights of migrants, when taking action to address climate change.

Even though these provisions do not, in any way, 'revolutionize' the applicable international legal regime in this context, the fact that the Agreement was adopted by 195 states, who agreed on the need to address the adverse effects of climate change, including the increasing problem of climate-related displacement, must nevertheless be welcomed. At the same time, parallel efforts must be pursued to further clarify the applicable international legal framework, and to enhance the protection of people who are vulnerable, not only to the adverse effects of climate change, but also to the risk of ensuing armed conflict.