



# THE *JUS POST BELLUM* PROJECT

An NWO-funded Vidi project of the Grotius Centre for International Legal Studies  
at the University of Leiden

## CALL FOR PAPERS

### ***Peacebuilding and Environmental Damage in Contemporary Jus Post Bellum: Clarifying Norms, Principles and Practices***

*June 11 – 12, 2014, The Hague, Netherlands*

Restoration and management of natural resources are key elements in the transition from armed conflict to peace. They are related to security and justice after conflict, governance strategies and development policies. UNEP has stressed this nexus<sup>1</sup> and existing legal shortcomings<sup>2</sup> in its reports. Other initiatives, such as the *Toxic Remnants of War* project, have suggested including legal mechanisms related to the environmental consequences of military activities as part of post-conflict reconstruction.<sup>3</sup> The International Law Commission (ILC) decided to include the protection of the environment in relation to armed conflict in its programming, including non-international armed conflicts and ‘post-conflict measures’.<sup>4</sup>

This topic requires further attention.<sup>5</sup> Traditional approaches to environmental protection face particular challenges during and after conflict. Calls for the acceptance of specific ecological obligations and procedures in post-conflict environments encounter resistance and constraint in military operations. Some harms and obligations lend themselves to systemic or abstract regulation. Others require context- and case-specific consideration. *Jus post bellum* provides a potential framework to take into account these specificities. It allows exploration of otherwise disparate areas of law and practice under a unified framework that focuses on post-conflict societies and the creation of sustainable peace.

This seminar is the first of two seminars planned for 11 – 13 June 2014. [The second seminar relates to property, investment, and jus post bellum.](#) The main aim of these seminars is to create guidelines for law and policy for property and the environment in the transition from armed conflict to peace. Discussants are encouraged to connect these with other, overarching issues, such as the role of international interventions, local ownership, the right to self-determination, and addressing root causes of conflict. The guidelines will be backed by substantive research papers submitted via this call for papers for presentations at the seminar.

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<sup>1</sup> UNEP, *From Conflict to Peacebuilding: The Role of Natural Resources and the Environment* (2009), at [http://postconflict.unep.ch/publications/pcdmb\\_policy\\_01.pdf](http://postconflict.unep.ch/publications/pcdmb_policy_01.pdf).

<sup>2</sup> UNEP, *Protecting the Environment During Armed Conflict An Inventory and Analysis of International Law* (2009), at [http://www.un.org/zh/events/environmentconflictday/pdfs/int\\_law.pdf](http://www.un.org/zh/events/environmentconflictday/pdfs/int_law.pdf).

<sup>3</sup> See Workshop Report, ‘Exploring a legal framework for Toxic Remnants of War’ (2012), at [http://www.toxicremnantsofwar.info/wp-content/uploads/2012/09/TRW-Legal-WS-Report\\_final.pdf](http://www.toxicremnantsofwar.info/wp-content/uploads/2012/09/TRW-Legal-WS-Report_final.pdf).

<sup>4</sup> See ILC Report, A/68/10, 2013, chp. IX, paras. 130-144, para. 141.

<sup>5</sup> See, e.g., ICRC, ‘Strengthening legal protection for victims of armed conflicts’, October 2011, p. 16-19, at <http://www.icrc.org/eng/assets/files/red-cross-crescent-movement/31st-international-conference/31-int-conference-strengthening-legal-protection-11-5-1-1-en.pdf> and the Special Edition of the *Nordic Journal of International Law* 82 (2013) on Protection of the Environment in Relation to Armed Conflict.

We are seeking submissions of academic research papers, built around identifiable guidelines, for presentation at the seminar. Submissions should include an abstract of no more than 300 words and be accompanied by a CV. Please indicate for which seminar the abstract is intended. Submissions must be written in English and sent to [j.m.iverson@cdh.leidenuniv.nl](mailto:j.m.iverson@cdh.leidenuniv.nl) and [j.s.easterday@cdh.leidenuniv.nl](mailto:j.s.easterday@cdh.leidenuniv.nl) no later than 27 January 2014. Selected participants will be informed 22 February 2014. Final papers should be submitted by 16 May 2014.

The environmental seminar seeks to bring together academics, policy-makers and practitioners from different disciplines to clarify policies and practices of environmental protection, and key legal considerations related to normative frameworks (e.g., international environmental law, international humanitarian law and human rights), the treatment of substantive principles (e.g., proportionality under *jus in bello* and *jus post bellum*, environmental integrity), 'shared responsibility' and accountability mechanisms for environmental damage. It aims to identify gaps and extract specific principles, norms, and practices that can bridge existing research on conflict, the environment and natural resource management with new areas for practice and study in the *jus post bellum* context. It will focus on some of the following themes:

### **I. Damage and Harm**

Armed conflict produces different types of damage and harm. It has direct, indirect (e.g., land-grabs, land-degradation, altered migration flows, unsustainable resource usage) and institutional impacts (e.g., inability of public institutions to provide environment-related government services) on environmental protection. To what extent are these reflected in existing legal categorizations? How can these types of harm and damage be measured? How are they treated under principles such as 'due regard' or 'environmental integrity'? How should they be addressed in peace agreements, post-conflict constitutions, international legal documents or peacebuilding strategies? How should they be sequenced? Do post-conflict environmental concerns disproportionately affect particular constituencies, such as women or children, and how can these effects be evened out?

### **II. Nexus and Interaction between Diverse Legal Frameworks**

Environmental protection is a cross-cutting issue. It requires consideration under multiple legal frameworks, including general international law (e.g., state responsibility), international humanitarian law, international environmental law, human rights law (e.g., socio-economic rights and duties) and domestic law. How can these bodies of law be applied in a mutually-supportive way? To what extent do they take into account context-specific governance practices and norms (e.g., community property arrangements)? What are common underlying structural constraints to environmentally sustainable peacebuilding, and how can they be best addressed by *jus post bellum*? How can *jus post bellum* help clarify or coordinate existing legal frameworks? What lessons can be learned from existing case-law?

### **III. Shared Responsibility**

Environmental damage is typically caused by a diversity of different actors, ranging from foreign interveners, to government forces, armed groups or private actors. This raises complex issues related to responsibility. To what extent should there be a strict liability approach and/or 'common but differentiated responsibilities'? How should they be measured or allocated? Who are the different actors that need to be a part of post-conflict settlements (e.g., military, police, government, women, refugees, private armed groups, criminal organizations, private corporations or donors)? What types of violations should be sanctioned by individual responsibility, and what violations lend themselves to collective responsibility? What evidence and proof is required in allocation of responsibility? Should there be a distinction between what is part of the 'public' versus 'private' domains?

#### IV. Regulatory Policies

Environmental protection is linked to different areas of peacebuilding. This nexus might require further discourse over regulatory responses. Questions include:

- What are issues that must be considered by post-conflict states and peace-builders to find models that are context-appropriate, socially inclusive, environmentally sustainable and which promote sustainable peace? What are the benefits and limits to models such as concession systems?
- What are common challenges and good practices related to domestic legal reform, implementation and institution building in the areas of post-conflict environmental protection, cleanup and natural resource management? How can overlaps in subject matter or mandates (e.g., between human rights commissions, anti-corruption commissions or land management institutions) be reconciled and managed to ensure synergy and cross-sector support?
- What kinds of initiatives and principles should be applied to promote socially and environmentally responsible investments in natural resources (e.g., due diligence, transparency or certification schemes)? How can these and other principles be utilized to promote employment, social inclusion and empowerment of local communities in ways that sustain and build peace?
- What can we learn from international standards and initiatives for private corporations, such as the Extractive Industries Transparency Initiative, the Voluntary Principles on Security and Human Rights, or the OECD Guidelines for Multinational Enterprises and Fragile States Principles? Is there a place in *jus post bellum* for soft-law norms (such as the Guiding Principles on Business and Human Rights), standards of conduct, voluntary principles and good practice frameworks? How do these different standards and protocols cohere?

#### V. Accountability, Reparation and Resource Management

Addressing immediate and long-term consequences of environmental damage in and after conflict raises novel questions about reparations. To what extent is there common ground, or a need for new system of accountability to remedy violations irrespective of the legality of conduct, based on the treatment of landmines or other explosive remnants of war?<sup>6</sup> To what extent are there common criteria for environmental reparations? What lessons can be learned from judicial and/or executive practices? How do we approach 'ownership' in relation to the allocation of resource management and sharing of resource revenues? How do we ensure equality—perceived and actual—in the distribution of natural-resource revenue streams?

#### VI. Prevention

As UNEP has noted, 'general humanitarian principles of distinction, necessity, and proportionality may not be sufficient to limit damage to the environment'.<sup>7</sup> In many cases, damages to the environment cannot be restored. This makes it necessary to re-think precautionary measures and prevention strategies. To what extent do existing legal frameworks take into account such rationales, and how can they be strengthened (e.g., in non-international armed conflicts)? What types of behavior, weapons and modalities of warfare should be ruled out *per se*? To what extent can specific fragile environments or 'areas of major ecological importance, such as groundwater aquifers, national parks and habitats of endangered species' be protected categorically?<sup>8</sup> How can peacebuilding programs prevent struggles over natural resources, the rights of stakeholders (including local resource users) and the environment?

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<sup>6</sup> See Art. 6 of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Antipersonnel Mines and on their Destruction, 18 September 1997, Articles 6-7 of the Protocol on Explosive Remnants of War (Protocol V to the 1980 Conventional Weapons Convention), 28 November 2003, Articles 4-6 of the Convention on Cluster Munitions of 30 May 2008.

<sup>7</sup> See UNEP, *supra* note 2, at 52.

<sup>8</sup> See ICRC, *supra* note 5, at 19.