



## ENVIRONMENTAL PROTECTION IN THE EVENT OF ARMED CONFLICTS

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*The present article explores a topical area of the relationship between the environment, the rights of the future generations to enjoy a clean, healthy and safe environment, unaffected by wars, as well as the right of future generations to live in a world free of terror, poverty and insecurity. There are some international regulations regarding the relationship between the environment and military technologies or those technologies used for hostile purposes, but they need to be improved and correlated with the recent developments related to the obligations of states in terms of sustainable development and environmental protection. The environment should be protected not only in relation to the right of peoples and states to development but also in relation to the military conflicts and any type of crises that entail destructive technologies. We consider it as an area of major interest in which, starting from the definition of the “environment manipulated for military purposes”, it is possible to develop studies on comparative law and security related to this legal relationship.*

*Keywords: international environmental law, Global Pact for the Environment, European Green Pact, security threats, military technologies.*

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## THE ENVIRONMENT PER SE IS NOT A MILITARY OBJECTIVE AND CANNOT BE CONSIDERED AS SUCH

Environmental security is, in the 21<sup>st</sup> century, part of national, European, regional and international security. The environment is becoming increasingly important in the legal and political culture of 21<sup>st</sup> century societies because of the challenges related to climate change, intensification of industrialisation, air and water pollution, increasing deterioration of soil and subsoil quality, continuing modification of natural ecosystems and global link between all terrestrial ecosystems, which are in a fragile balance.

The responsibility of human societies on the quality of life on Earth, on the preservation of natural ecosystems starts to be seen as part of a specific concept, “*environmental security*”, which becomes part of the concept of national, regional-European and international security.

Regardless of the perspective on the concept of “*environmental security*”, it is no longer an isolated one, but one closely related to hitherto classic terms in their meaning (national, regional, international security).

The impairment of the quality of the environment in one state can create effects in another state, therefore environmental security should be considered in terms of cross-border security, for which mechanisms, strategies, institutions for environment-related crisis and disaster prevention and management should be designed.

Currently, the development of military technologies should not affect the environment, as their degree of “*intelligence*” (high-precision strike) is increased. In both military strategies and tactics, environmental protection should be seen as a form of accountability to preserve the planet’s natural heritage for future generations.

In other words, the increasingly development of technology and *Artificial Intelligence (AI)* in the nature of military armaments and in the way of conceiving and waging wars in the 21<sup>st</sup> century must start from the mandatory premise of environmental protection, from *defining*

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The right of future generations to a healthy environment<sup>1</sup>, to a high quality of life starts to become a fundamental right not only of the *man* but also of the *mankind* (another legal concept already considered by the legal practitioners in the 21<sup>st</sup> century).

Today, we can say that we are witnessing, once again, an *arms race*, because of a specific view of the global world, a technological leap in terms of weapons, doubled by both the *ineffectiveness of disarmament regulations and the recent practice of withdrawal of major states from international agreements*.

Through their very existence, the types and quantities of weapons owned by states today represent *direct and serious threats to the planet, the natural ecosystems and the environment in any state*, according to the doctrine<sup>2</sup>. The existence of stockpiles of weapons of mass destruction, able to destroy the environment as well as urban settlements and targets, generates ecological imbalances as the doctrine has already noted<sup>3</sup>.

The International Environmental Law has been influenced by the relationship between the environment and armed conflicts, thus being necessary to regulate the juridical concept of “*environment manipulated for military purposes*”. It has been defined as the type of environment “*whose composition, structure and dynamics are disrupted by the use of means and methods of warfare, including environmental manipulation techniques*”<sup>4</sup>. Therefore, the doctrine uses an updated definition of the concept, introducing, among the military technologies that violently affect the environment (armed conflicts, wars), *the military (or employed for military purposes) techniques to disrupt the environment*. This conception of the legal doctrine in the matter also includes *the systems used to influence or disrupt*

<sup>1</sup> See <https://www.un.org/en/universal-declaration-human-rights/>, retrieved on 18 February 2020.

<sup>2</sup> Daniela Marinescu, *Tratat de dreptul mediului*, IV<sup>th</sup> edition, Editura Universul Juridic, București, 2010, pp. 600-601.

<sup>3</sup> *Ibidem*.

<sup>4</sup> *Ibidem*.

*the climate or the weather* (the so-called military technologies employed in the environmental warfare)<sup>5</sup>.

The “*environment manipulated for military purposes*” is a concept that increasingly develops in the 21<sup>st</sup> century, in line with the military and civilian technological progress, and with the possibility for it to be used by state or non-state actors (terrorist networks, organisations etc.) in wars, armed conflicts, crises or to trigger or extend such crises.

The “*environment manipulated for military purposes*” can be exposed to the intervention of military or civilian techniques in the event of armed conflicts or of any type of local or regional crises, with the *employment of some non-state or supra-state actors* (militias, security forces, paramilitary troops, troops of rival generals in failing or dissolving states etc.).

The “*environment manipulated for military purposes*” can be subjected not only to the intervention of categories recognised by public international law (peoples fighting for independence, belligerents, military forces representing states or alliances of states) but also to the intervention (unauthorised, non-legitimate from the perspective of public international law) of non-state actors (terrorist networks, armed religious groups etc.).

However, in our opinion, we should not consider that since an actor has the status of subject of public international law, it has the “*legitimacy*” to destroy the environment through the employed military techniques and technologies or through those used for military purposes.

The environment must not become or be treated as a military objective, because it is the essential element for the survival of the human species, being composed of the set of unique ecosystems, dependent on each other, and arranged globally in an interconnected way. In other words, the responsibility of states in the 21<sup>st</sup> century, which is intended to be a century of advancement in technique, technology and science (including in the military field and in the concept of war or military conflict), must include, from a legal and political point of view, at national, regional and global level, a direct responsibility for the environment.



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<sup>5</sup> *Ibidem*, p. 601.



*The state, in a Westphalian order, continues to remain the main actor and subject of international environmental law that will take responsibility for the violent intervention on the environment (in the event of armed conflicts, war or any terrorist or other non-state or quasi-state groups act) and for allowing or not preventing the intervention or not restoring the environment affected by such an intervention.*

*States should expressly assume, through national, regional (European, for example) as well as international law, the obligation to deter any action by any other state or non-state actor in damaging or affecting, through military or civilian techniques and technologies used for military purposes, the quality and the very existence of the ecosystems on their territory and on that they undertake their responsibility according to the principles and norms of international and national environmental law.*

*The sovereignty of the state also entails its sovereignty over its territory, over all natural and artificial ecosystems within the limits of its jurisdiction.*

The state, therefore, in a Westphalian order, continues to remain the main actor and subject of international environmental law that will take responsibility for the violent intervention on the environment (in the event of armed conflicts, war or any terrorist or other non-state or quasi-state groups act) and for allowing or not preventing the intervention or not restoring the environment affected by such an intervention.

Moreover, a regional or international legislation adapted to the 21<sup>st</sup> century as a century of global interdependence (in which, if an ecosystem in a region is affected by an armed intervention of any kind, harmful effects on the quality of life and the environment in other states or regions are created ) should provide for strengthened obligations of solidarity of states at regional and international level and mechanisms, clear collective procedures, to be activated in such cases, where military interventions of any kind produce disasters or serious effects on the environment of a country or a region .

In the 21<sup>st</sup> century, due to the increasing destructive potential of military technologies and techniques, the degree of the legal responsibility of states for the destruction or non-repair of the environment manipulated for military purposes must also increase accordingly.

We would even say that in the century of climate change, when we are already talking about climate wars, in line with the military technological advance of states, the concept of “environment manipulated for military purposes” becomes extremely important to provide legal and political guarantees for world peace and the right of present and future generations to peace, to a high quality of life.

To date, *two general principles* are considered to be included in international environmental law (however, this is an area that needs to be *constantly adapted and improved*). The first principle takes into account the obligations of each state (being therefore limited to the sphere of state actors, although military interventions, regardless of their name, can be also carried out by non-state actors) *not to cause environmental damage beyond its territorial competence*. Belligerents are not exempt from this obligation, as they are liable for cross-boundary damage caused to the natural environment<sup>6</sup>. However, there may be a legal obligation in the future for belligerents to take responsibility in case of cross-border or sub-local damage caused to the *artificial environment* (urban settlements, villages) or the *mixed environment* (parts of the natural environment integrated into the urban or rural environment), such as those on the outskirts of large cities or in any space surrounding a group or an urban or rural settlement. This would be an *extension of the obligations of legal liability in the case of belligerents*, which would apply mainly to states (therefore, not only in the case of the *natural environment* affected by military technologies).

The second principle concerns the *obligation of states to respect the environment in general*. As we can see, this is also a principle related to *states*, so a limited one, while, in reality, irreparable damage or destruction can be caused to the environment by military manipulation not only by states but also by *non-state or quasi-state actors*.

This second principle concerns the obligations of states to respect the environment and not to damage it outside their jurisdictions, for example in the open sea areas, on the bottom of the seas and oceans, in areas of common interest for humanity, such as the Moon, the Cosmos, the open sea, Antarctica or celestial bodies<sup>7</sup>.

In other international documents adopted under the auspices of the UN, for example in the World Charter for Nature<sup>8</sup>, there are stipulated principles that must be respected by *states*, connected to the principle

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<sup>6</sup> Daniela Marinescu, *op. cit.*, p. 601.

<sup>7</sup> *Ibidem*, p. 601.

<sup>8</sup> See <https://www.refworld.org/docid/3b00f22a10.html>, retrieved on 12 February 2020.



of sustainable development. These principles, as they are included in the Charter, make it an important document for defining the legal order of the 21<sup>st</sup> century as a legal order based on the responsibility of states towards the environment and on the mandatory compliance of their development policies with the environmental protection requirement. The principles are as follows:

- principle of respect for nature and its natural processes, states being expressly obliged not to affect or prevent them (hence, including a legal obligation applicable in the event of armed conflicts or crises that entail, regardless of their name or type, military or civilian technologies used for military purposes or having a violent impact on the environment);
- principle of conservation of biodiversity and habitats that are necessary to preserve biodiversity, principle of management or use of ecosystems and organisms, land, marine and atmospheric resources from the perspective of sustainability and integrity of such ecosystems or species;
- principle of conservation of all areas of the Earth, land or water, a special protection being given to unique areas and to rare or endangered species<sup>9</sup>.

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States also have, through point 21 in the Charter, legal obligations as follows:

- to cooperate for the conservation of nature, through joint activities, consultations, exchange of information;
- to establish the standards for the products and manufacturing processes that *can produce adverse effects on nature*;
- to implement the international legal provisions related to environmental protection and conservation;
- to ensure that the *activities under their jurisdiction or control* will not cause damages to the natural systems located *in other states or areas beyond national jurisdiction*;

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<sup>9</sup> *Ibidem.*

- to protect, save and conserve nature *in areas beyond* their national jurisdiction. This point in the Charter *extends the scope of legal responsibility not only to states but also to international organisations*, which are explicitly specified for the fulfilment of the above-mentioned obligations.

Art. 5 in the World Charter for Nature expressly refers to the principle according to which nature will be protected from the degradation caused by war or other hostile acts, and Art. 20 requires states to *avoid the military activities that can cause damage to nature*<sup>10</sup>. These two provisions are imperatively addressed to states, which are subjects of international law. Consequently, *states must guarantee* environmental protection in the event of hostile acts or wars, *eliminating these dangers and degradations* that may be caused or about which there are clear indications that will be indirectly or directly caused by the action of non-state actors. This *legal extension to the two principles*, regarding the responsibility of states for the degradations generated or potentially generated by non-state, quasi-state actors (in regions where the authority of states is weakened, or dissolved, or no longer exists), *is necessary*, we consider, and *it should be swiftly included* in regional and international environmental protection documents.

Moreover, we also consider necessary the implementation of the *principles of good neighbourliness and regional solidarity of states*, in the event a state is dissolving or failing, its authority being contested by the non-state actors that act on its territory (the case of Syria, Libya, Iraq, Yemen), where it is required either a collective responsibility of the states participating in the military conflict on that territory, the neighbour states, or the international community in its aggregate, to restore and protect the environment affected by the military activities conducted on that territory.

The case of the territories in a state of dissolving or failing, because of an armed conflict in which other states as well as non-state actors are involved (paramilitary, terrorist, rebel, militia and other groups), *urgently requires a legal regulation for the protection of the environment manipulated for military purposes in such cases*, at both regional and international level, imposing direct responsibility



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The “environment manipulated for military purposes”, in its broad sense, as it should be sanctioned in a future international convention, should include not only the natural environment per se but also the artificial environment (urban), mixt (outskirts of a settlement, its periphery, surrounding areas), but also the cultural environment (tourist, historical, cultural).

for the quality of the environment of the states participating in the armed conflict as well as the responsibility of the participating states for the military interventions of the non-state groups.

Such responsibility should also be met in the case of protecting and restoring the objects or sites representing *cultural heritage* on the territory affected by armed conflicts.

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It should also be mentioned the *Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD)*, adopted by the UN General Assembly on 10 December 1976 and entered into force on 5 October 1978<sup>11</sup>. Romania signed the Convention on 18 May 1977 and ratified it through the Decree no. 100 on 28 March 1983. This international legal instrument has unlimited validity and converts, in our opinion, into a preliminary and mandatory legal framework for not only states but also, by extension, for non-state actors, in order to ensure an environmental protection appropriate to the 21<sup>st</sup> century. We also mention here that the text of the Convention establishes an Advisory Committee at expert level, which can be convened ad-hoc upon the request of states parties. The competence of this Committee is to provide official consultations related to possible disputes and to exactly determine the nature of the activities suspected of violating the Convention<sup>12</sup>. Other provisions of the Convention concern the manner in which the delegates of states parties can meet during periodical conferences to review the functioning of the Commission. In this context, it should be

<sup>11</sup> See file:///C:/1976-enmod-icrc-factsheet.pdf, <https://www.unog.ch/enmod>, retrieved on 12 February 2020.

<sup>12</sup> Adrian Năstase, *Documenta universales I, Documente fundamentale ale dreptului internațional contemporan și ale relațiilor internaționale*, Roxana Frailich (editor), Asociația Română pentru Educație Democratică, Regia Autonomă Monitorul Oficial, București, 1997, p. 408.

noted that the USA is also party to the Convention, the president ratifying the Convention on 13 December 1997, it entering into force for the USA on 17 January 1980, when the instrument of ratification was deposited in New York<sup>13</sup>.

This Convention is of essential importance for the relationship between the environment and military activities, *banning the use of new methods or means of combat intended to produce or which are expected to produce widespread, long-lasting harmful effects* in relation to the environment.

The Convention *also prohibits techniques with widespread, long-term or serious effects on the environment*. It is appreciated that the *very existence* of new techniques, likely to harm or modify the environment for military purposes, may be the beginning of serious disasters, if the process escalates<sup>14</sup>, as it is stated in the Convention.

The Convention *defines environmental modification techniques as “altering – along with deliberate changes in natural processes –, the dynamics, composition, structure of air, including the biosphere, atmosphere, lithosphere, hydrosphere or outer space, by producing earthquakes, avalanches, landslides etc.”*<sup>15</sup>.

The Convention considers as examples of the negative effects that could result from the use of environmental modification techniques the following: climate or climate agents change, ecological upheaval, changes in ocean currents, changes in the ozone layer or ionosphere.

For the time at which it was signed and ratified (1970s-1980s), the Convention is of unexpected innovative value in a field which, decades later, has hitherto been regarded as vital to the survival of the human species, and of the planet itself.

Today, climate change generates wide and deep debates related to different visions of states, for and against the abandonment of technologies and economies with large or particularly intense disruptive potential (due to the degree of industrialisation, chemical agriculture, massive deforestation etc.) to the environment. There is a close link between climate change and human intervention (here, of the state,



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<sup>13</sup> *Ibidem*, p. 409.

<sup>14</sup> See file:///C:/1976-enmod-icrc-factsheet.pdf, <https://www.unog.ch/enmod>, retrieved on 12 February 2020.

<sup>15</sup> *Ibidem*.



Art. 1 in the Convention introduces in the responsibility of the signatory states the obligation of not getting engaged in the use of any technique to modify the environment for military or other hostile purposes, having large-scale, long-lasting or severe effects, as means of causing destruction, damage, or injury to other states parties.

of companies, in particular) and the capacity of the environment to regenerate. The Convention expressly refers, in its preamble, to the *Declaration of the United Nations Conference on the Environment*, in Stockholm, on 16 June 1972 and recommends the *peaceful use of environmental modification techniques*, expressly mentioning *the right of present and future generations to benefit from a preserved and enhanced environment*.

The Convention (63 signatory states) acknowledges the extremely damaging effects the use of such techniques for military or other hostile (therefore, a broad definition, including *any action having a hostile to environment character, not only the military ones* to manipulate the environment) purposes may have on the environment.

Art. 1 in the Convention introduces in the responsibility of the signatory states the *obligation of not getting engaged* in the use of any technique to modify the environment for military or other hostile purposes, having large-scale, long-lasting or severe effects, as means of causing destruction, damage, or injury to *other states parties*. In paragraph 2, such a prohibitive provision for the states parties is also extended to their *relations with third parties* (other states, groups of states or international organisations), states parties undertaking *not to assist, to encourage, or to incite* other states, groups of states or international organisations to engage in activities contrary to paragraph 1. This is a provision having *broad and extremely important applicability*, based on the provision for the states parties to *preserve the environment and not to use it for military or any other hostile purposes, not only in the relations between them, but also in those with third parties, whether they are states, groups of states (alliances, coalitions, federations) or international organisations*. Other categories (non-state actors) that have proliferated in the last two decades at the infra-local, regional and even global levels are not included in this Convention, but the *text can be extended and improved*.

Article IV obliges signatory states to take any measure deemed necessary to prohibit or prevent any activity contrary to this Convention, in *any place* under their jurisdiction or control.

Moreover, according to Art. 5 of the Convention, states parties are obliged to *cooperate and consult with each other* in order to resolve any problem that may arise in connection with the objectives

of this Convention or its application. Cooperation activities within the UN and its organisations are also encouraged.

If a state party considers that any other state party is in breach of its obligations under this Convention, it may lodge a complaint with the UN Security Council which has jurisdiction to investigate, in accordance with the UN Charter, the facts resulting from the complaint received by the Council. If the UN Security Council decides that the party concerned has been harmed or is at risk of injury as a result of a violation of this Convention, each state party shall be obliged to provide assistance or support to any party to the Convention that requests it. Article VI introduces a *legal possibility to extend the content of the Convention by submitting amendments by states parties*.

### INTERNATIONAL AND EUROPEAN DOCUMENTS RELATED TO THE RELATIONSHIP BETWEEN THE ENVIRONMENT AND SECURITY THREATS

The recently adopted documents under the aegis of the UN repeatedly refer to the right of humans to a healthy and balanced environment, to the rights of peoples and future generations to a high quality of life, which can be achieved (as the right to sustainable development, another fundamental right, among the most recent categories of human and people rights in the past decades) only if the environment quality is preserved, respected and enhanced. Among these documents (***that have legal incidence on the relationship between the environment and the armed conflicts***, introducing *indirect obligations* for states regarding environmental protection, including in terms of using technologies for military or other hostile purposes), we can list: UNGA Resolution on Harmony with Nature (A/RES/67/214); UN Secretary-General Report on Harmony with Nature (A/67/317); UN Secretary-General Report on Harmony with Nature (A/66/302); UNGA Resolution on Harmony with Nature (A/RES/65/164); UNGA Resolution on Harmony with Nature (A/RES/64/196); Study on the need to recognise and respect the rights of Mother Earth (E/C/2010/4); UNGA Resolution on Mother Earth International Day (A/RES/63/278); UNGA Resolution on Planet Earth International Year, 2008 (A/RES/60/192), supplemented by Agenda 21 or documents developed under the auspices of ECOSOC<sup>16</sup>.



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<sup>16</sup> See <http://www.un.org/en/events/motherearthday/documents.shtml>, retrieved on 7 September 2016.



According to the UNGA Resolution on 22 April 2009, which establishes Planet Earth International Day on 22 April every year, the UN member states are recommended to adopt in their policies “a harmonious relationship with nature and the Earth, to achieve a fair balance between the economic, social and environmental needs of present and future generations”.

As far as the relationship between the use of technologies for military or other hostile purposes and their impact on the environment, another international document should be mentioned, namely the *Johannesburg Declaration on Sustainable Development* on 4 September 2002<sup>17</sup>. It was adopted following the World Summit on Sustainable Development in South Africa (2-4 September 2002), acknowledging the *responsibility of present generations for the level of civilisation and welfare of future generations, as well as for the quality of life on Planet Earth* (states parties assuming certain obligations related to the preservation of terrestrial ecosystems). Point 13 (global challenges related to environment) also mentions the continuous degradation of global environment, by continuous loss of biodiversity, by *adverse effects of climate change (which can be produced inclusively by technologies used for military purposes or other purposes that are hostile to the environment and the society)*.

According to the UNGA Resolution (A/RES/63/278) on 22 April 2009, which establishes Planet Earth International Day on 22 April every year<sup>18</sup>, the UN member states are recommended to adopt in their policies “a harmonious relationship with nature and the Earth, to achieve a fair balance between the economic, social and environmental needs of present and future generations”<sup>19</sup>.

The right of future generations to a clean, healthy environment is also stipulated in another international document, such as “*Agenda 2030*”, adopted by the UN General Assembly through the resolution on 25 September 2015, no. 70/1, entitled “*Transforming Our World: the 2030 Agenda for Sustainable Development*” (A/RES/70/1), distributed on 21 October 2015<sup>20</sup>. The signatory states engaged to transmit ***to future generations goods and rights that have to be ensured and guaranteed in relation to the relationship between military technologies and their employment in order to manipulate the environment or hostile ones that broadly affect or could affect the environment in a severe***

<sup>17</sup> *Johannesburg Declaration on Sustainable Development*, 4 September 2002, [https://ec.europa.eu/environment/archives/wssd/documents/wssd\\_pol\\_declaration.pdf](https://ec.europa.eu/environment/archives/wssd/documents/wssd_pol_declaration.pdf), retrieved on 7 September 2016.

<sup>18</sup> *Chronology of Harmony with Nature*, [www.harmonywithnatureun.org/chronology.html](http://www.harmonywithnatureun.org/chronology.html), retrieved on 7 September 2016.

<sup>19</sup> *Ibidem*.

<sup>20</sup> See [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_70\\_1\\_E.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf), retrieved on 7 September 2016.

**manner.** Such rights are: the right of individuals, peoples, the society in its aggregate to a *clean and healthy global environment*; the right of individual, of peoples, to an *international climate of peace and security*; the right of individual, of peoples to live on a *clean, secure and resource-rich planet*; the right of individual, of peoples to live a *life free from fear, terror, misery and indecency caused by poverty and human rights violations*.

Through the document entitled “*Agenda 2030*”, the right of future generations related to the environment is expressly stipulated. They benefit from: the right to *development*; the right to a *future global environment characterised by peace and security*; the right to live in a *future world free from worry, fear, misery and needs*; the right to live in a future world *free from poverty*; the right to *enjoy a clean, unpolluted and resource-rich environment*; the right to *live on a safe and clean planet*.

Expressly, the Preamble of “*Agenda 2030*” stipulates the obligation of the states parties to respect and pursue in their policies and in multilateral or bilateral cooperation *certain goals that are directly linked to the relationship environment-armed conflicts*. Among them, we mention “*peace dimension*” (entailing the establishment of societies that are tolerant, inclusive, peaceful and just, free from violence and fear; the connection between sustainable development and peace).

Point 14 in the Agenda is linked to the issues of underdevelopment, natural disasters, *threats to global security, conflicts, violent extremism, terrorism and humanitarian crises or forced movement of people*. “*Agenda 2030*” obliges states parties to take action in order to: **resolve and prevent conflicts, sustain post-conflict reconstruction of countries**, as well as to ensure that women are really involved in the **processes of peace construction and state creation**. States parties have also the obligation to comply with international law, in the sense of respecting the right of peoples to development and to self-determination.

We consider that, with regard to the legal content of some future international conventions subsequent to “*Agenda 2030*”, it should:

- provide for strengthened legal obligations of states *regarding the preservation of peace and international security*. This obligation should be accompanied by *clear responsibilities* (according to the principle in the environmental law



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With regard to the relationship between the environment and the obligation of states to use it in a peaceful, non-destructive way, not to subject it to degradation or irremediable destruction following a military action, we can also mention the principles established by the Rio Declaration, adopted following the Rio Summit (Earth Summit): the right of all peoples to a healthy, productive life in harmony with nature; the sovereign right of nations to freely exploit their own resources without thereby causing cross-border damage to the environment; the polluter pays principle; the obligation of nations to adopt effective laws on the environment etc.

*“the polluter pays”* and where the use of military or civilian technologies for military or hostile purposes, which have caused or are susceptible of causing a negative, severe, and long-term impact on the environment or to irremediably destroy it, *to be considered as “destructive action on the environment”*, involving obligations for the actor to repair the harm as well as other concrete actions to restore the ecosystems affected by the armed aggressions, through the destructive impact on the environment);

- *the states that conduct armed actions to destroy and attack other nations* should be subject to a strengthened legal system regarding the responsibility for the environmental destruction following their aggressive armed actions or having a military component.

With regard to the relationship between the environment and the obligation of states to use it in a peaceful, non-destructive way, not to subject it to degradation or irremediable destruction following a military action, we can also mention the principles established by the Rio Declaration<sup>21</sup>, adopted following the Rio Summit on 3-12 June 1992, also named Earth Summit: the right of all peoples to a healthy, productive life in harmony with nature; the sovereign right of nations to freely exploit their own resources *without thereby causing cross-border damage to the environment*; the polluter pays principle; the obligation of nations to adopt effective laws on the environment etc.<sup>22</sup>. According to Principle 24 in the Rio Declaration, it is considered that *war intrinsically exercises a destructive action on sustainable development*, therefore the express obligation of states to conform to the international law norms regarding environmental protection during armed conflicts and to participate in the development of this law, if necessary<sup>23</sup>.

Practically, this principle legally characterises the *environment as a “civilian good”*, states having to renounce attacking and affecting/destroying the environment in the event of an armed conflict or attack on a military objective, if the damage caused or susceptible

<sup>21</sup> See <https://www.cbd.int/doc/ref/rio-declaration.shtml>, retrieved on 7 September 2016.

<sup>22</sup> Daniela Marinescu, *op. cit.*, pp. 18-19.

<sup>23</sup> *Ibidem*, p. 601.

of being caused to the environment would be greater than those to the target objective<sup>24</sup>. The Doctrine mentions, in this context, the UNGA Resolution AG ONU 43/37, on 9 February 1993, entitled *Protection of the Environment in Times of Armed Conflict*<sup>25</sup>. In this resolution, the UNGA considers the the unjustified destruction of the environment in relation to military needs as well as that of a gratuitous nature are clearly contrary to the international law in force (paragraph 32). The approval of the International Court of Justice (requested by the UNGA through resolution 49/75 K in 1994), which cites this resolution in its jurisprudence, with regard to the relationship between the environment and armed conflicts, implicitly considers as having an *illegal character the threat or use of nuclear weapons* (that cause severe, long-term or irreparable damage to the environment).

Another important international document is also the *Millennium Declaration*, adopted following the World Summit in 2000<sup>26</sup>, a document in which, in points 4 and 6, it is also mentioned the *objective of protecting and preserving the environment* (expressed by the *value of respect for nature*). However, this is an objective that should be *correlated with the other principles and objectives* of the Declaration, among which there are some that have a direct relevance for the present topic: **preservation of a climate of peace and international security**; the right to development; **protection of vulnerable groups (including those who have suffered as a result of genocide, civil wars, natural disasters)**; improvement of cooperation relations between countries<sup>27</sup>. Point 6 in the Millennium Declaration (*respect for nature*) sanctions the principle of the need to transmit to future generations the rich resources of the planet, including through the *introduction*



*In Millennium Declaration, adopted following the World Summit in 2000, a document in which, in points 4 and 6, it is also mentioned the objective of protecting and preserving the environment (expressed by the value of respect for nature).*

<sup>24</sup> *Ibidem*, p. 602.

<sup>25</sup> *Ibidem*. See also A RES 43/97 *Protection of the Environment in Times of Armed Conflict*, on 9 February 1993, <https://undocs.org/en/A/RES/47/37>, retrieved on 12 February 2020. See also A RES 37/137/*Protection against Products Harmful to Health and to Environment*, 17 December 1982, <https://undocs.org/en/A/RES/37/137>, retrieved on 12 February 2020; A RES 47/195, 1 March 1993, *Protection of Global Climate for Present and Future Generations of Mankind*, <https://undocs.org/en/A/RES/47/195>, retrieved on 12 February 2020.

<sup>26</sup> UNGA, Resolution 55/2, *United Nations Millennium Declaration*, New York, 8 September 2000, [www.un.org/millennium/declaration/ares552e.htm](http://www.un.org/millennium/declaration/ares552e.htm), retrieved on 12 February 2020.

<sup>27</sup> Paul Boncuțiu, *Declarația Mileniului*, Part one, year 2000, 12 December 2010, Ziare.com, <http://www.ziare.com/international/onu/declaratia-mileniului-partea-intai-anul-2000-1061123>, retrieved on 12 February 2020.



The UN Secretary-General, Ban Ki-Moon, considered, in 2015, that one of the global challenges to the society in the 21<sup>st</sup> century is represented by the climate changes, to which are added challenges to peace and international security and to human rights.

of the principle of moderation in the management of all living species and natural resources<sup>28</sup>.

The UN Secretary-General, Ban Ki-Moon, considered, in 2015<sup>29</sup>, that one of the global challenges to the society in the 21<sup>st</sup> century is represented by the **climate changes, to which are added challenges to peace and international security and to human rights**. It is the obligation of states to create a *universal climate of peace and international security*, connected to the *need to protect the environment (war being another cause of the sometimes-irreversible degradation and pollution of nature)*, he considered. In his vision, the problem of climate change should be seen as connected to “the global problems – financial, economic, internal, **security**, influencing food security, health and water”<sup>30</sup>.

Climate changes are seen by Ban Ki-Moon, in another speech, as entailing “**all nations in the world legal obligation as well as interest to preserve a universal climate of peace and security**”<sup>31</sup>. Climate changes represent, in his view, “a multiplier of threats, especially at international level, extreme weather and natural disasters caused by them leading to humanitarian crises and increasingly massive displacements of population to rich countries, endangering international security”<sup>32</sup>.

At European level, it can be noted the EU interest in contributing to not only the efforts to consolidate the environment international law but also to a strengthened legal protection related to the environment, in response to France initiative to negotiate a so-called *Global Pact for the Environment*<sup>33</sup> at international level. The initiative is meant to ease the implementation of already existing international environmental law. The project was introduced to the UNGA by France,

<sup>28</sup> UNGA, Resolution 55/2, *loc. cit.*

<sup>29</sup> Secretary-General Ban Ki-Moon, Paris, 29 April 2015, *Address at the Institute d'Etudes Politiques de Paris: The United Nations at 70: New Global Challenges: A Conversation with Ban Ki-Moon*, UN News Centre, [www.un.org/apps/news/infocus/speeches](http://www.un.org/apps/news/infocus/speeches), retrieved on 12 February 2020.

<sup>30</sup> *Ibidem.*

<sup>31</sup> *Declaration – Secretary-General's Message to High-Level Side Event on Climate Change and Security* (delivered by Janos Pasztor), New York, 30 September 2015, [www.un.org/sg/statements](http://www.un.org/sg/statements), retrieved on 12 February 2020.

<sup>32</sup> *Ibidem.*

<sup>33</sup> *European Commission Roadmap*, Ref. Ares (2018)900428 - 15/02/2018, <http://pactenvironment.org>, retrieved on 12 February 2020.

on 19 September 2017, following the UNGA 72<sup>nd</sup> session ministerial meeting<sup>34</sup>. At the proposal of France, it was noted the idea of establishing a *Group of Friends of the Pact*, to issue a draft of a resolution to be adopted by the UNGA and formally open the debates for this Pact (with topics on the negotiating table in 2018)<sup>35</sup>. The purpose of the Group of Friends of the Pact is to establish a working group open to negotiate the Pact under the auspices of the UNGA, expected to complete its work this year, when it is desirable to present the outcome of an intergovernmental conference. In this context, it is considered that the EU has competence in the field provided by art. 192 (1) TFEU (environmental protection). The Commission can act only on the basis of the authorisation issued by the Council to negotiate this international instrument on behalf of the EU<sup>36</sup>.

It is important to note that the *Global Pact for the Environment* proposed by France is intended to be, from the very beginning, a *codification of the principles included in the Rio Declaration, as the third international pact*. It is included in the category of international pacts related to human rights, as the International Pact on Civilian and Political Rights /1966, the International Pact on Economic, Cultural and Social Rights /1966 or even the Universal Declaration of Human Rights in 1949. On 10 May 2018, the UNGA adopted Resolution 72/277, entitled "*Towards a Global Pact for the Environment*"<sup>37</sup>.

In the *Global Pact for the Environment*, subject to the discussions within the UNGA, following the French initiative, since 2017, there are *important innovations and codifications*, such as: establishing a universal right to a healthy, intact environment as a human right that can be invoked before the courts at national, international and regional level; unifying the guiding principles of international environmental law into a single legal document; empowering citizens to hold their and neighboring governments accountable for environmental policies<sup>38</sup>.



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<sup>34</sup> *Ibidem*.

<sup>35</sup> *Ibidem*.

<sup>36</sup> *Ibidem*.

<sup>37</sup> *Global Pact for the Environment*, <https://www.iucn.org/commissions/world-commission-environmental-law/wcel-resources/global-pact-environment>, retrieved on 12 February 2020.

<sup>38</sup> *Ibidem*.



*European Green Pact is intended to be a priority of the European Commission, led by Ursula von der Leyen. Through this Pact, a real European government programme proposed and assumed by the European Commission in 2020, it is acknowledged by the EU that “the climate change and the global climate are significant threat multipliers and a source of instability”.*

At European level, within the EU, it is to note the recent document entitled *European Green Pact*<sup>39</sup>, which is intended to be a priority of the European Commission, led by Ursula von der Leyen. Through this Pact, a real European government programme proposed and assumed by the European Commission in 2020, it is acknowledged by the EU that “*the climate change and the global climate are significant threat multipliers and a source of instability*”. The security interests, mentioned in this context, “*are factors that will be changed by the ecological transition*”<sup>40</sup>, a fact that, in the EU view, will create challenges for a certain number of countries and societies. The EU will launch the *European Pact on Climate* in March 2020, to encourage the extended understanding (at the public opinion level) of environmental threats like *security threats* as well as the way to combat such threats<sup>41</sup>. It is important to mention the EU commitment through the European Commission, which launched that ambitious Pact, to encourage the “*cooperation with all partners*” (states, non-state actors, third party states, member states) to “*increase the capacity to prevent environment threats from becoming sources of conflict, global insecurity, population displacement and forced migration*”<sup>42</sup>. According to the Commission, the EU foreign policy and the common defence and security policy should include the climate policy dimension<sup>43</sup>. However, the impact of military or civilian technologies used for military or other hostile purposes on the environment, and the measures to prevent the degradation or destruction of the environment as a direct result of wars and armed conflicts of any type are not included in the document.

## CONCLUSIONS

As it can be seen, this is an area of international environmental law exploring a legal relationship (environment – armed conflict) that we consider of great importance for the society of the 21<sup>st</sup> century,

<sup>39</sup> Brussels, 11.12.2019 COM (2019) 640 final. *Communication from the Commission to the European Parliament, European Council, the Council, the European Economic and Social Committee and the Committee of the Regions. The European Green Deal*, [https://ec.europa.eu/info/sites/info/files/european-green-deal-communication\\_en.pdf](https://ec.europa.eu/info/sites/info/files/european-green-deal-communication_en.pdf), retrieved on 12 February 2020.

<sup>40</sup> *Ibidem*.

<sup>41</sup> *Ibidem*.

<sup>42</sup> *Ibidem*.

<sup>43</sup> *Ibidem*.

*given the constant technological and scientific advance in military and civilian technologies, but used for hostile purposes, as well as the arms race, which we are currently witnessing, as a resumption of the neo-realistic perspective in international politics. The environment and international environmental law are becoming, both from the perspective of global issues such as climate change and those set out here, key areas for providing increased protection for terrestrial ecosystems and their parts that can be exposed or are actually exposed, in the event of crises with a military component or of military conflicts, including regional ones, to the danger of long-term, serious or irreparable destruction or degradation.*

It is important that the relevant international doctrine and jurisprudence *acknowledge the need for the express sanctioning, at the level of an international convention on this subject, of the environment as a civil good.* They should also include the *express prohibition* on states, but also on non-state actors involved in armed conflicts, to use the environment for military purposes, the environment as a military component of the particular war or conflict. An *express ban on the use of weapons of mass destruction on the environment*, either for no specific purpose, for the purpose of intimidating other states or for the purpose of aggression against other states or groups of states, should also be introduced. The *ban on the use of drones in military conflicts in order to destroy the environment under the jurisdiction of other states or in free zones* should also be introduced. The ban on the use of civil technologies for environmentally hostile purposes should also be introduced, whether we are talking about a mixed or urban natural environment (artificial, i.e. human settlements). Legal correlations and improvements can be made between the classic conventions already adopted by states on the conduct of wars and the recent obligations assumed by states through the Rio, Johannesburg or “Agenda 2030” declarations.

It results that we are in the presence of an *area that needs to be legally improved*, both through the efforts of states (through the debate and adoption by the UN General Assembly of various resolutions or by signing an international convention specifically dedicated to this subject) and through the *involvement of non-governmental actors* (NGOs, global media, organisations, transnational corporations)



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to preserve the environment and transmit it to future generations as a healthy, clean environment, unaffected by the destruction caused by wars and armed conflicts or by civilian technologies used for environmentally hostile purposes.

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