

## Chapter XVIII

# Environmental Aspects of Non-international Conflicts: The Experience in Former Yugoslavia

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**T**he most important example of the problems relating to the protection of the environment relative to non-international conflicts in today's world is the experience of the ongoing conflict in former-Yugoslavia. This conflict has dominated the news for the past five years, ever since the beginning of the breakup of the former State of Yugoslavia. It has riveted the attention of the United Nations, of NATO, and of other great, or not so great, powers remaining after the breakup of the Soviet Empire. Thousands of people have died in the conflict, more thousands have been uprooted from their homes. Terrible atrocities have occurred, the like of which have been unknown in Europe since the end of the Second World War. And, it can be said without hesitation, there has been a profound effect on the environment. The extent of this is not known and will probably not be known until long after the conflict is finished. But, the fact that so many military forces have been involved, that battles have been fought by irregular forces without the discipline of conventional armies, that whole populations have been moved in the form of so called "ethnic cleansing," that so many atrocities have occurred and, on the other hand, that so many peacekeeping forces have also been involved in trying to control the conflict could not help but have a profound effect upon the environment of the area where the conflict is taking place.

Before a discussion of the environmental issues, it is necessary to examine the type of conflict involved. The conflict is a struggle for the control of the territory of a State, Yugoslavia, which disintegrated after the end of the Cold War. This struggle has resulted in the birth of several new nations - Slovenia, Croatia, Serbia (or the Yugoslav Republic), and Macedonia. The birth of these new nations have taken place within the framework of the conflict of fighting between, at first, the Yugoslav (or Serbian) Army with Slovenia, and then with Croatia. The latter is a conflict which is still not finished. Most importantly, the fighting has expanded with great ferocity in Bosnia-Herzegovina where the Bosnian government is trying to create a State which is being bitterly disputed by the Serbs and by the Croatians living in Bosnia, and by the Bosnian Muslims who support the new State. The United Nations has intervened in what has become the most extensive

peacekeeping mission in history and has sent thousands of peacekeepers who are trying vainly to moderate the conflict and to protect the extensive humanitarian relief operations being conducted for the benefit of the effected population. It has issued one decree after another, calling upon the parties to stop the fighting and to respect the humanitarian efforts, and creating protected or safe areas.<sup>1</sup>

The peacekeepers have been involved in the fighting in an unprecedented way, being forced to respond in self-defense, to threaten the use of force to accomplish their mission, and have even most recently been held as hostages by both sides to the conflict. This has led to the debate over whether the "peacekeeping" mission should be expanded to a "peacemaking" mission.<sup>2</sup> It has involved the use of NATO forces to support the peacekeepers and to try to protect them. All of the above raises the question of whether this is really a non-international conflict.<sup>3</sup> It could quickly develop into an international conflict, but for the moment the great nations have stayed out of the fighting and have limited their action to support of the peacekeepers, and when they intervene it is clearly stated to be in support of U.N. peacekeeping resolutions. It is significant to note that this is a type of conflict which seems to be part of the new state of world order (or disorder), with active U.N. intervention on an unprecedented scale. It is also significant that this may be the wave of the future, and that the U.N. or other bodies such as NATO will intervene in peacekeeping or peacemaking actions where the regular rules of international conflicts may not be applied. Even with the intervention of outside States, the peacekeeping nature of the conflict places it firmly in the category of non-international conflicts, or what is also being called here "military operations other than war."<sup>4</sup>

The second point which should be considered before proceeding further is to look quickly at the numerous and complex nature of actions taken by the U.N. and nations involved in the conflict.<sup>5</sup> First of all, there is the U.N. peacekeeping effort. The U.N. originally intervened to keep apart the Croatians and the Serbians, and set up the protected areas within Croatia, which were until recently controlled by the local Serbs. It then intervened to protect humanitarian relief efforts within Bosnia. NATO and other individual nations intervened based upon U.N. resolutions to enforce an embargo in the form of the ongoing naval operation known as Sharp Guard. Then NATO also intervened in the air action known as Operation Deny Flight, which enforces a no-fly zone over Bosnia and which intervenes upon call to protect U.N. forces. There also is the separate U.S. operation known as Provide Promise, which operates an air bridge to Sarajevo and has dropped thousands of tons of supplies to besieged areas. This relief effort is not only U.S. supported, but other nations have joined in, and the air relief of Sarajevo has now surpassed the length of the Berlin airlift. Other planning has been ongoing to enforce a peace plan, to conduct a withdrawal of the U.N. forces, or to conduct other more specific evacuation or support missions, and most

recently to respond to developments such as the fall of the safe areas of Srebrenica and Zepa and the threat to Gorozda and Bihac.

Why all of this is important here is because it is the framework within which measures to protect the environment during the conflict have been, or perhaps should have been, taken. We can ask to what extent the U.N. and other nations should intervene to protect the environment during a bitter non-international conflict. What rules apply to the forces which are acting as peacekeepers? What environmental problems do they face, and how practically can they regulate their actions to comply with international standards to protect the environment? Due to the fact that the U.N. and the participating nations have been concentrating on the basic issue of trying to bring peace to the region and to aid the local population and the refugees, it should be admitted that the environment has not been the main issue with which they have been concerned. However, it is an issue which has not been neglected by the peacekeepers because, as will be indicated, the international rules of law have been recognized, and the U.N. and NATO participants have included in their plans and the rules governing those plans that international law will be observed. What is proposed in this paper is to look at how the rules have been recognized, whether and to what extent they have been applied, and what we can learn from this experience.

First, has the environment been affected? There is not here the case of a deliberate action to do something to alter the environment, such as the decision by Iraq to set fire to the oil wells in Kuwait. But, there has been such intense fighting throughout Bosnia that the destruction of towns, farms, and countryside is inevitable. Some of it is caused by random shelling, and also by the deliberate effort to force populations out of areas which one side or the other wishes to claim as its own. Since the fighting is so desperate and the forces for much part nonprofessional, control over what individuals or individual units do is sometimes minimal. On the other hand, even the peacekeepers affect the environment by the very scale of their operations which include building camps, continuously moving large convoys over a rudimentary road system, and trying to keep all of this supplied by land, sea, and air. There is also the embargo operation ongoing in the Adriatic which involves an unprecedented number of ships from many different nations, operating closely and continuously in a limited area of sea. This raises the problems of oil spills and discharges from the ships and other mishaps relative to naval operations. Lastly, there is also the air operation which could quickly affect the environment if not carefully controlled. The bombing of targets, and even airdropping supplies, may damage the environment. Air operations might involve the carrying of hazardous cargoes, and there is always the possibility of pollution involving airports and facilities.

This paper addresses the problem by looking at the practical ways the participating forces have endeavored to recognize and to follow the environmental

rules. For all of the operations mentioned, from the U.N. peacekeeping effort to the naval embargo and the enforcement of the no-fly zone, there are operations plans and rules of engagement.<sup>6</sup> These are drawn up for the particular mission, such as the peacekeeping effort in Bosnia by the U.N., the NATO embargo operation in the Adriatic, or the air operation which enforces the no-fly zone or comes to the aid of the peacekeepers. The operation plans describe the mission and how it is to be accomplished. They spell out the commander's intent, and set the rules which will govern the operation. They have a whole series of annexes, from personnel to logistics, but what is most important here is that there will be a Rules of Engagement Annex to set out rules for the use of force, and a Legal Annex to address legal issues involved with the operation. These plans are reviewed by attorneys working on the staff of the commanders to assure that they properly conform with international and national laws and regulations. It is significant that there are legal advisers serving with the U.N., with NATO, and with national military units.

From my own experience as Allied Forces Southern Europe (AFSOUTH) Legal Advisor, I can assure that each of these plans, whether it is the U.N. plan for peacekeeping or the NATO plans for the naval or air operations mentioned above, or the U.S. plans which govern U.S. forces, recognize the obligation to conform to international law. This includes the laws governing armed conflict and would also include both the specific and customary rules in regard to the protection of the environment. Operation plans are further developed by specific national rules on how operations are carried out. This would include rules applying to the precautions taken by naval ships not to discharge pollutants into the seas. In the air, this would include rules relating to the transportation of hazardous cargoes. On land, they would include rules on the handling of petroleum products and the prevention of spills. It would also include the rules applying to cleanup if there are accidents. How well nations will carry out their obligations in this regard depends on how well their environmental programs are developed. The U.S., for example, has a very sophisticated environmental program for its armed forces, carries out very detailed studies on how its military operations affect the environment in overseas locations, and determines to what extent they comply with local environmental regulations.<sup>7</sup>

As mentioned above, operations plans include rules of engagement which govern the conduct of the military forces during the operations.<sup>8</sup> These will also recognize the obligation to be in conformity with international law, specifically those governing armed conflict. They will set limits on the use of fire power, what are legitimate targets, and who can authorize firing upon targets. In this regard targets must be legitimate military objectives. The civilian population, and civilian facilities, or the countryside, would not be a target unless the civilians take up arms and become combatants, or the civilian facilities were put to military use. Limits

to assure that this is understood by both commanders and soldiers are part of every set of rules of engagement. The rules of engagement will also limit the weapons which may be used. Chemical weapons may be forbidden or limited to certain types, such as riot control agents, for use only in certain limited circumstances. Specific rules are established for each part of the operation, so that there are land, air and sea rules of engagement, each addressing the particular problems associated with that part of the operation. While not all these rules relate directly to the environment, they are important since they limit the use of force which may affect the environment.

It is important to note both the differences and the similarities between the U.N., and the NATO or national rules of engagement. The U.N. rules basically are peacekeeping rules, that is, the use of force is normally only allowed in self-defense. Peacekeepers are supposed to withdraw from conflict if they are confronted with it. However, the NATO rules and national rules generally allow the use of force to accomplish the mission, not only in self-defense. This has led to long debates over whether the U.N. rules should be expanded, or how the NATO rules should be limited.<sup>9</sup> In any case, even the NATO rules which are being planned for possible NATO participation are designed only to use force for specific missions such as enforcement of the embargo, the no-fly zone, evacuations, delivery of aid, or protection of peacekeepers. The most recent use of force by NATO has been the action taken in response to the Bosnian-Serb attack upon the Sarajevo market which killed and wounded numerous people. NATO acted to force the Bosnian Serbs to respect Sarajevo as a safe area.<sup>10</sup> The U.N. rules may, on the other hand, have been expanded for the U.N. Rapid Reaction Force which is being assigned new missions and needs more authority to use force to accomplish these missions. In either case, for NATO or for the U.N. the rules are limited, since the mission is limited. This is significant for the protection of the environment because if the mission is limited, the effect that the use of force could have on the environment is also limited.

At this point, it is necessary to ask what are the specific rules which apply in regard to rules of engagement and the duty to protect the environment in non-international conflicts.<sup>11</sup> Most of the specific provisions on environmental rules in armed conflict are found in the Protocols to the Geneva Conventions.<sup>12</sup> However, it is relevant here that Additional Protocol II, relative to non-international conflicts, does not have the particular provisions relating to the environment that are found in Additional Protocol I. Missing from Additional Protocol II is the basic rule in Article 35<sup>13</sup> that it is prohibited to employ methods or means of warfare which are intended or may be expected to cause "widespread, longterm and severe damage to the natural environment." Also missing is Article 55<sup>14</sup> which states that care must be taken in warfare to protect the natural environment against "widespread, long-term and severe damage." This article

prohibits the use of methods or means of warfare intended or which may be expected to cause such damage to the natural environment. Also attacks against the natural environment by means of reprisals are prohibited. Additional Protocol II, on the other hand, sets out only fundamental guarantees. There are provisions forbidding acts directed against the civilian population, such as prohibitions against the taking of hostages, acts of terrorism, collective punishment, forced movement of populations, and pillage but no specific provisions on the environment. The only provisions which might have some relevance to the environment are Articles 14 and 15.<sup>15</sup> Article 14 protects objects indispensable to the survival of the civilian population. This article protects agricultural areas, crops, livestock, drinking water installations, and irrigation works. Article 15 protects works and installations containing dangerous forces.

In general, Additional Protocol II sets up only minimum guarantees, but these rules were designed for irregular forces or for regular forces fighting irregular forces inside their own country.<sup>16</sup> This does not mean that military forces participating in peacekeeping operations should not observe the more extensive guarantees provided for in Additional Protocol I, especially in a conflict such as the one ongoing in former-Yugoslavia, which is so close to becoming an international conflict, and especially by United Nations forces and other nations representing the world community. In fact, the rules of engagement being used by the peacekeeping forces in former-Yugoslavia and the rules proposed for NATO forces acting in support of the U.N. do not make a distinction between international and non-international conflicts. While not going into specific provisions of these rules, I note that the more general provisions of Additional Protocol I are a basic underlying consideration in the relevant rules of engagement. Examples include the basic rule in Article 35<sup>17</sup> that the right to choose methods or means of warfare is not unlimited. There is also Article 48<sup>18</sup> providing the duty to distinguish between the civilian population and combatants, and between civilian objects and military objectives. There are also Article 51,<sup>19</sup> which provides against indiscriminate attacks, and Article 57<sup>20</sup> in regard to precautions to be taken in planning attacks. And, finally, there is Article 82<sup>21</sup> which provides a requirement for the provision and use of legal advisers. All are cited in Hans Peter Gasser's recent article which suggests the publication of "Guidelines for military manuals and instructions for the protection of the environment" for military forces involved in armed conflict.<sup>22</sup>

Aside from the Additional Protocols, the other document which is basic to the protection of the environment is the 1977 Environmental Modification Convention (ENMOD),<sup>23</sup> which contains language similar to that found in Additional Protocol I. The ENMOD Convention prohibits environmental modification "techniques" designed to result in widespread, longlasting and severe effects on the environment.<sup>24</sup> The ENMOD agreement only applies to

signatory powers. And it is extremely limited in coverage since it forbids only what might be referred to as a "manipulation" of the environment, a deliberate undertaking to make longlasting or permanent changes. What is interesting to note here is that it sets out a general principle which should be recognized under all circumstances. There is not one rule for international conflicts and another for non-international conflicts. It would also just as well apply to operations in time of peace. While it may not be very practical because of its limitations, and it certainly will not find application in the ongoing conflict in former-Yugoslavia, it stands for the fact that there are general environmental rules which would apply to this conflict however it is classified, and there is good reason for peacekeeping forces to observe it and other provisions relating to the environment.

Lastly, there is the 1980 Conventional Weapons Convention with its Protocol II on mines, booby traps, and other devices, and Protocol III on incendiary weapons which, in addition to limiting use of particular weapons, prohibits making forests and plant cover objects of attack except when used for military purposes.<sup>25</sup>

The rules of engagement of the peacekeeping forces and the rules planned for other forces do utilize and apply these general principles, and the lack of specificity in Additional Protocol II does not mean that they are disregarded because this may be a non-international conflict. I suggest that any peacekeeping force will adopt and follow such provisions of Additional Protocol I no matter how we classify the conflict. They would also apply to military operations other than war. It is most significant that the forces involved as peacekeepers are regular military forces and are part of an international peacekeeping mission. They should be held to a higher standard. There may be some exceptions since, for example, it may not be practical to apply all of the provisions of Additional Protocol I or of the 1949 Geneva Conventions. Specifically, particular provisions of the Geneva Convention on Prisoners of War<sup>26</sup> may not be applicable. The taking of prisoners is not contemplated by peacekeepers. Peacekeepers will not operate POW camps. However, the general provisions in regard to distinguishing targets, taking precautions in planning, and the use of legal advisers are all applicable. Again, they are important here because they will serve to protect the environment if they are properly utilized. Deliberate destruction of the environment without military need would be forbidden in all cases. The destruction of the environment of a widespread, long-term or severe nature should always be forbidden.

As indicated above, operations plans discuss areas other than rules of engagement. As mentioned earlier, there is a need to address special problems, such as those involving the use of ships at sea. It is generally expected of the commanders of military vessels that they will recognize and follow the international rules of the sea. In this regard, the 1982 Law of the Sea Convention clearly provides that States have the obligation to protect and preserve the

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environment (Article 192).<sup>27</sup> They shall also take measures to prevent, control and reduce pollution of the marine environment (Article 194).<sup>28</sup> This includes the control of the release of pollutants from vessels, dumping wastes, prevention of accidents, and preventing pollution from installations. This obligation is observed by NATO nations involved in Operation Sharp Guard. In regard to air operations, an important concern would be the transportation of hazardous materials. While not as extensive as the Law of the Sea Convention, the Basel Convention on Transboundary Movement of Hazardous Wastes and their Disposal provides rules in this regard.<sup>29</sup> Again, military commanders would be obliged to observe international legal rules. In such extensive operations as Deny Flight or Provide Promise there are borders to be crossed, permissions to be granted in obtaining flight clearances, and precautions to be taken in transporting arms and munitions which may certainly be considered as hazardous. Accidents must be prevented, and installations where the materials are stored kept safe. All of these are factors which need to be considered in planning operations.

There is another area which needs to be addressed, and that is the responsibility for environmental damages. It has already been mentioned that each operations plan will contain a Legal Annex. This Annex will normally contain the rules in regard to the investigation and payment of claims.<sup>30</sup> In regard to peacekeeping operations, the exception which normally applies to combat operations, that nations are not obliged to pay for damage caused, should not be applicable.<sup>31</sup> This reasonably applies to the situation where opposing sides are fighting each other and will not reimburse each other for the damage caused in the fighting. In peacekeeping operations the normal claim is that of a third party injured during an operation conducted during conditions of general peace. The U.N. has a extensive claims program and has regularly been paying claims for damages caused during its operations. These range from the typical motor vehicle accident to damage to roads or farms, and therefore could be considered as environmental damage. The U.N. Legal Advisor at Zagreb informed me that they would not pay claims from actions taken properly in the line of duty—they would expect this expense to be assumed by the host country which benefits from the protection of the peacekeeping forces—but they would pay claims for damages caused by negligence or improper acts.<sup>32</sup> Negligence claims would include liability for such things as oil spills or other pollution damage, and there has been at least one case of an environmental cleanup claim being paid.<sup>33</sup>

Legal Annexes should provide how claims are to be paid and investigated. It is necessary that incidents be reported, and that an investigation be made to determine what the damages were, who caused them, and if they can be verified. There is also the question of who is liable. If it is a U.N. operation, will the U.N. be liable even if the particular damage was caused by a national unit acting in support of the U.N. forces? If damages were caused by forces under U.N. command,

there should be no question that the U.N. will accept responsibility, but it may refer claims back to national units if they were operating under national command even if in support of the U.N. The U.N. has referred claims to Joint Task Force Provide Promise as a U.S. operation and to AFSOUTH if NATO forces were involved. This, of course, may result in the fact that there will be differing policies on the payment of claims. In regard to claims referred to NATO, NATO may in turn refer them to its member States if they were responsible for the damages. There is a NATO claims formula set out in the NATO Status of Forces Agreement (NATO SOFA),<sup>34</sup> but the NATO SOFA may not be applicable to situations in former-Yugoslavia since this is an "out of area operation." Former-Yugoslavia is an area not within the scope of the NATO agreement.

In any event, the issue of recognizing claims responsibility is extremely important. If there is a responsibility to pay claims, then there is also reason to try to prevent claims. The U.N., NATO or national bodies will be concerned to limit their liability, and there will be an effort to prevent the causes of claims. Precautions will be taken against accidents. There will be controls in regard to the handling of pollutants and cleaning up should accidents occur. This becomes difficult in the international setting, since, for example, the U.N. must try to set up controls and standards for a very diverse group of soldiers and units which make up the U.N. forces. It is easier within NATO, since NATO units are accustomed to working together, and there are longstanding and practiced rules applying to NATO units. It is easier still within national units since their rules apply only to their own soldiers and their own operations. But, the bottom line is that if liability is anticipated, countries will do what they can to protect themselves from liability because they are responsible to pay for the damages which they cause.

A third area of discussion in regard to operations in former-Yugoslavia and the environment concerns agreements with the host nation and also agreements between the participating parties. On one hand, there is the U.N. Model SOFA<sup>35</sup> which has been signed between the U.N. and the Government of Bosnia-Herzegovina, and more recently a similar agreement has also been signed with Croatia. This agreement provides in Article 6<sup>36</sup> that the U.N. forces will respect the law of the receiving State. This would include appropriate environmental laws. The U.N. agreement does not have claims provisions, but as already noted, the U.N. has an extensive claims program and will generally pay claims where there is fault involved. NATO forces supporting the peacekeeping mission would also be covered by the U.N. agreement when attached to U.N. forces. In the case that NATO intervened but not as part of the U.N. force, it would also have to have a SOFA. If modeled on the NATO SOFA, this agreement would also provide for the respect of local law (Article II).<sup>37</sup> It would have claims provisions (Article VIII) which would set up a formula by which the contracting parties waive claims against each other, but agree to share the payment of third party claims.<sup>38</sup> Of course, the

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relevant agreement could be modeled on the U.N. agreement rather than the NATO model, or a different agreement entirely could be drafted. Another provision in the Model SOFA provides for immunity for military personnel from criminal or civil jurisdiction, leaving it to the international organization to be responsible for the acts of its personnel.<sup>39</sup> The NATO SOFA provides for partial immunity, giving immunity for official acts, but allowing the most interested party to exercise jurisdiction for nonofficial acts.<sup>40</sup> The significance here is that it is the State itself, rather than its personnel, which would have responsibility for most environmental offenses.

The other type of agreement to be considered is one between the participating parties, such as a terms of reference agreement for forces participating in a U.N. operation.<sup>41</sup> Again, in such an agreement, it would be appropriate for the forces to agree that they would respect the local laws of the country where the operation is taking place. The responsibility of the parties between each other could be defined. For example, will the U.N. or NATO pay a claim which is derived from a U.N. operation, but where the specific damage has been caused by a member or a unit of the NATO force? Not a great deal of thought has been given as to how either of these two types of agreements (SOFA's or Terms of Reference) might relate to the environment. We could speculate what types of provisions should be added. The Model SOFA might, in its text, provide with particularity provisions in regard to the observance of environmental rules. The NATO SOFA, written in 1951, does not refer specifically to environmental matters.<sup>42</sup> Later NATO agreements, such as the recently signed Supplementary Agreement with Germany, do refer to environmental matters, stipulating a specific duty to comply with environmental laws and regulations.<sup>43</sup> It would be possible to provide specifically for the respect for environmental laws in both peacekeeping SOFA's and agreements between peacekeeping forces. However, there must be caution here, because compliance with all environmental regulations, especially if a country where the actions were taking place had a sophisticated environmental protection system, might become burdensome and interfere with the missions to be accomplished. Exceptions to the rules might be necessary.

These are only a few of the issues which have occurred, but there are generalizations from this discussion which can be made in regard to operations in the former-Republic of Yugoslavia and protection of the environment. First and most generally, environmental rules must apply to non-international as well as international conflicts. While the rules for non-international conflicts may not be so specific as for international conflicts, there should be a general rule in regard to all conflicts, that the environment is not to be deliberately damaged. It should also apply to all operations other than war. Included in this general rule should be the specific rules in regard to selecting targets and limiting collateral damage. Other rules are also applicable, such as Article 57 in regard to precautions in the

attack.<sup>44</sup> This must be part of all military planning. There is also the rule in Article 82 which requires the use of legal advisers.<sup>45</sup> They must advise commanders and review the plans for military operations. Again, these are basic rules, and there is no reason they should not apply to non-international conflicts and military operations other than war as well as to international conflicts. Policy should dictate in such operations that all the general rules apply. The Additional Protocol II rules are minimum standards, and that does not mean participating forces should not apply a higher standard. It is not unreasonable that nations participating for peacekeeping purposes should apply the highest standards to their conduct.

Then there is a second generalization, in regard to the use of operations plans and rules of engagement. The plans and rules must recognize the duty to respect the law, both international and local laws, and these should include those which relate to the protection of the environment. The Rules of Engagement Annex is key because it sets out specific rules in regard to the use of force, and the Legal Annex because it sets out the rules which apply generally even when force is not being used. Aside from general international rules, I cited as example the 1982 Law of the Sea Convention<sup>46</sup> and the Basel Convention.<sup>47</sup> The Legal Annex also establishes rules in regard to such things as the payment of claims. And the recognition of the obligation to pay claims serves the important function of deterring acts which damage the environment because the parties will prevent those things which will cost them money. The third generalization concerns the use of status of forces agreements and agreements between participating forces, both of which should recognize the obligations to respect the law, and stipulate particular arrangements for such things as the investigation and reimbursement for claims. These agreements could also refer specifically to environmental laws and regulations. They could work out the details in regard to what extent local procedures are to be followed, such as applying for permits or following particular environmental rules.

While the above generalizations may seem simple, they do establish a reasonable basis to observe environmental law in non-international conflicts and in military operations other than war. I note that all of the comments made in this paper have been drawn from my own experience and that of other legal advisers during the conflict in former-Yugoslavia. The suggested practices in operations plans and rules of engagement have been used by the U.N., by NATO, and by individual nations involved. The comments in regard to SOFA's and TOR's are also drawn from actual or proposed agreements. This experience has been used in operations taking place on a vast scale so that the lessons learned should be recognized as precedent for the future. Even if the intent of the operations, to preserve the peace and come to the aid of those suffering, fail, the experience gained in conducting these operations will remain. So whatever the outcome of the present experience in former-Yugoslavia, there may be some good which comes

from it in that we are being forced to address difficult situations which might have even wider consequences in conflicts in the future. It particularly applies to the environment. The opportunity exists to develop rules for these conflicts, and to recognize responsibilities for the future. Whatever is being developed is likely to be practical since it is being developed for actual ongoing conflicts. Real problems are being addressed, and it is hoped that we are left with some workable rules and experience which are valuable for the future.

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### Notes

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1. While it is beyond the scope of this paper to enumerate the many U.N. actions underlying international intervention in former-Yugoslavia, it is helpful to note that U.N. intervention began in 1991 with Resolution 713 which implemented a general embargo on all deliveries of weapons and military equipment to Yugoslavia. In 1992, Resolution 743 established United Nations Protection Force (UNPROFOR). Also in 1992, Resolution 781 banned military flights in the airspace over Bosnia and Herzegovina. The U.N. created safe areas by Resolution 824 in 1993, and also in 1993 authorized the use of force by Resolution 836 to protect safe areas.

2. While both these terms are in general use, the correct terminology is "peacekeeping", which is authorized under Chapter VI of the U.N. Charter, and "peace enforcement", which is authorized under Chapter VII. The Charter of the United Nations, 26 June 1945; 59 Stat. 1931; T.S. No. 993; 3 Bevans 1193.

3. For a discussion of the concept of non-international conflicts, see: Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, at 1319 (International Committee of the Red Cross 1987).

4. Note that the concept of non-international conflict is different from that of military operations other than war (MOOTW), which might include peacekeeping, rescue operations, humanitarian aid, or other nonhostile actions. In both cases, there is a key issue whether all of the rules in regard to international conflicts should be applied. However, non-international conflict is still a conflict, and MOOTW may or may not involve hostile actions. So there is a basic difference as well.

5. For a good outline of the U.N. actions in former-Yugoslavia, see *The United Nations and the Situation in Former Yugoslavia*, United Nations Department of Public Information, Reference Paper (15 March 1994).

6. An excellent discussion of legal issues involving operational planning is found in U.S. Department of the Army, *Operational Law Handbook* (1994).

7. See U.S. Department of Defense DoD Directive 6050.16, *DoD Policy for Establishing and Implementing Environmental Standards at Overseas Installations* (1991).

8. For a discussion and examples of rules of engagement, see *Operational Law Handbook*, *supra* n. 6 at TAB H.

9. The latest development was the decision by Secretary General Boutros Boutros Ghali to delegate the decision to call in NATO air support to the military commanders after NATO decided to threaten the use of force against the Serbs if other safe areas were attacked after the fall of Srebrenica and Zepa. Whitney, *UN Yields Air-Strike Control to the Military*, *Int'l Herald Trib.*, July 27, 1995 at 1.

10. The decision to use force was taken by the AFSOUTH Commander and the U.N. Commander pursuant to the agreement worked out between NATO and the U.N. *Supra* n. 9.

11. A good discussion of the law in this area is found in: Diederich, *Law of War and Ecology - A Proposal for a Workable Approach to Protecting the Environment through the Law of War*, 136 *Mil. L. Rev.* 137 (Spring 1992). See also Almond, *War, Weapons and the Attacks on the Environment*, *Revue de Droit Militaire et de Droit de la Guerre*, XXXI, 1-2-3-4 (1992), at 329. And most recently; Gasser, *For Better Protection of the Natural Environment in Armed Conflict: A Proposal for Action*, 89 *A.J.I.L.* 637 (1995).

12. Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims in International Armed Conflicts, *opened for signature* Dec. 12 1977, 1125 U.N.T.S. 3, *reprinted in* 16 *I.L.M.* 1391 (1977), [hereinafter Additional Protocol I]. The United States has signed but not ratified Protocol I. And, Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Conflicts, *opened for signature* Dec. 12, 1977, 1125 U.N.T.S. 609, *reprinted in* 16 *I.L.M.* 1442 (1977), [hereinafter Additional Protocol II]. Also, the U.S. has signed but not ratified Additional Protocol II. However, the President recommended that the Senate give its advice and consent for Protocol II but not for Protocol I. The recommendation as to Additional Protocol I is now under reconsideration by the Clinton Administration. See, Meron, *Editorial Comment, The Time Has Come for the United States to Ratify Geneva Protocol I*, 88 *A.J.I.L.* at 678 (1994).

13. Article 35, Additional Protocol I, *supra* n. 12.

14. Article 55, Additional Protocol I, *supra* n. 12.
15. See Arts. 14 and 15, Additional Protocol II, *supra* n. 12.
16. See Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, *supra* n. 3, in *General Introduction to the Commentary on Protocol II*, at 1319 and following.
17. Art. 35, Additional Protocol I, *supra* n. 12.
18. Art. 48, Additional Protocol I, *supra* n. 12.
19. Art. 51, Additional Protocol I, *supra* n. 12.
20. Art. 57, Additional Protocol I, *supra* n. 12.
21. Art. 82, Additional Protocol I, *supra* n. 12.
22. See Gasser, *supra* n. 11, at 641.
23. Convention of the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, May 18, 1977, 31 U.S.T. 333; T.I.A.S. 9614 [hereinafter ENMOD].
24. Art. I, ENMOD, *supra* n. 23.
25. Convention on Prohibition or Restrictions on the Use of Certain Weapons Which May be Deemed to Be Excessively Injurious or to Have Indiscriminate Effect, *opened for signature* Apr. 10, 1981, *reprinted in* 19 I.L.M. 1524 (1980).
26. Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949, 6 U.S.T. 3316; T.I.A.S. 3364; 75 U.N.T.S. 135.
27. United Nations Convention on the Law of the Sea, *opened for signature* Dec. 16, 1982, U.N. Doc. A/CONF. 62/122 (1982), *reprinted in* United Nations Official Text of the United Nations Convention on the Law of the Sea with Annexes and Index., U.N. Sales No. E83 v.5 (1983) [hereinafter LOS Convention]. See Oxman, *The Future of the United Nations Convention on the Law of the Sea*, 88 A.J.I.L. at 488 (1984).
28. *Id.*
29. Basel Convention on the Transboundary Movement of Hazardous Wastes and their Disposal, Mar 22, 1989, U.N. Doc. UNEP/IG.80/3 (1989), *reprinted in* 28 I.L.M. 657 (1989).
30. Operational Law Handbook, Annex Q of TAB F, *supra* n. 6.
31. It is nowhere stated in the law of armed conflict that damages caused are to be paid or not, but these are matters which are generally settled after a conflict has taken place.
32. The Legal Adviser of the U.N. presently working these issues is Gary F. Collins, a former U.S. Army Judge Advocate, with the United Nations Protection Force, UNPROFOR H.Q., Zagreb, Croatia. The opinion that the U.N. will not be liable for operational activities is stated in a legal memorandum from the Legal Division to the Office for Special Political Affairs: Interoffice Memorandum from Sirha Sasnayeke, Director General Legal Division to Hisako Shimura, Director for Special Political Affairs, SUBJECT: *Government Liability for damage caused by UNIFIL operational activities* (U.N. HQ, Dec. 5, 1989).
33. *Id.*
34. The NATO Claims Formula is found in Article VIII of the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces, June 19, 1951, 4 U.S.T. 1792; T.I.A.S. 2846; 199 U.N.T.S. 67 [hereinafter NATO Status of Forces Agreement or NATO SOFA].
35. Draft Model Status of Forces Agreement between the United Nations and Host Countries. Agreements correspond to the terminology used in para. 11 of General Assembly Resolution 44/49 dated 8 Dec. 1989 [hereinafter U.N. SOFA], but will vary according to the type of peacekeeping operation concerned. *Printed in* SIEKMANN, NATIONAL CONTINGENTS IN UNITED NATIONS PEACE KEEPING FORCES (1991) at Annex II, 204-10. Also *found in* U.N. Res. A. 45/594 of Oct. 9, 1990.
36. *Id.*
37. NATO SOFA, Art. II, *supra* n. 34.
38. NATO SOFA, Art. VIII, *supra* n. 34.
39. U.N. SOFA, *supra* n. 35.
40. NATO SOFA, Art. VII, *supra* n. 34.
41. "Terms of Reference" (or TOR) made between the U.N. and participating nations, and they would spell out in detail the status of participants, command control, liability for costs, and other matters relating to the operation. See Draft Formula for Articles of Agreed Guidelines for U.N. Peacekeeping Operations, App 1, Agreed Guidelines for U.N. Peacekeeping Operations, in SIEKMANN, *supra* n. 35, at 197-99.
42. NATO SOFA, *supra* n. 34.
43. Agreement of 18 March 1993 to Amend the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces with respect to Foreign Forces Stationed in the Federal Republic of Germany, ratified by Germany, 28 Sep. 1994.
44. Additional Protocol I, *supra* n. 12.
45. *Id.*
46. LOS Convention, *supra* n. 27.
47. Basel Convention, *supra* n. 29.