

IX. Évfolyam 4. szám - 2014. december

Milota Kustrová
milota.kustrova@aos.sk

THE LEGISLATIVE BACKGROUND OF ENVIRONMENTAL SECURITY DURING MILITARY ACTIVITIES AND ARMED CONFLICTS

Abstract

Article deals with the major legislative provisions, the application of which is important in ensuring the environmental safety during military operations, in particular in armed conflicts and during NATO Led Military Activities. Mentioned legislative framework is based on existing international humanitarian law, international criminal law and international human rights law and mainly on international environmental law. North Atlantic Council and Military Committee care about Environmental Protection in NATO. The article also mentioned NATO's Environmental Protection Definition, NATO's Environmental Protection Structures and Other Organizations in NATO's Environmental Area of Interest. This article provides an overview of NATO Environmental protection Document Hierarchy - NATO EP policy, doctrine, standards and other EU and national regulations and standards.

A cikk a legfontosabb jogszabályi rendelkezések alkalmazásával foglalkozik, ami releváns a környezeti biztonság szempontjainak érvényesítéséhez a katonai műveletek során. A tárgyalt jogi keret alapja a meglévő nemzetközi humanitárius jog, a nemzetközi büntetőjog, a nemzetközi emberi jogi törvények és főként a nemzetközi környezetvédelmi jog. A tanulmány összegzi a NATO környezetbiztonsággal, ökológiai kérdésekkel foglalkozó doktrinális és szabványrendszerét, az egyes meghatározó dokumentumok tartalmát, hierarchiáját. (NATO EP politikája, doktrinális irodalma, szabványai és egyéb meghatározó EU és nemzeti szabályozók és szabványok)

Keywords: *environmental security, legislative background, armed conflicts, NATO, doctrines ~ környezeti biztonság, jogi háttér, fegyveres konfliktus, NATO, doktrína*

INTRODUCTION

Environmental destruction has become an inevitable result of modern warfare and military tactics. The nuclear, chemical, and biological weapons that emerged during the late twentieth century present threats to life itself; but short of that apocalypse, modern weapons can cause or hasten a host of environmental disasters, such as deforestation and erosion, global warming, desertification, or holes in the ozone layer. The devastating effects of military weapons on the environment is reflected throughout the history of the twentieth century, in World War I, World War II, the Korean and Vietnam wars, the Cambodian civil war, Gulf wars I and II, the Afghan civil war, and the Kosovo conflict. The Science for Peace Institute at the University of Toronto estimates that 10 to 30 percent of all environmental degradation in the world is a direct result of the various militaries. Military operations can affect land, air, wildlife, and water resources. In modern warfare, environmental destruction can be a primary means of threatening or defeating one's enemies. War itself can, and often does, mean war against the natural environment.

Because the environment and natural resources are crucial for building and consolidating peace, it is urgent that their protection in times of armed conflict be strengthened. There can be no durable peace if the natural resources that sustain livelihoods are damaged or destroyed. The International Day for Preventing the Exploitation of the Environment in War and Armed Conflict, which is observed annually on 6 November, aims to raise awareness of the fact that damage to the environment during armed conflict impairs ecosystems and natural resources long after the period of the conflict, and extends beyond the limits of national territories and the present generation.

Despite the protection afforded by several important legal instruments, the environment continues to be the silent victim of armed conflicts worldwide. The armed conflict causes significant harm to the environment and the communities that depend on natural resources. Direct and indirect environmental damage, coupled with the collapse of institutions, lead to environmental risks that can threaten people's health, livelihoods and security, and ultimately undermine post-conflict peace building. The existing international legal framework contains many provisions that either directly or indirectly protect the environment or govern the use of natural resources during armed conflict. The four main bodies of international law that provide protection for environment during armed conflict. These include international humanitarian law (IHL), international criminal law (ICL), international environmental law (IEL), and international human rights law (HRL). In practice, however, these provisions have not always been effectively implemented or enforced. In view of the rapid transformations in the methods and means of warfare, as well as the increase in non-international armed conflicts, updating of the ICRC Guidelines on the Protection of the Environment during Armed Conflict (1994) is necessary.

The Environmental Modification Convention (ENMOD) was adopted in 1976 to prohibit the use of environmental modification techniques as a means of warfare. Additional Protocol I to the Geneva Conventions, adopted in the following year, included two articles (35 and 55) prohibiting warfare that may cause "widespread, long-term and severe damage to the natural environment." In 1992, the UN General Assembly held an important debate on the protection of the environment in times of armed conflict. While it did not call for a new convention, the resulting resolution (RES 47/37) urged Member States to take all measures to ensure compliance with existing international law on the protection of the environment during armed conflict.

1. INTERNATIONAL ENVIRONMENTAL LAW (IEL)

International environmental law (IEL) covers numerous cases of environmental damage that give rise to responsibility and potential liability during times of peace. The question is whether and to what extent these liability principles may apply for similar damage resulting from armed conflict. The question of the potential application of IEL during armed conflict is complicated by the fact that environmental law is still maturing at both the domestic and international levels, and States are still in the process of determining how it relates to IHL (as well as other bodies of law, such as international trade law).

This part of article accordingly provides an overview of the law that addresses the applicability of IEL during armed conflict. It consists of two main sections:

1. Multilateral environmental agreements (MEAs) and principles of IEL: Relevant provisions of contemporary international environmental law, including multilateral environmental agreements (MEAs), that directly or indirectly provide for their application – or suspension – during armed conflict.
2. Customary international environmental law and soft law instruments: Relevant provisions of customary international environmental law, including the Trail Smelter Principle, and important non-binding documents, such as the Rio Declaration.¹

1.1. Multilateral Environmental Agreements (MEAs) and principles of IEL

There is substantial variation in how international environmental law (IEL) addresses the question of applicability during times of armed conflict. Some MEAs directly or indirectly address the question of their continuance during hostilities, either by inference or by express statement. Other MEAs specifically state that they are automatically suspended, terminated or inapplicable once armed conflict has begun.

MEAs that directly or indirectly provide for their application during armed conflict:

- UN Convention on the Law of the Sea (UNCLOS) (1982),
- International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL) (1954),
- International Convention for the Prevention of Pollution from Ships (MARPOL) (1973/1978),
- Regional seas conventions (Barcelona Convention, Cartagena Convention),
- Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention) (1971),
- Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention) (1972),
- Convention on Long-Range Transboundary Air Pollution (LRTAP) (1979),
- African Convention on the Conservation of Nature and Natural Resources (Revised) (2003),
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention) (1972),
- UN Convention on the Law of the Non-Navigational Uses of International Watercourses (1997).

¹ Michael Bothe, Carl Bruch, Jordan Diamond, and David Jensen, 2010. International law protecting the environment during armed conflict: gaps and opportunities. In: International Review of the Red Cross, Vol. 92, No. 879, September 2010. p. 569-592.

MEAs that specifically provide for suspension, derogation or termination during armed conflict:

- Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (1993),
- Convention on Third Party Liability in the Field of Nuclear Energy (1960),
- Vienna Convention on Civil Liability for Nuclear Damage (1963),
- International Convention on Civil Liability for Oil Pollution Damage (1971).

MEAs that neither directly nor indirectly address their application during armed conflict:

- Convention on Early Notification of a Nuclear Accident (1986),
- Convention on Biological Diversity (1992),
- Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention) (1989),
- UN Convention to Combat Desertification (1994).

The following MEAs also do not address the question of their applicability in times of war:

- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973);
- Vienna Convention for the Protection of the Ozone Layer (1985);
- Montreal Protocol on Substances that Deplete the Ozone Layer (1987);
- United Nations Framework Convention on Climate Change (1992);
- Stockholm Convention on Persistent Organic Pollutants (2001);
- Convention on the Conservation of Migratory Species of Wild Animals (CMS) (1979); and
- Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (1998).

1.2. Customary international environmental law and soft law instruments

- Declaration of the UN Conference on the Human Environment (Stockholm Declaration) (1972)

In 1972, the UN Conference on the Human Environment convened in Stockholm, culminating in the issuance of 26 principles regarding humans and their environment. Two of these principles could bear on the question of whether IEL applies during armed conflict.

First, Principle 21 provides the foundational principle of the conference, that: “*States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.*”²

More directly related to armed conflict is Principle 26, which in the interest of protecting the world from nuclear weapons and other methods of mass destruction, instructs States to “*strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons.*”³

² Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 16 June 1972, UN Document A/CONF.48/14/Rev. 1 (1973). Principle 21

³ Stockholm Declaration, Principle 26

- World Charter for Nature, UNGA Resolution 37/7 (1982)

The resolution directly addresses the need to prohibit environmental harm resulting from armed conflict. Principle 5, which is one of the document’s general principles, mandates that “*nature shall be secured against degradation caused by warfare or other hostile activities.*”⁴

Principle 11 then states that “activities which might have an impact on nature shall be controlled, and the best available technologies that minimize significant risks to nature or other adverse effects shall be used,” with subheadings covering specific types of harm and the need to rehabilitate degraded areas.¹⁹⁸ Finally, regarding implementation, Principle 20 declares that “military activities damaging to nature shall be avoided.”⁵

These provisions are clearly intended to prohibit environmental harm during armed conflict – the question is whether that directive is limited to the principles contained within the resolution, or whether they could provide a bootstrapping argument for broader applicability of IEL.⁶

- Declaration on Environment and Development (Rio Declaration) (1992),
- Programme of Action for Sustainable Development (Agenda 21) (1992),
- UNGA Resolutions 47/37 Protection of the environment in times of armed conflict (1993), and 49/50 United Nations decade of international law (1995),
- World Summit on Sustainable Development (2002),
- UNEP Governing Council Decision 23/1/IV (2005).

International Environmental Law (IEL) has continued to grow and become more robust and easier to enforce. In addition, many countries have elaborated or updated military manuals to incorporate environmental provisions. It would thus be useful for the international community to provide further research, analysis and clarification regarding which, if any, of the various approaches should be used.

2. ENVIRONMENTAL PROTECTION IN NATO

2.1. NATO’s Environmental Protection Definition

“*Environmental protection is the prevention or mitigation of adverse environmental impacts*” (protection of the environment from soldiers).⁷

Why environmental protection in NATO? Because avoiding unnecessary damage to the environment:

- Enhances force protection - Avoids exposing soldiers and civilians to contamination
- Supports operations - Environment affects readiness, safety, tactics, budgets and relations with host nation, local communities and media
- Saves money - Remediation, medical, litigation
- Is an order - EP is part of policy, doctrine, standards, OPLANs, SOPs, directives⁸

⁴ World Charter for Nature, UNGA Resolution 37/7, UN Document A/RES/37/7, 28 October 1982, Principle 5

⁵ World Charter for Nature, UNGA Resolution 37/7, UN Document A/RES/37/7, 28 October 1982, Principle 11 and Principle 20.

⁶ Elizabeth Mrema, Carl E. Bruch, Jordan Diamond, 2009. Protecting the Environment During Armed Conflict: An Inventory and Analysis of International Law. 83 p. ISBN: 978-92-807-3042-5

⁷ EPWG endorsement 30 April 2013

⁸ Berghuis Henry, 2013. NATO Environmental Management Direction and Guidance. SHAPE SO (Environmental Management), 6 May 2013, M3-77 Environmental Management for Military Forces

2.2. NATO Environmental Protection (EP) structures

NATO Environmental Protection structures is clearly shown in Figure 1.

Other NATO organizations with EP aspects:

- Emerging Security Challenges Division (ESCD) / Energy Security Section (ESS)
- Defence and Environment Experts Group (DEEG)
- Smart Energy Team (SENT)
- Energy Security Centre of Excellence (ENSEC COE)
- engineering, logistics, medical, CBRN

Other Organizations in NATO's Environmental Area of Interest:

- United Nations Environment Programme (UNEP)
- Organization for Security and Co-operation in Europe (OSCE)
- European Defence Environmental Network (DEFNET)
- European Defence Agency (EDA)
- European Union Military Staff (EUMS)

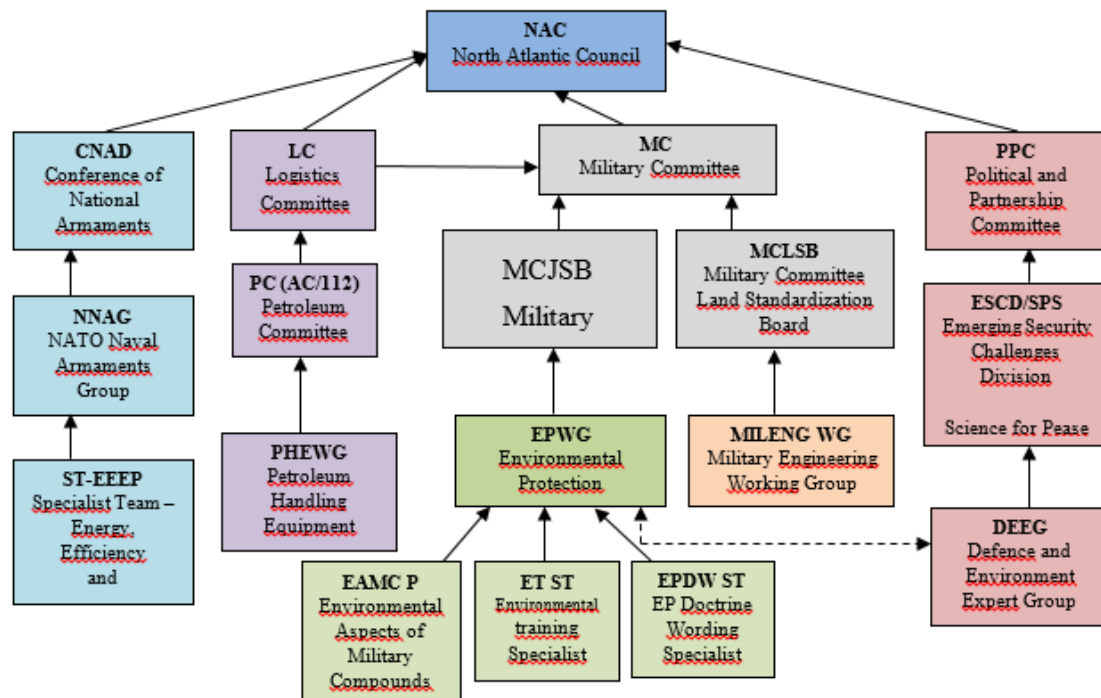


Figure 1. NATO Environmental Protection Structure (Source: ACO Allied Command Operations)

NATO EP training opportunities:

- NATO School Oberammergau
- MILENG COE
- SPS (Science for Peace and Security Programme) – sponsored training events
- Exercises

2.3. NATO Military Committee EP Document Hierarchy

MC Policies

MC 560/1 – MC Policy for Military Engineering (MILENG) - 19 Jan 2012

- “MILENG supports all operations ... in all phases ... and incorporates specialist areas of expertise such as environmental protection ...” (para 6) ,
- “NATO Commands at all levels are to implement this Policy” (para 21).

MC 469/1 – NATO Military Principles and Policies for Environmental Protection (EP) - 13 Oct 2011

- “... objective is to facilitate the integration of environmental protection into all NATO-led military activities, consistent with operational imperatives.” (para 7)
- “These principles and policies apply to all NATO and non-NATO Troop Contributing Nations in NATO-led military activities.” (para 5)
- Respect host nation environmental laws - Apply National standards if more stringent. If no Host Nation standards, then participating nations must agree to a standard.
- NATO and participating nations have collective responsibility for protection of the environment. Each nation ultimately responsible for the actions of its own forces.
- Coordination and information exchange.
- Transparency and reporting.
- Apply best practicable and feasible measures.

NATO Commanders and EP:

- Authorized to establish EP procedures and standards and direct compliance
- Responsible for issuing EP directives
- Authorized to require reports from sending nations on EP status of locations made available for their use
- Must consider environmental issues and impacts early in planning
- Must have access to EP expert advice and support (MILENG)

Sending Nation Responsibilities:

- Provide EP education and training to their forces - Lessons observed, identified and learned
- Provide environmental expertise within own force
- Comply with NATO Commander’s EP directives

Related to NATO Policy:

- MC 536 - Infrastructure Engineering for Logistics, 2 Nov 2005
- MC 547 - Code of Conduct for the Use of Active Sonar to Ensure the Protection of Marine Mammals Within the Framework of Alliance Maritime Activities, 1 Jun 2006

Other Environmental Standards

International Organization for Standardization (ISO)

- Environmental management systems (14001)
- Environmental auditing (14010, 14011, 14012)
- Life cycle assessment (14040)
- Terms and definitions (14050)

EU and national regulations and standards

Transportation of dangerous goods regulations

- International Air Transportation Authority
- EU and national authorities

Doctrines

STANAG 7141 – Joint NATO Doctrine for Environmental Protection During NATO-Led Military Activities - 26 Feb 2008

Aim

- State environmental doctrine for NATO-led military activities
- Provide guidance in environmental planning for military exercises and operations
- Three annexes (A, B, C)

Annex A - Planning and Risk Management - Commitment to taking all reasonably achievable measures to protect the environment

- Early identification of potential impacts
- Environmental baseline study
- Knowledge of laws and regulations
- National differences in EP priority, standards and terminology

Annex B - Commander's Environmental Responsibilities - Demonstrate leadership, provide direction and guidance

- Consider environmental impacts in decision making
- Promote awareness, ensure compliance
- Enhance relationships by addressing environmental issues (win hearts and minds, be a good guest)
- Ensure stewardly use of resources
- Integrate pollution prevention

Annex C - Training and Education - Primarily a national responsibility

- NATO common training - NATO School Oberammergau; MILENG Centre of Excellence, Ingolstadt, DEU
- Incorporate into existing training - Individual (e. g. basic training, junior officer and NCM courses); Collective (SOPs for exercises and training areas); Continuation (annual refresher);
- Education objectives - Incorporate into daily military routine; Start early and progress with career development; Increase awareness among senior commanders;
- Education levels - Awareness (all personnel) ; Procedures and measures (specific functional areas/duties); Supervisory (expert advisors);⁹

Standards

16 STANAGs related to EP (4x AJEPPs with covering STANAGs, 1x STANAGs → AJEPPs, 2x draft AJEPPs/STANAGs)

Allied Joint Environmental Protection Publications (AJEPPs)

AJEPP 1 – EP Standards and Norms for Military Compounds in NATO Operations (STANAG 2581)

- Tool for NATO commanders to establish EP standards, As per MC 469/1 para 8.a.(3),
- Guidelines in the application of environmental standards in a deployed NATO compound,

⁹ Bergius Henry, 2013. NATO EP Requirements and Troop-Contributing Nation Responsibilities. SHAPE SO (Environmental Management), 6 May 2013, M3-77 Environmental Management for Military Forces

- Basis for theatre-agreed EP standards in the absence of host nation standards,
- National standards should be applied if more stringent,
- Taken from an agreed-upon national or international standard CAN, EU, USA, WHO,
- Annexes cover management and standards for 11 potential types of waste, contamination or environmental resource (Waste water, Solid waste, Healthcare waste, Hazardous materials management, Radioactivity, Energy, Petroleum, oils and lubricants, Soil contamination, Natural, cultural and historical resource management, Air pollution, Noise pollution).

AJEPP 2 – Best EP Practices for Military Compounds in NATO Operations (STANAG 2582)

Best EP practices is a method or technique that consistently shows better results than other means; is used as a benchmark; can evolve as improvements are discovered. Used to maintain quality as an alternative to mandatory legal standards. Used extensively in ISO 14001.

- Tool for NATO commanders to establish EP procedures;
- Best practices handbook for operational and tactical level planners;
- Guidelines for integrating EP into the Operations Planning Process.

AJEPP 3 – Environmental Management System in NATO Operations (STANAG 2583)

Describes the use of an environmental management system by NATO EP planners to identify and reduce environmental impacts during NATO deployments.

AJEPP 4 – Joint NATO EP Doctrine during NATO-led Military Activities (STANAG 7141)

AJEPP 5 – Joint NATO Procedures for Waste Management during NATO Led Activities (STANAG 2510)

Purpose: to state joint requirements for waste management during NATO-led military activities. Does not address waste water treatment, classified waste, infectious waste, waste related to CBRN, waste related to explosive ordnance and ammunition, maritime waste. Operational imperatives have priority - nonetheless, “*NATO-led forces must strive to respect waste management requirements*”.

Principles of Waste Management:

- Precautionary principle - Minimize environmental damage; Remediate where damage occurs.
- Principle of waste hierarchy - Reduce, reuse, recycle and remove.
- Polluter pays principle.
- Proximity principle - Disposal close to waste origin; Minimize transportation.
- Apply Basel Convention, EU, other international regulations; Respect host nation laws.

Waste Management Responsibilities – NATO Commander:

- Assess waste management requirements and incorporate into planning.
- Coordinate overarching aspects of waste management - Agreements with host nation.
- Issue direction and guidance.
- Ensure compliance with legislation - Trans-boundary movement of waste.

Waste Management Responsibilities – Nations:

Lead Nation

- Provide disposal capacities
- Develop waste management plan
- Periodically review and update waste management plan

Sending Nations

- Correctly manage own waste
- Promote reduction, reuse and recycling before final disposal
- Conform to lead nation's waste management plan

Host Nation

AJEPP 6 – NATO Compound Environmental File during NATO-led Operations (STANAG 6500)

AJEPP 7 – Best EP Practices for Sustainability of Military Training Area (MTA) (STANAG 2594)

- Intent is to capture best practices for sustaining military training lands that maximize their capability, accessibility and availability in support of military training in the presence of environmental regulations.
- Target audience is commanders and military training area managers
- Addresses Key Issues and Best Practices of Functional Areas: Habitat / Ecosystems, Fauna, Flora, Water and Wetlands, Soils, Fire, Noise and Vibrations, Geographic Information Systems, Environmental Training and Outreach.¹⁰

Other Related NATO Standards:

STANAG 2048, 2473, 2535, 2908 and 2982 (Force Health Protection issues)

STANAG 3609, 3756, 3784 and 3854 (Aviation fuel and transportation issues)

Note: There are also Maritime EP documents (9 x AMEPPs).

CONCLUSION

Environmental Protection is always conducted in support of operations. EP is vital to sustainability and can contribute to success on operations. NATO EP documentation is well developed. Implementation of policy and assignment of resources (personnel, finances) is improving but needs continual reinforcement. NATO EP is a MILENG area of specialist expertise. Compliance to EP policy is mandatory for NATO and non-NATO participants in NATO-led military activities. Commanders and nations have specific responsibilities. Early planning is key to effective EP and waste management. Policy, doctrine and standards provide necessary, useful direction.

REFERENCES

- [1] AL-DUAIJ Nada, 2002. Environmental Law of Armed Conflict. (S.J.D. dissertation, Pace University School of Law), available at <http://digitalcommons.pace.edu/lawdissertations/1/>
- [2] BERGHUIS Henry, 2013. NATO Environmental Management Direction and Guidance. SHAPE SO (Environmental Management), 6 May 2013, M3-77 Environmental Management for Military Forces
- [3] BERGHUIS Henry, 2013. NATO EP Requirements and Troop-Contributing Nation Responsibilities. SHAPE SO (Environmental Management), 6 May 2013, M3-77 Environmental Management for Military Forces

¹⁰ Laire Johan, 2014. NATO and nature protection in military areas. International Conference: 'Nature protection in military areas' 14 – 16 May 2014 - Veszprém, Hungary, Chairman ETST EPWG/MCJSB

- [4] BOTHE Michael, BRUCH Carl, DIAMOND Jordan and JENSEN David, 2010. International law protecting the environment during armed conflict: gaps and opportunities. In: International Review of the Red Cross, Vol. 92, No. 879, September 2010. p. 569-592.
- [5] Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 16 June 1972, UN Document A/CONF.48/14/Rev. 1 (1973). Principle 21
- [6] Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 16 June 1972, UN Document A/CONF.48/14/Rev. 1 (1973). Principle 26
- [7] LAIRE Johan, 2014. NATO and nature protection in military areas. International Conference: 'Nature protection in military areas' 14 – 16 May 2014 - Veszprém, Hungary, Chairman ETST EPWG/MCJSB
- [8] LANIER-GRAHAM Suzan D., 1993. The Ecology of War. Environmental Impacts of Weaponry and Warfare. (Walker & Company, 1993).
- [9] MREMA Elizabeth, BRUCH Carl E., DIAMOND Jordan, 2009. Protecting the Environment During Armed Conflict: An Inventory and Analysis of International Law. 83 p. ISBN: 978-92-807-3042-5
- [10] World Charter for Nature, UNGA Resolution 37/7, UN Document A/RES/37/7, 28 October 1982, Principle 5
- [11] World Charter for Nature, UNGA Resolution 37/7, UN Document A/RES/37/7, 28 October 1982, Principle 11 and Principle 20.