

Enforcing Biodiversity Protection in Armed Conflict: The Azerbaijan v. Armenia Arbitration under the Bern Convention

Meng Wang & Andrés Cáceres Solari

ABSTRACT

On January 19, 2023, Azerbaijan's Ministry of Foreign Affairs announced the commencement of arbitration proceedings under the Permanent Court of Arbitration against the Republic of Armenia, pursuant to the Bern Convention on the Conservation of European Wildlife and Natural Habitats ("Bern Convention"), to which both countries are parties. This marks the first known inter-state arbitration under the Bern Convention. The objective of the proceedings is to hold Armenia accountable for the significant destruction of Azerbaijan's environment and biodiversity in territories occupied by Armenia from 1994 to 2020 in the Nagorno-Karabakh region. On April 12, 2024, the arbitration tribunal held its first procedural conference with the parties. This article explores the key legal issues that are likely to emerge in this arbitration and, more importantly, draws insights from this unprecedented case to inform broader discussions on the compliance and enforcement of environmental treaties during armed conflict.

KEY WORDS: Environmental Arbitration – Armed Conflict – Disputes Settlement – Armenia / Azerbaijan – Biodiversity

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I. INTRODUCTION

The Nagorno-Karabakh region has been the center of an armed conflict between Azerbaijan and Armenia, which has had profound consequences not only on the political and social fronts but also on the environment and biodiversity of the region.¹ The conflict and subsequent occupation have led to environmental destruction, significantly affecting the region's delicate ecosystems and biodiversity.² At the same time, this region is also a biodiversity hotspot, home to various species of wild trees and shrubs, 70 of them are endemic to the area and don't naturally grow in any other part of the world.³ The rich biodiversity of Nagorno-Karabakh makes it a critical zone for conservation, but extensive armed conflict in this area has severely compromised conservation efforts. Habitat destruction, pollution, and the displacement of wildlife are just some of the environmental consequences exacerbated by the prolonged violence and occupation.⁴

On January 19, 2023, Azerbaijan's Ministry of Foreign Affairs announced the initiation of arbitration proceedings under the Permanent Court of Arbitration ("PCA") against Armenia, citing violations of the Bern Convention on the Conservation of European Wildlife and Natural Habitats ("Bern

¹ Eoghan Darbyshire & Doug Weir, *Environmental Dimensions During and After the Nagorno-Karabakh Conflict of 2020*, 19 INTEGRATED ENV'T ASSESSMENT & MGMT. 360, 360–61 (2023).

² Ariel Karlinsky & Orsola Torrissi, *The Casualties of War: An Excess Mortality Estimate of Lives Lost in the 2020 Nagorno-Karabakh Conflict*, 42 POPULATION RSCH. & POL'Y. REV. 41, 41 (2023).

³ HIKMAT ALIZADE, MINISTRY ECOLOGY & NAT. RESS., THE REPUBLIC OF AZERBAIJAN'S FIFTH NATIONAL REPORT TO THE CONVENTION ON BIOLOGICAL DIVERSITY § 1.3.2 (2014), <https://www.cbd.int/doc/world/az/az-nr-05-en.pdf> [<https://perma.cc/2T86-C7S2>].

⁴ U.N. Hum. Rts. Council, Written Statement Submitted by Youth Parliament for SDG, a Non-Governmental Organization in Special Consultative Status, at 2, U.N. Doc. A/HRC/52/NGO/124 (Feb. 3, 2023), <https://documents.un.org/doc/undoc/gen/g24/091/83/pdf/g2409183.pdf> [<https://perma.cc/2RMG-QZJ7>].

Convention” or “Convention”).⁵ Both Azerbaijan and Armenia are parties to this Convention. The Bern Convention is an environmental treaty focused on the conservation of European wildlife and natural habitats, aiming to protect endangered species and their habitats, and to promote cooperation among European countries to preserve biodiversity.⁶ The purpose of the arbitration is to hold Armenia accountable for the significant environmental and biodiversity damage inflicted upon Azerbaijani territories within the Nagorno-Karabakh region occupied since 1994.⁷ In April 2024, the PCA held its first procedural conference with both parties involved.⁸

The legal framework provided by the Bern Convention, and the potential for arbitration under its framework, have gathered considerable attention, highlighting the role and possibility of international law in holding States accountable for environmental damage in occupied territories under an environmental treaty.⁹ In this context, and combining the unprecedented nature of this arbitration, this article seeks to address the following research questions:

What legal challenges does the Azerbaijan v. Armenia arbitration raise in attributing responsibility for environmental harm during armed conflict, and how might the arbitration influence the development of international mechanisms for environmental dispute resolution in the unique context of armed conflict?

To address this question, the structure of the article is as follows. Section 2 lays the foundation by outlining the general legal frameworks for environmental protection during occupation, drawing from both international humanitarian law (“IHL”) and international environmental law (“IEL”). Section 3 turns to the specifics of the arbitration, offering a brief overview of the historical context of the conflict between Azerbaijan and Armenia over the Nagorno-Karabakh region and the environmental damage caused during the period of occupation. Section 4 introduces the initiation of the Bern Convention arbitration and outlines its procedural background. Section 5 delves into the key legal issues likely to arise in the proceedings, including questions of jurisdiction, the applicability of the Bern Convention in situations of armed conflict, and the challenges of proving and assessing environmental harm. Section 6 broadens the discussion by examining the potential implications of this arbitration for the development of international legal frameworks on environmental protection in conflict settings. Finally, Section 7 summarizes the main findings and offers a response to the research question posed at the outset.

⁵ Press Release, Republic Azer. Ministry Foreign Affs., Press Release on the Statement of Claim Filed by the Republic of Azerbaijan against Armenia under the Arbitration within the Bern Convention, Press Release No:046/25 (Feb. 13, 2025, at 10:57 CT), <https://www.mfa.gov.az/en/news/no04625> [perma.cc/WX2C-4QTC] [hereinafter Press Release, Republic Azer. Ministry Foreign Aff.].

⁶ Carolina Lasén Díaz, *The Bern Convention: 30 Years of Nature Conservation in Europe*, 19 REV. EUR. CMTY. & INT'L ENV'T L. 185, 185–86 (2010).

⁷ Press Release, Republic Azer. Ministry Foreign Aff., *supra* note 5.

⁸ *Id.*

⁹ For further analysis of this, *see infra* Section 2.2 International Environmental Law.

II. ENVIRONMENTAL PROTECTION IN TIMES OF OCCUPATION: INTERNATIONAL LAW PERSPECTIVE

A. *International Humanitarian Law*

As the body of law governing situations of armed conflict, IHL contains several key provisions concerning environmental protection during active hostilities and periods of occupation. Article 42 of the 1907 Hague Regulations states that a “territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”¹⁰ It should be noted that once a situation exists which factually amounts to an occupation, the law of occupation applies¹¹ – whether or not the occupation is considered lawful.¹²

The duties of the occupying power are primarily regulated in the 1907 Hague Regulations (Articles 42–56) and the Fourth Geneva Convention (Articles 27–34 and 47–78), as well as in certain provisions of Additional Protocol I to the Geneva Conventions (“API”).¹³ The occupying power has certain rights regarding property and natural resources in the occupied territory and certain obligations under the law of occupation.

Compared with the law on the conduct of hostilities, which offers some protection to the environment via API Articles 35(3) and 55 API,¹⁴ the law of occupation doesn’t contain explicit reference to the protection of the environment. It has been argued that possible protection could be provided by the effective implementation of the property rights provisions under the law of occupation, such as Article 55 of the Hague Regulations 1907.¹⁵ This article mandates for the occupying power not to usufruct natural resources, but to manage them according to local law. Furthermore, Article 43 of the Hague Regulations of 1907 offers additional protection, regulating the occupying power’s obligation to protect, respect, and consider the public order, civil life, well-being of occupied

¹⁰ Convention Respecting the Laws and Customs of War on Land art. 42, Oct. 18, 1907, 36 Stat. 2277 [hereinafter 1907 Hague Regulations].

¹¹ *Id.*

¹² Therefore, in the case of the Nagorno-Karabakh region, due to the fact that it has been under Armenian occupation between 1994 and 2020, the rules governing this situation would primarily be rules in relation to occupied territory.

¹³ 1907 Hague Regulations, *supra* note 10, arts. 42–56; Geneva Convention Relative to the Protection of Civilian Persons in Time of War arts. 27–34, 47–78, Aug. 12, 1949, 75 U.N.T.S. 287; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 1, June 8, 1977, 1125 U.N.T.S. 3 [hereinafter API].

¹⁴ Article 35(3) of Additional Protocol I (API) to the Geneva Conventions prohibits warfare methods that are “intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.” API, *supra* note 13, art. 35(3). Similarly, Article 55 API reinforces this protection by stating that care must be taken in warfare to protect the natural environment against such damage, recognizing that the environment itself is vital to the survival of civilian populations. *Id.* art. 55.

¹⁵ ANNE DIENELT, ARMED CONFLICTS AND THE ENVIRONMENT: COMPLEMENTING THE LAWS OF ARMED CONFLICT WITH HUMAN RIGHTS LAW AND INTERNATIONAL ENVIRONMENTAL LAW 63 (2022).

people, along with respecting the domestic laws and regulations of the occupied territory.¹⁶ This provision states that the occupying power must take “all the measures in his power to restore, and ensure, as far as possible, public order and civil life, while respecting, unless absolutely prevented, the laws in force in the country.”¹⁷

Article 43 has been invoked by the International Court of Justice (“ICJ”) in the case concerning *Armed Activities on the Territory of the Congo* (“*DRC v. Uganda*”).¹⁸ In the *DRC v. Uganda*, the DRC accused Uganda of engaging in the illegal exploitation of Congolese natural resources, pillaging and looting its assets and wealth, and of failing, as an occupying power, to take adequate measures to prevent such acts and to punish persons committing them.¹⁹ The ICJ based this decision on several key reports that as sources are considered to have higher and persuasive probative value, which led to its reasoning that such exploitation was illegal. Among these were, the United Nations Panels of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (“UN Panel Reports”) and the reports from the Judicial Commission of Inquiry into Allegations of Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo set up by the Ugandan Government (the “Porter Commission”).²⁰ On the basis of those reports, the ICJ found that despite the lack of a clear governmental policy directed at the exploitation of Congolese natural resources, Ugandan high-ranking officers, as well as soldiers, were involved in the looting, plundering, exploitation, and trade of the DRC’s natural resources and that the military high command failed to take the necessary measures to stop such acts.²¹ According to the ICJ, such conduct constituted a clear violation of international humanitarian law as reflected in Article 43 of the Hague Regulations of 1907.²²

It should be noted that the ICJ invoked this article in occupied territories mainly as it related to natural resources.²³ Although in a broader and indirect way, the protection and sustainable use of natural resources has a positive impact on environmental protection, this measure still represents an indirect protection of the environment. Not all the components of the environment are either public or private property.²⁴ Even though IHL rules provide protection

¹⁶ 1907 Hague Regulations, *supra* note 10, art. 43.

¹⁷ *Id.*

¹⁸ *Armed Activities on the Territory of the Congo* (Dem. Rep. Congo v. Uganda), Judgment, 2005 I.C.J. 168, ¶ 178 (Dec. 19).

¹⁹ *Id.* ¶ 3.

²⁰ *Id.* ¶ 60.

²¹ *Id.* ¶¶ 61, 78.

²² 1907 Hague Regulations, *supra* note 10, art. 43.

²³ *Dem. Rep. Congo v. Uganda*, 2005 I.C.J. ¶ 250.

²⁴ For instance, elements such as the atmosphere, biodiversity, or ecological processes may not fall neatly within the categories of public or private property, making them difficult to protect under occupation law provisions focused on property rights.

over the environment in occupied territory, this is not always explicit or sufficiently adequate to ensure that the protection of the environment in times of occupation is completely effective.

In order to adopt a more comprehensive approach to the protection of the environment in armed conflict, since 2013 the International Law Commission (“ILC”) has been working on the Draft Principles on Protection of the Environment in Relation to Armed Conflicts (“The Principles”), with significant attention devoted to occupied territories.²⁵ Part Four of the Principles addresses rules applicable in situations of occupation.²⁶ These Principles state that an occupying power shall respect and protect the environment of the occupied territory in accordance with applicable international law and take environmental considerations into account in the administration of such territory.²⁷ These Principles also provide for the sustainable use of natural resources and the prevention of transboundary harm in times of occupation.²⁸

B. *International Environmental Law*

The traditional perspective has long maintained a clear distinction between the legal regimes governing situations of armed conflict and those applying during peacetime.²⁹ Under this view, IHL primarily governs armed conflict, while IEL and International Human Rights Law (“IHRL”) are generally regarded as peacetime frameworks.³⁰ This binary setting has been challenged and has shifted over the years.³¹ This shift has been supported by decisions from the ICJ and contributions from the ILC. A more detailed analysis of this evolution is presented in Section 4.2, which explores the applicability of the Bern Convention during occupation. The *general observation* is that, unless explicitly stated otherwise, the outbreak of hostilities does not automatically suspend the applicability of IEL and IHRL.³² These legal frameworks, although traditionally considered peacetime law, continue to apply in the context of armed conflict.³³

In fact, several significant Multilateral Environmental Agreements (“MEAs”)

²⁵ Int’l L. Comm’n, Rep. on the Work of Its Seventy-Third Session, at 90, U.N. Doc. A/77/10 (2022).

²⁶ *Id.* at 155–70.

²⁷ *Id.* at 158.

²⁸ *Id.* at 169–71.

²⁹ ELIZABETH MARUMA MREMA, CARL BRUCH & JORDAN DIAMOND, U.N. ENV’T PROGRAMME, PROTECTING THE ENVIRONMENT DURING ARMED CONFLICT: AN INVENTORY AND ANALYSIS OF INTERNATIONAL LAW 35 (David Jensen & Silja Halle eds., 2009).

³⁰ *Id.*

³¹ For literature on this topic, see, e.g., Michael Bothe et al., *International Law Protecting the Environment During Armed Conflict: Gaps and Opportunities*, 92 INT. REV. RED CROSS 569, 569–92 (2010); Michael Bothe, *The Protection of the Environment in Times of Armed Conflict*, 34 GER. Y.B. INT’L L. 54, 54 (1991); Cordula Droege & Marie-Louise Tougas, *The Protection of the Natural Environment in Armed Conflict: Existing Rules and the Need for Further Legal Protection*, 82 NORDIC J. INT’L L. 21, 21–52 (2013).

³² Int’l L. Comm’n, Rep. on the Work of Its Sixty-Third Session, at 185, U.N. Doc. A/66/10 (2011).

³³ *Id.*

address the protection of the environment during armed conflict,³⁴ underscoring the continued applicability of MEAs in such situations. More importantly, this highlights the broader relevance of IEL in complementing the existing IHL framework for environmental protection. The interaction between MEAs and the preservation of the environment in armed conflict demonstrates IEL's potential to enhance environmental safeguards where IHL alone may fall short. Notable examples of these interactions include the World Heritage Convention and the Ramsar Convention.³⁵

Article 11(4) of the World Heritage Convention states that the List of World Heritage in Danger may include only those properties forming part of the cultural and natural heritage that are threatened by serious and specific dangers, such as the outbreak or threat of an armed conflict.³⁶ This provision is particularly relevant to situations of occupation, as belligerent occupation is a recognized form of armed conflict.³⁷ Article 11(4) sends a clear message that the Convention remains applicable during armed conflict, including occupations. This interpretation is further reinforced by the Operational Guidelines of the Convention, which explicitly reference the “outbreak or threat of an armed conflict,”³⁸ confirming the Convention’s relevance in such scenarios.

The practical application of this provision is evident in past cases. For instance, the World Heritage Committee—a key institution established under the Convention—added the Ituri Forest in the Okapi Wildlife Reserve in the DRC to the List of World Heritage in Danger following the outbreak of armed conflict in 1996.³⁹ Other natural heritage sites inhabited by endangered species have also been listed,⁴⁰ reflecting the heightened risks posed by armed conflict

³⁴ See, e.g., U.N. Convention on Wetlands of International Importance Especially as Waterfowl Habitat art. 2, ¶ 5, Feb. 2, 1971, 996 U.N.T.S. 245 (entered into force Dec. 21, 1975); UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage art. 11, ¶ 4, Nov. 16, 1972, 1037 U.N.T.S. 151 (entered into force Dec. 17, 1975) [hereinafter UNESCO Convention]; U.N. Convention on the Law of the Non-Navigational Uses of International Watercourses art. 29, May 21, 1997, 2999 U.N.T.S. 77 (entered into force Aug. 17, 2014).

³⁵ UNESCO Convention, *supra* note 34, at 151; U.N. Convention on Wetlands of International Importance Especially as Waterfowl Habitat, *supra* note 34, at 245.

³⁶ UNESCO Convention, *supra* note 34, at 151.

³⁷ 1 MARCO SASSÒLI, ANTOINE A. BOUVIER & ANNE QUINTIN, HOW DOES LAW PROTECT IN WAR? 21 (3d ed. 2011), https://www.icrc.org/sites/default/files/document/file_list/icrc-0739-part-i.pdf [<https://perma.cc/4BN4-NPDB>].

³⁸ Intergovernmental Comm. for Prot. World Cultural & Nat. Heritage, Operational Guidelines for the Implementation of the *World Heritage Convention*, at 59, U.N. Doc. WHC.21/01 (2021), <https://whc.unesco.org/en/guidelines> [<https://perma.cc/REH5-VTNB>]. The practical application of this provision is evident in past cases. For instance, the World Heritage Committee—a key institution established under the Convention—added the Ituri Forest in the Okapi Wildlife Reserve in the Democratic Republic of Congo to the List of World Heritage in Danger following the outbreak of armed conflict in 1996. See *Okapi Wildlife Reserve*, UNESCO WORLD HERITAGE CONVENTION, <https://whc.unesco.org/en/list/718> [<https://perma.cc/3PEU-ASVJ>] (last visited Feb. 8, 2026, at 20:50 CT).

³⁹ *Okapi Wildlife Reserve*, *supra* note 38.

⁴⁰ See *List of World Heritage in Danger*, UNESCO WORLD HERITAGE CONVENTION, <https://whc.unesco.org/en/danger-list> [<https://perma.cc/7ZU2-FXF5>] (last visited Feb. 8, 2026, at 21:00 CT).

and occupation to these irreplaceable ecosystems.

More recently, in the context of the ongoing armed conflict and occupation between Russia and Ukraine, a resolution was adopted at the 14th Meeting of the Conference of the Contracting Parties to the Ramsar Convention on Wetlands ("Ramsar Convention").⁴¹ The resolution addressed "the Ramsar Convention's response to the environmental emergency in Ukraine relating to the damage of its Wetlands of International Importance ("Ramsar Sites") stemming from the Russian Federation's aggression."⁴²

In addition to IEL, IHRL also contributes to the protection of the environment during occupation. A safe, healthy, and clean environment is essential for safeguarding and promoting human rights, such as the rights to life and health, in times of occupation.⁴³ Although IHRL treaties—such as the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the United Nations Convention on the Rights of the Child; and the Convention on the Elimination of All Forms of Discrimination Against Women—do not explicitly recognize an independent right to the environment, they do acknowledge that environmental harm and degradation can undermine the full enjoyment of the human rights protected under these treaties.⁴⁴

III. THE NAGORNO-KARABAKH REGION: CONFLICT HISTORY AND ENVIRONMENTAL DAMAGE

After outlining the legal framework governing environmental protection during occupation, this section turns to the specifics of the Bern Convention arbitration, beginning with a concise overview of the conflict's background in the Nagorno-Karabakh region and the environmental damage caused during the period of occupation.

A. *Nagorno-Karabakh Region: Conflict between Azerbaijan and Armenia*

The Nagorno Karabakh region, also known as the former and largely unrecognized Republic of Artsakh (in Armenian, "RoA"), is a landlocked territory within Azerbaijan and a historical source of conflict between Azerbaijan and Armenia.⁴⁵ In 1991 with the collapse of the Soviet Union, the region, mainly

⁴¹ Ramsar Conference of the Contracting Parties, Res. XIV.20, *The Ramsar Convention's Response to Environmental Emergency in Ukraine Relating to the Damage of Its Wetlands of International Importance (Ramsar Sites) Stemming from the Russian Federation's Aggression* (Nov. 5–13, 2022), https://www.ramsar.org/sites/default/files/documents/library/xiv.20_ukraine_e.pdf [<https://perma.cc/6TFY-X8QJ>].

⁴² *Id.*

⁴³ Sylvia Garry & Francesco Checchi, *Armed Conflict and Public Health: Into the 21st Century*, 42 J. PUB. HEALTH 287, 293 (2019).

⁴⁴ It is important to recognize the vital role IHRL plays in the overall legal framework for environmental protection in times of armed conflict. As this article primarily focuses on IEL and its interplay with IHL, however, the perspective offered by IHRL will not be further elaborated here.

⁴⁵ Galina M. Yemelianova, *The De Facto State of Nagorno-Karabakh: Historical and Geopolitical Perspectives*, 75 EUR.-ASIA STUD. 1336, 1338 (2023).

populated by ethnic Armenians, declared independence from Azerbaijan, seeking to join Armenia.⁴⁶ These political events sparked several armed conflicts between Azerbaijan and Armenia, culminating in Azerbaijan's complete takeover of the region in September 2023.⁴⁷

For the purpose of this research, Nagorno-Karabakh and those surrounding areas (including the Lachin corridor) that have been captured and reacquired in three decades of conflict will be studied and addressed as the *disputed region*. The scope of analysis will be limited to the 1991-2023 armed conflicts. This section will discuss kinetic operations, occupation, frozen conflict over the disputed territory, and the resulting destruction of the environment and biodiversity.

In 1991, Azerbaijan mobilized to forcibly take back the disputed region to which Armenia responded militarily, resulting in the occupation of the region and the expulsion of Azeris.⁴⁸ By 1994, both states reached a ceasefire under the Bishkek Protocol, where Azerbaijan lost control of over 20 percent of its state territory to Armenia.⁴⁹

In 2016, hostilities reignited with Azerbaijan's offensive to retake the disputed region, with both sides employing heavy weaponry.⁵⁰ The conflict resulted in small territorial gains for Azerbaijan that included the high terrain along the *de facto* border.⁵¹ This gave Azerbaijan's government indications that military balance was beginning to shift in their favor, thus encouraging further rearmament.⁵²

In September 2020, during the Second Nagorno-Karabakh War, Azerbaijan's forces advanced through Armenian minefields and artillery barrages.⁵³ The Azerbaijan army relied heavily on maneuverability, speed, and technological innovations while Armenia relied on Soviet-era tactics of heavy

⁴⁶ Rafai Czachor, *The Nagorno-Karabakh Conflict as a Specific Example of Asymmetric Conflict*, 185 SCI. J. MIL. U. LAND FORCES 17, 18 (2017).

⁴⁷ Walter Landgraf & Nareg Seferian, *A "Frozen Conflict" Boils over: Nagorno-Karabakh in 2023 and Future Implications*, FOREIGN POL'Y RSCH. INST. (Jan. 18, 2024), <https://www.fpri.org/article/2024/01/a-frozen-conflict-boils-over-nagorno-karabakh-in-2023-and-future-implications> [https://perma.cc/8RL3-8WNF].

⁴⁸ See Ctr. for Preventive Action, *Tensions Between Armenia and Azerbaijan*, COUNCIL FOREIGN RELS.: GLOB. CONFLICT TRACKER (Aug. 12, 2025), <https://www.cfr.org/global-conflict-tracker/conflict/nagorno-karabakh-conflict> [https://perma.cc/6HRK-5HEE].

⁴⁹ *Id.*

⁵⁰ Aleksandra Jarosiewicz & Maciej Falkowski, *The Four-Day War in Nagorno-Karabakh*, CTR. E. STUD. (Apr. 6, 2016), <https://www.osw.waw.pl/en/publikacje/analyses/2016-04-06/four-day-war-nagorno-karabakh> [https://perma.cc/3GFF-HDL8].

⁵¹ *Improving Prospects for Peace After the Nagorno-Karabakh War*, INT'L CRISIS GRP. (Dec. 22, 2020), <https://www.crisisgroup.org/brf/europe-central-asia/armenian-azerbaijani-conflict/b091-improving-prospects-peace-after-nagorno-karabakh-war> [https://perma.cc/5LRF-KRMD].

⁵² Hans-Joachim Schmidt, *The Four-Day War Has Diminished the Chances of Peace in Nagorno-Karabakh*, 2016 INST. PEACE RSCH. & SEC. POL'Y B. 111, 114 (2017).

⁵³ Phillip Andrews, *Lessons from the Nagorno-Karabakh 2020 Conflict (21-655)*, ARMY CTR. LESSONS LEARNED (Aug. 2021), <https://api.army.mil/e2/c/downloads/2023/01/31/693ac148/21-655-nagorno-karabakh-2020-conflict-catalog-aug-21-public.pdf> [https://perma.cc/6JDC-79B9].

artillery and armored vehicle employment,⁵⁴ which littered the disputed region with landmines and unexploded ordnance.⁵⁵ Both sides accuse each other of using incendiary and chemical weapons and of causing secondary contamination from the release of toxic polychlorinated biphenyl (“PCB”) from attacks on electricity facilities.⁵⁶

In September 2024, Azerbaijan launched its most recent offensive, resulting in the collapse of the RoA, the routing of Armenian forces and Russian peacekeepers and the exodus of the region’s ethnic Armenian population.⁵⁷ The defending forces capitulated within 24 hours, and Azerbaijan cut off the Lachin corridor and forced the *de facto* government to participate in reintegration talks.⁵⁸

Currently, the disputed region has been reintegrated into Azerbaijan, but decades of war have negatively impacted the local environment, as chemicals associated with spent munitions continue to seep into the ground and water.⁵⁹

B. *Destruction of the Environment and Biodiversity in the Nagorno-Karabakh Region*

The expenditure of various types of ammunition, military maneuvers over the terrain, and the establishment of defensive lines have taken a toll on the region⁶⁰ and affected its biodiversity, which is essential for the agriculturally-

⁵⁴ See generally Zhirayr Amirkhanyan, *A Failure to Innovate: The Second Nagorno-Karabakh War*, 52 U.S. ARMY WAR COLL. Q.: PARAMETERS 119 (2022) (noting that the Armenian armed forces inherited outdated tactics from Soviet war doctrine, which proved outdated when facing a more modern armed conflict with Azerbaijan’s forces).

⁵⁵ See Council Eur. Comm. on Migration, Refugees and Displaced Pers., Res. 2391, *Humanitarian Consequences of the Conflict Between Armenia and Azerbaijan*, ¶ 10 (Sep. 27, 2021), <https://pace.coe.int/pdf/77dfac5825284bebd0d9dd8e4e12320a8a81f83fe6891990a95ff8391c2b5b/res.%202391.pdf> [<https://perma.cc/UA7F-VRKD>].

⁵⁶ See Eoghan Darbyshire, *Report: Investigating the Environmental Dimensions of the 2020 Nagorno-Karabakh Conflict*, CONFLICT & ENV’T OBSERVATORY (Feb. 2021), <https://ceobs.org/investigating-the-environmental-dimensions-of-the-nagorno-karabakh-conflict/#s4> [<https://perma.cc/HLH9-T75X>].

⁵⁷ See HRANT MIKAELIAN & JERONIM PEROVIĆ, *GEOPOLITICAL ECHOES OF THE KARABAKH CONFLICT 2* (2023), <https://css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/CSSAnalyse334-EN.pdf> [<https://perma.cc/G7DR-NL4Q>].

⁵⁸ Vladimir Solovyov, *Azerbaijani Control of Nagorno-Karabakh Will Not Stop Conflict in the South Caucasus*, CARNEGIE RUSS. EURASIA CTR. (Sep. 28, 2023), <https://carnegieendowment.org/russia-eurasia/politika/2023/09/azerbaijani-control-of-nagorno-karabakh-will-not-stop-conflict-in-the-south-caucasus> [<https://perma.cc/MA36-8358>].

⁵⁹ Fatih Temiz, *What About The Environment In Karabakh?*, TESPAM (Aug. 9, 2021), <https://www.tespam.org/publications/what-about-the-environment-in-karabakh-2> [<https://perma.cc/M4LZ-CAM7>].

⁶⁰ See generally CTR. ANALYSIS INT’L RELS., *NEGLECTED VICTIM OF THE ARMENIA–AZERBAIJAN CONFLICT: ENVIRONMENTAL IMPACTS OF OCCUPATION* (2021) (Troop movements and the use of ammunition have a severe impact on the terrain that directly affect the biosiversity and also the ability for the land to be agriculturally productive after the conflict).

dependent economy in the region.⁶¹ It is important to underline that this destruction is not limited to kinetic combat. Military training, combat rehearsals close to the combat zone, and the establishment of bases/forward posts changed the landscape and caused chemical pollution.⁶² While there is limited scientific evidence on the precise pollutants and damage in the disputed region, below is a discussion of several indicators that paint a likely picture.

In 2021, Azerbaijan's Minister of Agriculture, Inam Karimov, expressed that despite the disputed region having a vast potential for agriculture, their soil required suitability analyses and irrigation systems repair.⁶³ Azerbaijan's military officials have indicated that Armenia's operations included soil excavations and the clearance of forests and fields, causing the destruction of natural environments.⁶⁴ Undoubtedly, Azerbaijan's military activities have had a similar impact. The armed conflict has generated multiple environmental and humanitarian challenges, among which are diminished access to water, pollution caused by remnants of war such as decaying ammunition, and widespread landscape destruction.⁶⁵ According to the government of Azerbaijan, the abandonment of farmland and irrigation systems has caused extensive silt deposits, affecting southern agricultural fields and surrounding areas.⁶⁶

Capturing the disputed region's level of agricultural abandonment is a means to measure its environmental destruction.⁶⁷ Agricultural abandonment may result from a myriad of effects, from farmers being killed or forced to leave their farming lands, to the destruction/contamination of agricultural land which forces farmers to abandon agricultural plots.⁶⁸ Azerbaijan's agricultural fields in

⁶¹ Ilgar B. Khalilov & Firuza M. Jafarova, *Current State of Agricultural Development in Karabakh and East Zangezur Regions of Azerbaijan and Sustainable Development Prospects*, in TÜCAUM 2022: INTERNATIONAL GEOGRAPHY SYMPOSIUM PROCEEDINGS 780, 780–81 (Necla Türkoğlu et al eds., 2022), <https://tucaum.ankara.edu.tr/wp-content/uploads/sites/280/2023/02/TM-46-Ilgar-B.-Khalilov-Firuza-M.-Jafarova-Duzenleme.pdf> [<https://perma.cc/59TM-B666>].

⁶² M. J. Lawrence et al., *The Effects of Modern War and Military Activities on Biodiversity and the Environment*, 23 ENV'T REV. 443, 443 (2015).

⁶³ Gulu Nuriyev, *Agrarian Potential of Karabakh and East Zangazur – ANALYSIS*, REPORT INFOMASIYA AGENTLIYI (July 31, 2021, at 12:01 CT), <https://report.az/en/analytics/agrarian-potential-of-karabakh-and-east-zangazur-analysis> [<https://perma.cc/99NY-GSRN>].

⁶⁴ Ramil Akhundov, *Ecocide in the Nagorno-Karabakh Conflict: An Analysis of Armenia's Environmental Impact on Azerbaijan*, in CURRENT DIRECTIONS OF DEVELOPMENT OF INFORMATION AND COMMUNICATION TECHNOLOGIES AND CONTROL TOOLS 95, 95–96 (2024), https://www.researchgate.net/publication/380356860_Ecocide_in_the_Nagorno-Karabakh_Conflict_An_Analysis_of_Armenia's_Environmental_Impact_on_Azerbaijan [<https://perma.cc/KTR5-M43C>].

⁶⁵ See Darbyshire, *supra* note 56.

⁶⁶ See U.N. ENV'T PROGRAMME, REPORT OF THE UNEP ENVIRONMENTAL SCOPING MISSION TO THE CONFLICT-AFFECTED TERRITORIES OF AZERBAIJAN 8–9 (2022), https://eco.gov.az/frq-content/plugins/pages_v1/entry/20221223145000_59496900.pdf [<https://perma.cc/W6VB-VSWR>] [hereinafter U.N. ENV'T PROGRAMME].

⁶⁷ Haipeng Chen et al., *Study on the Impact of Environmental Pollution on Farmland Abandonment*, 29 ENV'T SCI. POLLUTION RSCH. 1458, 1459 (2021).

⁶⁸ Johanna Buchner et al., *Localized Versus Wide-Ranging Effects of the Post-Soviet Wars in the Caucasus on Agricultural Abandonment*, 76 GLOB. ENV'T CHANGE 1 (2022).

the vicinity of the conflict zone were abandoned (similarly to Chechnya)⁶⁹ as most armed engagements took place in croplands, resulting in farmlands littered with landmines and destroyed irrigation systems.⁷⁰ These littered munitions cause long term pollution as chemicals and heavy metals seep into the ground.⁷¹

The aftermath of other global conflicts provides examples of possible contaminants that may remain long after hostilities have ended. For instance, the United States is facing the effects of airborne military chemical pollution in the aftermath of the wars in Afghanistan and Iraq. The United States has finally acknowledged that thousands of its veterans have lingering health complications resulting from U.S.-produced airborne pollutants.⁷² Therefore, it should be safe to assume that the local environment and inhabitants of the disputed region are facing similar circumstances.

Depleted uranium ("DU"), a commonly found contaminant in armor-piercing ammunition that has long lasting effects on the environment, is readily found in Russia's and Turkey's stockpiles.⁷³ There is little evidence that either Armenia or Azerbaijan have employed these munitions, however it is impossible to overlook the possible presence of this contaminant, given that Russia⁷⁴ and Turkey⁷⁵ are these states' most important suppliers of weapons and ammunition. DU is chemically and radiologically toxic for years after its use as it seeps into soils, river beds, and is ingested by animals and humans alike.⁷⁶ DU is also easily absorbed by plants, causing it to enter the food chain,⁷⁷ and it has been linked to birth defects in areas of conflict such as Iraq.⁷⁸

Pollution from other ammunition-related heavy metals (cadmium, lead, zinc, etc.) is also very common, which affects livestock and humans through

⁶⁹ *Id.* at 6.

⁷⁰ *Id.* at 5.

⁷¹ Stacey Pizzino, Jo Durham & Michael Waller, *Conflict Pollution, Washed-Up Landmines and Military Emissions – Here's How War Trashes the Environment*, CONVERSATION (Nov. 13, 2023, at 18:07 EST), <https://theconversation.com/conflict-pollution-washed-up-landmines-and-military-emissions-heres-how-war-trashes-the-environment-216987> [<https://perma.cc/R8MR-5XW8>].

⁷² Eric Garshick & Paul D. Blanc, *Military Deployment-Related Respiratory Problems: An Update*, 29 CURRENT OP. PULMONARY MED. 83, 87 (2023).

⁷³ Doug Weir, *Depleted Uranium – The Facts*, NEW INTERNATIONALIST (Nov. 1, 2007), <https://newint.org/features/2007/11/01/the-facts> [<https://perma.cc/T4Q5-73T2>].

⁷⁴ See Robert M. Cutler, *Russian Arms Sales to Armenia and Their Geopolitical Effects*, GEOPOLITICAL MONITOR (Sep. 9, 2020), <https://www.geopoliticalmonitor.com/russian-arms-sales-to-armenia-and-their-geopolitical-effects> [<https://perma.cc/ZG5G-UWPX>].

⁷⁵ See *Turkey's Military Exports to Azerbaijan Have Risen Six-Fold in 2020*, CIVILNET (Oct. 16, 2020, at 15:00 CST), <https://www.civilnet.am/en/news/380401/turkeys-military-exports-to-azerbaijan-have-risen-six-fold-in-2020> [<https://perma.cc/XE7T-ZSXZ>].

⁷⁶ Pizzino, Durham & Waller, *supra* note 71.

⁷⁷ See *Depleted Uranium*, IAEA, <https://www.iaea.org/topics/spent-fuel-management/depleted-uranium> [<https://perma.cc/97JE-V56H>] (last visited Feb. 9, 2026, at 13:36 CT).

⁷⁸ Mozghan Savabieasfahani, *Iraqi Birth Defects and the WHO Report*, 1 CLASS, RACE & CORP. POWER 1, 1–3 (2013).

inhalation or fragments embedded in the skin.⁷⁹ This pollution results from ordnance impacts on the landscape, former artillery positions, and chemical spills, most of which are not biodegradable,⁸⁰ killing wildlife directly or through the food chain.⁸¹ White phosphorus ammunition has caused severe biodiversity destruction affecting forests, waterways, and populations' livelihoods.⁸² White phosphorous exposure causes respiratory and cardiovascular problems, as well as musculoskeletal degradation.⁸³

IV. THE LAUNCH OF THE BERN CONVENTION ARBITRATION

Decades of warfare during the occupation, along with extensive environmental damage, prompted the Azerbaijani government to initiate arbitration proceedings against Armenia under an environmental treaty. In this context, this section begins with a concise overview of the Bern Convention, followed by an explanation of the process through which the Bern Convention Arbitration was initiated.

A. *An Overview of the Bern Convention*

The Bern Convention is a European treaty on nature conservation. It is the only regional convention of its kind in the world and was the first environmental treaty to protect both species and habitats.⁸⁴ The Bern Convention was adopted in 1979 in Bern, Switzerland and has been in force since 1982 with 50 Contracting Parties currently.⁸⁵

The Bern Convention adopted a dual approach that aims to conserve both Europe's wild species (flora and fauna) and their natural habitats.⁸⁶ Parties agreed in 1989 to build up a network of "areas of special conservation interest" called the Emerald Network.⁸⁷ It engages parties to conserve the wild fauna and

⁷⁹ Saurabh Shukla et al., *Environment and Health Hazards Due to Military Metal Pollution: A Review*, 20 ENV'T NANOTECHNOLOGY, MONITORING & MGMT. 1, 6 (2023).

⁸⁰ See U.N. ENV'T PROGRAMME, *supra* note 66, at 19.

⁸¹ Deborah J. Pain, Rafael Mateo & Rhys E. Green, *Effects of Lead from Ammunition on Birds and Other Wildlife: A Review and Update*, 48 AMBIO 935, 939 (Sep. 2019).

⁸² See *Biodiversity of Nagorno-Karabakh's Forests in Danger Because of Extensive Fires. Armenian NGOs Seeking Support from International Environmental Platforms*, ARNIKA (May 11, 2020) <https://arnika.org/en/news/biodiversity-of-nagorno-karabakhs-forests-in-danger-because-of-extensive-fires-armenian-ngos-seeking-support> [<https://perma.cc/S66Z-JCX9>].

⁸³ See SCIS, INT'L & RSCH. TRIANGLE INST., TOXICOLOGICAL PROFILE FOR WHITE PHOSPHORUS 51, 66, 99 (1997), <https://www.ncbi.nlm.nih.gov/books/NBK598124> [<https://perma.cc/K83V-NSEC>].

⁸⁴ Carolina Lasén Díaz, *The Bern Convention: 30 Years of Nature Conservation in Europe*, 19 REV. EUR. CMTY. & INT'L ENV'T L. 185, 185 (2010).

⁸⁵ Convention on the Conservation of European Wildlife and Natural Habitats, Sep. 19, 1979, Europ. T.S. No. 104.

⁸⁶ Arie Trouwborst, *Conserving European Biodiversity in a Changing Climate: The Bern Convention, the European Union Birds and Habitats Directives and the Adaptation of Nature to Climate Change* 20 REV. EUR. CMTY. & INT'L ENV'T L. 62, 65 (2011).

⁸⁷ Standing Comm., Convention on the Conservation of Eur. Wildlife & Nat. Habitats, Recommendation No. 16 (1989) on Areas of Special Conservation Interest (June 9, 1989), <https://rm.coe.int/0900001680746c25> [<https://perma.cc/97CH-22T2>].

flora species listed in its appendices, as well as their natural habitats.⁸⁸ This feature is an important one in the development of international biodiversity law, as the Bern Convention provided a qualitative step forward by moving from the previous focus on species protection to a more ‘modern’ approach to conserve both species and habitats.⁸⁹ The listed features are now shared by several multilateral environmental agreements such as the Ramsar Convention and the World Heritage Convention.⁹⁰ The Bern Convention was a very innovative biodiversity convention at its adoption, with many features and provisions that were ‘unique’ at the time, incorporating important principles such as those of precaution, integration, participation and cooperation, long before they became widespread.⁹¹ Importantly, it recognized the value of wild flora and fauna and the need to conserve them to be passed on to future generations, as they constitute a “natural heritage of aesthetic, scientific, cultural, recreational, economic and intrinsic value.”⁹²

The Bern Convention sets out a dispute settlement mechanism in Article 18.⁹³ Any dispute between Contracting Parties concerning the interpretation or application of this Convention which has not been settled by the Standing Committee of the Convention or by negotiation between the parties concerned shall, “unless the said parties agree otherwise, be submitted, at the request of one of them, to arbitration.”⁹⁴

B. *The Launch of the Bern Convention Arbitration*

Based on this dispute settlement provision, on January 19, 2023, the Ministry of Foreign Affairs of Azerbaijan issued a press release announcing that Azerbaijan had commenced arbitration proceedings against the Republic of Armenia under the Bern Convention, to which both states are a party.⁹⁵ This was the first known inter-state arbitration under the Convention and the aim of the proceedings was to hold Armenia accountable for its extensive destruction of Azerbaijan’s environment and biodiversity in the territories that were held by Armenian military forces from 1994 to 2020 in the Nagorno-Karabakh region.⁹⁶ Azerbaijan contends that Armenia breached its obligations under the Bern Convention “to maintain populations of all wild flora and fauna, especially in the area of ensuring conservation, restoration and improvements to the habitats of

⁸⁸ *Id.*

⁸⁹ Díaz, *supra* note 84, at 185.

⁹⁰ PIERRE-MARIE DUPUY & JORGE E. VIÑUALES, INTERNATIONAL ENVIRONMENTAL LAW 405, 412 (2015).

⁹¹ MALGOSIA FITZMAURICE ET AL., INTERNATIONAL ENVIRONMENTAL LAW: TEXT, CASES AND MATERIALS 47, 68, 89 (2022).

⁹² Convention on the Conservation of European Wildlife and Natural Habitats, *opened for signature* Sep. 19, 1979, 1284 U.N.T.S. 209, E.T.S. No. 104 (entered into force June 1, 1982).

⁹³ *Id.* art. 18.

⁹⁴ *Id.*

⁹⁵ See Press Release, Republic Azer. Ministry Foreign Aff., *supra* note 5.

⁹⁶ *Id.*

wild flora and fauna.”⁹⁷ As remedies, Azerbaijan is demanding Armenia cease all ongoing violations of the Bern Convention and pay full reparations for its environmental destruction.⁹⁸ However, any further details of substantive issues remain to be seen as Azerbaijan’s notice of arbitration is not yet publicly available.⁹⁹

The Secretariat of the Bern Convention informed the Bureau, the convention’s standing executive body, of this press release.¹⁰⁰ Further, on March 27, 2023, the Secretariat informed the Bureau that it had received a letter from the Ministry of Ecology and Natural Resources of the Republic of Azerbaijan stating that a dispute had arisen between Azerbaijan and Armenia regarding Armenia’s alleged non-compliance with its obligations under the Bern Convention and that negotiations between the Parties would have failed to resolve the dispute.¹⁰¹ The letter further stated that Azerbaijan had submitted the dispute to arbitration.¹⁰²

On April 12, 2024, a year after the case was filed with the PCA, the Tribunal held its first procedural conference with the Parties.¹⁰³ Shortly before the conference, the Tribunal, following consultations with the Parties, finalized its Rules of Procedure for the proceedings, pursuant to Article 18(4) of the Bern Convention.¹⁰⁴ During the conference, the Tribunal consulted the Parties on the procedural timetable for the proceedings, and other procedural matters.¹⁰⁵ Since the procedure has never been used, it has been argued that it is difficult to

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Azer. v. Arm., In the Matter of an Arbitration Under the Convention On the Conservation of European Wildlife and Natural Habitats of 19 September 1979* (Procedural Order No. 1), No. 2023-60, Order, Permanent Ct. Arb., Mar. 29, 2024, <https://pcacases.com/web/sendAttach/52944> [<https://perma.cc/5B58-7AFU>].

¹⁰⁰ Council of Europe, *Meeting Report of the Bureau to the Standing Committee to the Convention on the Conservation of European Wildlife and Natural Habitats*, at 3, T-PVS(2023)07 (Apr. 13, 2023). The Bureau—the Bern Convention’s standing executive body composed of elected members of the Standing Committee—oversees the implementation of the Convention between annual meetings and provides guidance on urgent conservation matters. For instance, see *Institutions of the Bern Convention*, COUNCIL EUR., <https://www.coe.int/en/web/bern-convention/institutions> [<https://perma.cc/2CDR-WW2Z>] (last visited May 19, 2026, at 19:55 CT).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Azer. v. Arm., In the Matter of an Arbitration Under the Convention On the Conservation of European Wildlife and Natural Habitats of 19 September 1979* (Procedural Order No. 1), No. 2023-60, Order, Permanent Ct. Arb., Mar. 29, 2024, <https://pcacases.com/web/sendAttach/52944> [<https://perma.cc/5B58-7AFU>].

¹⁰⁴ Convention on the Conservation of European Wildlife and Natural Habitats, *supra* note 92, art. 18(4).

¹⁰⁵ *Azer. v. Arm., In the Matter of an Arbitration Under the Convention On the Conservation of European Wildlife and Natural Habitats of 19 September 1979* (Procedural Order No. 2), No. 2023-60, Order, Permanent Ct. Arb., Mar. 29, 2024, <https://pcacases.com/web/sendAttach/52944> [<https://perma.cc/5B58-7AFU>].

predict how it would move forward.¹⁰⁶

V. BERN CONVENTION ARBITRATION MOVING FORWARD: POTENTIAL LEGAL ISSUES

The current arbitration case represents the first instance of such a procedure being invoked under the Convention. Because the Convention is dealing with a dispute in the unique context of an occupation, this is an unprecedented situation that brings several potential legal issues to the forefront.

A. *The Jurisdiction of the Permanent Court of Arbitration*

The Bern Convention's Article 18(1) states that the "Standing Committee shall use its best endeavours to facilitate a friendly settlement of any difficulty to which the execution of this Convention may give rise."¹⁰⁷ If a dispute between Contracting Parties regarding the interpretation or application of the Convention cannot be resolved through these efforts or by negotiation, as Article 18(2) states, unless the parties agree otherwise, the dispute shall be submitted to arbitration at the request of one party.

On March 27, 2023, the Convention's secretariat was informed that this dispute between Azerbaijan and Armenia had been submitted to arbitration.¹⁰⁸ It is yet not entirely clear whether the Standing Committee of the Convention has had the opportunity to attempt resolution between the parties. Azerbaijan indicated that Article 18(1)'s attempt for negotiations between the Parties would have failed to resolve the dispute.¹⁰⁹ Despite this ambiguity in procedure, the Permanent Court of Arbitration, on March 29, 2024, initiated arbitral proceedings,¹¹⁰ establishing a corresponding timetable on May 15, 2024.¹¹¹

It is possible that Azerbaijan's bypassing the Convention's Article 18(1) (settlement under the Convention's body) may make this submission premature. Also, the PCA may require that the respondent is notified of the dispute under this particular Convention, regardless of any other related matters under other conventions.¹¹² This is further supported in the *Marshall Islands* cases, where

¹⁰⁶ See Waad Abualrob, Marco Longobardo & Ruth Mackenzie, *Applying International Environmental Law Conventions in Occupied Territory: The Azerbaijan v. Armenia Case Under the Bern Convention*, EJIL: TALK! (May 12, 2023), <https://www.ejiltalk.org/applying-international-environmental-law-conventions-in-occupied-territory-the-azerbaijan-v-armenia-case-under-the-bern-convention> [https://perma.cc/SY5J-5CGL].

¹⁰⁷ Convention on the Conservation of European Wildlife and Natural Habitats, *supra* note 92, art. 18(1–2).

¹⁰⁸ Council of Europe, *supra* note 100, at 3.

¹⁰⁹ *Id.*

¹¹⁰ Azer. v. Arm., In the Matter of an Arbitration Under the Convention On the Conservation of European Wildlife and Natural Habitats of 19 September 1979 (Procedural Order No. 1), No. 2023-60, Order, Permanent Ct. Arb., Mar. 29, 2024, <https://pcacases.com/web/sendAttach/52944> [https://perma.cc/5B58-7AFU].

¹¹¹ *Id.*

¹¹² Application on International Convention on Elimination of all Forms of Racial Discrimination (Geor. v. Russ.), Judgment, 2011 I.C.J. 70, ¶¶ 64, 113 (Apr. 1).

the ICJ established that the respondent must have awareness of the dispute and that it must be in existence at the time of submission.¹¹³

While the question of whether Azerbaijan has fulfilled the requirements before it brings the case to the PCA may not be too difficult a task to investigate, it is worth considering that the PCA should only have jurisdiction over a dispute concerning the interpretation or application of the Bern Convention, and not with regard to law of occupation rules. This could cause the PCA to refrain from dealing with similarly structured questions which combine with another body of law, IHL in this case, or more specifically the law of occupation.

A somewhat comparable example is the PCA case of the *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. the Russian Federation)*.¹¹⁴ In 2016, Ukraine initiated arbitration proceedings at the PCA against Russia under the United Nations Convention on the Law of the Sea (“UNCLOS”).¹¹⁵ Ukraine claimed that Russia had unlawfully restricted its maritime rights in the Black Sea, the Sea of Azov, and the Kerch Strait following Russia’s annexation of Crimea in 2014.¹¹⁶ Ukraine argued that Russia violated Ukraine’s sovereign rights over its exclusive economic zone and continental shelf and illegally interfered with Ukrainian fishing, navigation, and energy exploration in these waters.¹¹⁷ Ukraine’s UNCLOS claims required the consideration of sovereignty issues before determining jurisdiction.¹¹⁸ Eventually, the PCA decided that it lacked jurisdiction over claims that required a determination of sovereignty over Crimea since UNCLOS does not resolve territorial disputes.¹¹⁹ The PCA further pointed out that Ukraine’s claims related to freedom of navigation, fisheries, and environmental obligations under UNCLOS outside the territorial disputes were preserved for consideration in the merits phase.¹²⁰

Ukraine v. Russia suggests that the PCA may refrain from dealing with questions that require applying the law of occupation, just as it avoided sovereignty determinations under UNCLOS. If the current case mixes the Bern Convention with IHL or the law of occupation, then PCA might split the claims—accepting those strictly related to the Bern Convention while declining

¹¹³ *Obligations Concerning Negotiations Relating to Cessation of Nuclear Arms Race and to Nuclear Disarmament (Marsh. Is. v. U.K.)*, Judgment, 2016 I.C.J. 833 (Oct. 5).

¹¹⁴ *Ukr. v. Russ., Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, & Kerch Strait*, No. 2017-06, Award Concerning the Preliminary Objections of the Russian Federation, Permanent Ct. Arb., Feb. 21, 2020, <https://pcacases.com/web/sendAttach/9272> [<https://perma.cc/CC4J-M47H>].

¹¹⁵ *Id.* ¶ 8.

¹¹⁶ *Id.* ¶ 17(a)–17(t).

¹¹⁷ *Id.*

¹¹⁸ *Id.* ¶ 152.

¹¹⁹ *Ukr. v. Russ., Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, & Kerch Strait*, No. 2017-06, Award Concerning the Preliminary Objections of the Russian Federation, Permanent Ct. Arb., ¶ 197, Feb. 21, 2020, <https://pcacases.com/web/sendAttach/9272> [<https://perma.cc/CC4J-M47H>].

¹²⁰ *Id.* ¶ 198.

jurisdiction over those that require interpreting IHL.

B. *The Applicability of the Bern Convention in Times of Armed Conflict*

As briefly noted in Section 2.2, a traditional distinction has long existed between the legal regimes applicable during armed conflict, primarily IHL, and those governing peacetime, such as IHRL and IEL. However, this traditional belief has been challenged over the years, making it relevant in discussions related to this arbitration case. Therefore, the applicability of the Bern Convention in times of armed conflict may become a crucial point of discussion.

There are certain MEAs that indicate the continued applicability of these treaties during armed conflicts as we discussed earlier.¹²¹ When examining the Bern Convention, however, there is no explicit derogation clause or similar provision indicating whether the Convention remains applicable during armed conflict or emergencies. This absence necessitates a broader analysis of the general applicability of environmental treaties in such contexts. In this regard, valuable insights can be drawn from the ICJ, the work of the ILC on draft articles concerning the effects of armed conflicts on treaties, and the extensive academic literature on the subject.

In its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the ICJ noted that international human rights law continues to apply during armed conflict alongside international humanitarian law.¹²² In the *DRC v. Uganda* case, the ICJ concluded that Uganda, as the occupying power of the Ituri district in the DRC, had violated its obligation of vigilance “by not taking adequate measures to ensure that its military forces did not engage in the looting, plundering and exploitation of the DRC’s natural resources.”¹²³ As one of the bases for this obligation, the ICJ directly referred to a peacetime treaty, the African Charter on Human and Peoples’ Rights, specifically Article 21 concerning the collective rights to natural resources.¹²⁴ This is strong evidence of the general applicability of peacetime treaties in armed conflict.

At the same time, the ILC concluded in its Draft Article on the Effects of

¹²¹ For instance, the World Heritage Convention allows World Heritage Sites to be included in the World Heritage List in Danger due to circumstances like armed conflict, providing them with extra protection and attention. This provision suggests its applicability in situations of armed conflict. Similarly, treaties like the Ramsar Convention and the African Convention on the Conservation of Nature and Natural Resources contain derogation clauses that allow states to reduce environmental protection obligations due to urgent national interests or national emergencies. These derogation clauses also implicitly support their continued applicability during armed conflict. *See* World Heritage Convention Concerning the Protection of the World Cultural and Natural Heritage arts. 11(4), 17, Nov. 16, 1972, 1037 U.N.T.S. 151; United Nations Educational, Scientific and Cultural Organization Convention on Wetlands of International Importance especially as Waterfowl Habitat art. 27, Feb. 2, 1971, 996 U.N.T.S. 245; African Convention on the Conservation of Nature and Natural Resources art. 28, Sep. 15, 1968, 1001 U.N.T.S. 3.

¹²² *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226, ¶ 25 (July 8).

¹²³ *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, Judgment, 2005 I.C.J. 168, ¶ 246 (Dec. 19).

¹²⁴ *Id.* ¶ 245.

Armed Conflicts on Treaties that there is no automatic suspension of treaties due to the outbreak of hostilities.¹²⁵ Furthermore, the ILC also emphasized that treaties for the international protection of the environment, unless indicated otherwise, remain applicable during armed conflict.¹²⁶ Similar approaches supporting the continued applicability of environmental treaties during armed conflict are also shared by more recent work completed by the ILC. The ILC Draft Principles on Protection of the Environment in relation to Armed Conflicts refer to several environmental treaties in the commentaries.¹²⁷

Although it is optimistic to argue that the Bern Convention remains applicable during a situation of armed conflict, it is worth noting that such applicability is not without challenges. The Ramsar Resolution XIV.20 stands as an important example of the application of MEAs during times of occupation. However, while the applicability of the Ramsar Convention during armed conflict was not directly contested, concerns were raised about its role as an environmental treaty and the broader implications of addressing the topic of armed conflict within its framework.¹²⁸ Some Contracting Parties to the Convention expressed concerns that addressing issues related to armed conflict, which could extend to discussions on international peace and security, might represent a departure from the environmental and scientific mandate of the Ramsar Convention.¹²⁹ The divergence of opinions among the parties was so substantial that they could not reach a consensus.¹³⁰ As a last resort, the Contracting Parties had to proceed with a majority vote to adopt the resolution.¹³¹ This case highlights that, despite several sources supporting the general applicability of IEL treaties in armed conflict, the applicability of the Bern Convention in such contexts remains open to debate.

C. *Proving Environmental Damage in the Case of Bern Convention Arbitration*

Customary IHL establishes that severe and long-term damage to the

¹²⁵ Int'l L. Comm'n, Draft Articles on the Effects of Armed Conflicts on Treaties, with Commentaries, art. 3 (2011), https://legal.un.org/ilc/texts/instruments/english/commentaries/1_10_2011.pdf [<https://perma.cc/EX4Q-SN7S>].

¹²⁶ *Id.* at 126–27.

¹²⁷ Int'l L. Comm'n, Draft Principles on the Protection of the Environment in Relation to Armed Conflicts, with Commentaries, at 106, 155 (2022), https://legal.un.org/ilc/texts/instruments/english/commentaries/8_7_2022.pdf [<https://perma.cc/CD7Z-RRPT>].

¹²⁸ Meng Wang, *The Unprecedented Ramsar Resolution: Ukrainian Wetlands Protection in Armed Conflict*, 70 NETH. INT'L L.R. 323, 347–48 (2023).

¹²⁹ 14th Meeting of the Conference of the Contracting Parties to the Ramsar Convention on Wetlands, *Conference Report*, ¶ 238, COP14/2022 (Nov. 5, 2022), https://www.ramsar.org/sites/default/files/documents/library/cop14_report_e.pdf [<https://perma.cc/RE2W-P9LM>] (such concerns were expressed by Bolivia, Brazil, China, Cuba, Indonesia, the Islamic Republic of Iran, the Democratic People's Republic of Korea, Nicaragua, Russia, and Venezuela).

¹³⁰ *Id.* ¶ 241.

¹³¹ *Id.*

environment is prohibited in warfare.¹³² The disputed region was under the authority of Armenian armed forces,¹³³ according to Hague Regulations of 1907,¹³⁴ thus being considered occupied territory. Despite any Armenian effort to divert responsibility to the *de facto* Republic of Artsakh, the territory of Nagorno-Karabakh is internationally recognized as having been occupied by Armenia since 1991.¹³⁵ According to Sylwia Strykowska, the RoA's heavy dependence on Armenia underlines the RoA's status as an Armenian organ of the state, regardless of the lack of a formal link in domestic law.¹³⁶

Distinction between Armenian and RoA forces may be unnecessary due to the latter not being internationally recognized as an independent state, and Armenia is often considered to be the parent state of the RoA.¹³⁷ An example of this was the 2014 downing of an Mi-24 helicopter by Azerbaijan forces over no-man's land.¹³⁸ Azerbaijan claimed this was an Armenian aircraft while the government of Armenia claimed it was an RoA helicopter and crew.¹³⁹ The crew, however, had been trained in Yerevan, Armenia and were buried with full military honors in an Armenian military cemetery, which indicates that these were Armenian aircraft and crew.¹⁴⁰

A parallel argument was the ICJ's *Armed Activities* Case, finding Uganda liable for directly exploited Congolese natural resources, and also those exploited by other armed groups during the occupation.¹⁴¹ It is therefore unnecessary to employ an effective control test per the ICJ's Nicaragua case, to attribute international responsibility, as it is clear the acts took place under Armenian

¹³² See JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, 1 CUSTOMARY INTERNATIONAL HUMANITARIAN LAW: RULES 151–58 (2005) (Rule 45).

¹³³ See 1907 Hague Regulations, *supra* note 10, art. 42.

¹³⁴ *Id.* art. 43.

¹³⁵ Stefan Talmon, *Germany Offers Semi-Public Apology to Azerbaijan Over Displaying Separatist Flag of the 'Republic of Artsakh'*, GPIL, (Apr. 2, 2025) <https://gpil.jura.uni-bonn.de/2025/04/germany-offers-semi-public-apology-to-azerbaijan-over-displaying-separatist-flag-of-the-republic-of-artsakh/> [<https://perma.cc/D2ZG-STKW>].

¹³⁶ See Sylwia Strykowska, *The International Legal Issue of Attribution of Conduct to a State — The Case Law of the International Courts and Tribunals*, 8 ADAM MICKIEWICZ UNIV L. REV. 143, 143 (2018).

¹³⁷ See Edward J. Erickson, *The 44-Day War in Nagorno-Karabakh: Turkish Drone Success or Operational Art?*, ARMY UNIV. PRESS MIL. REV. (Aug. 2021) <https://www.armyupress.army.mil/Journals/Military-Review/Online-Exclusive/2021-OLE/Erickson> [<https://perma.cc/Z7QC-2VV7>] (last visited Feb. 9, 2026, at 16:24 CT).

¹³⁸ See Sargis Harutyunyan, *Armenian Helicopter Shot Down Near Karabakh*, RADIO AZATUTYUN (Arm.) (Nov. 12, 2014), <https://www.azatutyun.am/a/26687991.html> [<https://perma.cc/6QFE-ZBR2>].

¹³⁹ See *id.*; Nanore Barsoumian, *Artsakh, Armenia React to Downed Helicopter*, ARMENIAN WEEKLY (Arm.) (Nov. 14, 2014), <https://armenianweekly.com/2014/11/14/artsakh-armenia-react> [<https://perma.cc/C7ZQ-GZ33>].

¹⁴⁰ See *Helicopter Crew Laid to Rest at Yerablur*, ASBAREZ (Nov. 25, 2014), <https://asbarez.com/helicopter-crew-laid-to-rest-at-yerablur> [<https://perma.cc/65SJ-WAUY>].

¹⁴¹ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda): Overview of the Case*, INT'L CT. JUST., <https://www.icj-cij.org/case/116> [<https://perma.cc/YJX4-23QC>] [hereinafter *Armed Activities*].

occupation.¹⁴² Regardless of Armenia's claims that this environment may have been damaged by other forces, the RoA's dependence on Armenia makes Armenia liable for RoA's actions.

In the aftermath of the 1991 Gulf War, affected states were able to claim damages against Iraq through the United Nations Compensation Commission ("UNCC") due to the environmental damage and coastal pollution of neighboring Gulf States to help support ecosystems' restoration and environmental monitoring.¹⁴³ According to scholarly work, three factors were necessary to establish Iraq's state responsibility: (1) a clear violation of UN charter, (2) significant and region-wide environmental damage, and (3) the respondent state had the ability to generate sufficient resources to satisfy these claims.¹⁴⁴

Armenia's 1991 occupation resulted in UN General Assembly Resolution 62/243, which called for the respect and support of Azerbaijan's territorial integrity.¹⁴⁵ Armenia's actions were a clear violation of the UN Charter's Article 2(4),¹⁴⁶ thus complicating Armenia's efforts to claim any damages caused by its own invasion. On the other hand, Azerbaijan's claims against Armenia are valid, as this invasion/occupation was a widely recognized violation of international law.¹⁴⁷ Using the Gulf War example, Azerbaijan would have to prove that the environmental damage meets the *region-wide* threshold, especially if attempting to prove that waterways leading to southerly Iran were also affected through waterborne pollutants. More difficult, however, would be establishing that Armenia possesses enough revenue to satisfy these claims. According to the World Bank, Armenia has severe economic challenges that are further worsened by its closed borders and lack of trade with Turkey and Azerbaijan.¹⁴⁸

The exploitation of the Congo's natural resources, per the ICJ, were a Ugandan violation of The Hague Regulations' Article 47¹⁴⁹ and Geneva Convention IV's Article 33,¹⁵⁰ both forbidding pillaging. The ICJ established that the occupying force (Uganda) had the responsibility to "restore and ensure, as far as possible, public order and safety in the occupied area, while respecting,

¹⁴² Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.), Judgment, 1984, I.C.J. 392, ¶ 115 (Nov. 26).

¹⁴³ See Cymie R. Payne, *Developments in the Law of Environmental Reparations: A Case Study of the UN Compensation Commission*, in ENVIRONMENTAL PROTECTION AND TRANSITIONS FROM CONFLICT TO PEACE: CLARIFYING NORMS, PRINCIPLES AND PRACTICES 329, 1-31.3 (Carsten Stahn, Jens Iverson & Jennifer S. Easterday eds., 2017).

¹⁴⁴ Christopher Greenwood, *State Responsibility and Civil Liability for Environmental Damage Caused by Military Operations*, 69 INT'L L. STUDS., 397, 406-07 (1996).

¹⁴⁵ G.A. Res. 62/243, ¶ 1 (Apr. 25, 2008).

¹⁴⁶ See U.N. Charter art. 2, ¶ 4.

¹⁴⁷ See *id.*

¹⁴⁸ Ashi Aydıntaşbaş, Richard Giragosian, *Acts of normality: The potential for Turkey-Armenia rapprochement*, ECFR (Mar. 15 2022) <https://ecfr.eu/publication/acts-of-normality-the-potential-for-turkey-armenia-rapprochement/>, [<https://perma.cc/2VFJ-89L2>].

¹⁴⁹ 1907 Hague Regulations, *supra* note 10, art. 47.

¹⁵⁰ See Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *supra* note 13, art. 33.

unless absolutely prevented, the laws in force in the DRC.”¹⁵¹ This included the prohibition to exploit natural resources or allowing other supported groups to do the same.¹⁵² Therefore, it was Armenia’s responsibility not to exploit Azerbaijan’s occupied territories directly through its own forces or indirectly through the RoA’s.

In 2016, Azerbaijan published a report detailing Armenia’s mining of natural resources in the disputed region where it claimed that Armenia has also been directly and indirectly involved with agricultural and other environmental modification activities.¹⁵³ The same report mentions the existence of chemical dumps which directly affect the environment and the disappearance of certain tree species which diminish the area’s biodiversity.¹⁵⁴ According to other reports, the exploitation of these natural resources was also facilitated by contracts awarded to foreign corporations, under the *de facto* RoA’s regime.¹⁵⁵ However, since Armenia is recognized as the occupying power, the action of this *de facto* authority is irrelevant, thus making Armenian authorities responsible for these activities.

In April 2021, the ICJ delivered the order for Uganda to pay for “damage related to natural resources” among other damages.¹⁵⁶ The ICJ also addressed the damage to fauna and flora by the occupying power in its 2022 judgment which established Uganda as liable.¹⁵⁷ Unlike the exploitation of natural resources, this consequential damage to the natural environment must be accompanied by a nexus between the damage and Armenia’s operations.¹⁵⁸ Azerbaijan must be able to prove that the impact on the environment has reached a point that it is unable to generate expected agricultural output, that its biodiversity is unable to regenerate, and that the natural and artificial irrigation systems have lost their capabilities in comparison to prewar years.¹⁵⁹ This was the case in the ICJ’s *Certain Activities* case, where the ICJ did not find that Nicaragua’s soil excavation and subsequent refill with lower quality soil caused Costa Rica’s affected area to lose its ability to mitigate natural

¹⁵¹ *Armed Activities*, *supra* note 141.

¹⁵² *See id.*

¹⁵³ *See* MINISTRY OF FOREIGN AFFS. OF THE REPUBLIC OF AZER., *ILLEGAL ECONOMIC AND OTHER ACTIVITIES IN THE OCCUPIED TERRITORIES OF AZERBAIJAN* 55-68 (2016), <https://www.yumpu.com/en/document/read/55263055/mfa-report-on-the-occupied-territories-march-2016-1> [<https://perma.cc/5LUA-85YW>] (Per the report, as part of the occupation, Armenia has exploited the occupied areas causing extensive environmental damage).

¹⁵⁴ *See id.*

¹⁵⁵ Aynur Nesirova, *Economic Results of The Karabakh War: Plundering in The Territories of Azerbaijan During The Occupation Period*, 5 ULUSLARARASI YONETIM AKADEMISI DERGISI 257, 262-63 (2022).

¹⁵⁶ *Armed Activities on the Territories of the Congo*, (Dem. Rep. Congo v. Uganda), Judgment, 2022 I.C.J. 13, ¶ 405 (Feb. 9).

¹⁵⁷ *See id.* ¶ 157.

¹⁵⁸ *See Certain Activities Carried Out by Nicaragua in the Border Area Case (Costa Rica v. Nicaragua): Overview of the Case*, INT’L CT. JUST., <https://www.icj-cij.org/case/150> [<https://perma.cc/V5EU-6UWB>] (last visited May 20, 2026, at 21:55 CT).

¹⁵⁹ *See id.*

hazards.¹⁶⁰ Conversely, Costa Rica was able to prove that Nicaragua's removal of trees and vegetation from the subject areas significantly impacted their ability to provide "environmental goods and services."¹⁶¹

In 2016, the United Nations Environmental Programme released a report detailing collapsed agricultural systems and land degradation, deforestation, chemical seeping (in water, soil, biota) and sediment pollution of water systems due to Armenia's mining activity.¹⁶² The report mentions this pollution's continuing impact due to Azerbaijan's water systems carrying this pollution downstream, and through precipitation on these abandoned sites.¹⁶³ According to R. Malviya (an international environmental scholar), it is these human demands for natural resources in occupied areas that led to this environmental destruction.¹⁶⁴

Rule 43 of Customary International Humanitarian Law prohibits the targeting or destruction of the natural environment unless considered of "imperative military necessity."¹⁶⁵ Armenia's excavation of the terrain, compacting and pollution of farmland, and its destruction of forests for the purposes of establishing a deliberate defense, area to maneuver its forces, and clear fields of fire, could be considered *imperative military necessity*. This passive form of destruction is regulated under Additional Protocol I's Article 55, which mandates the protection of "the natural environment against widespread, long-term and severe damage."¹⁶⁶ Additionally, the UN General Assembly's World Charter for Nature indicated the duty to secure the natural environment from degradation caused by all forms of warfare.¹⁶⁷ Other, more subtle, impacts on the environment should be considered, such as the spreading of fires or flooding that government agencies do not have the ability to prevent.¹⁶⁸

Azerbaijan will therefore require extensive data collection to prove that military-related pollution has reduced agricultural output and that the biodiversity of the environment has been affected to the extent that the environment is unable to provide the goods and services it once did. Among these changes would be the prevention of soil erosion and the ability to naturally or artificially irrigate natural and agricultural areas. Similar wartime environmental damage was documented in the aftermath of the wars of former Yugoslavia, when Special Rapporteur Serhiy Kurykin reported on the extensive pollution of the Danube River as a result of strikes on industrial and energy

¹⁶⁰ *See id.*

¹⁶¹ *Id.*

¹⁶² *See* U.N. ENV'T PROGRAMME, *supra* note 66, at 8-9.

¹⁶³ *Id.* at 29.

¹⁶⁴ R.A. Malviya, *Laws of Armed Conflict and Environmental Protection: an Analysis of their Inter-Relationship*, 1 ISIL YEAR BOOK OF INT'L HUMANITARIAN AND REFUGEE LAW 72-93 (2001).

¹⁶⁵ HENCKAERTS & DOSWALD-BECK, *supra* note 132, at 143-46.

¹⁶⁶ API, *supra* note 13, art 55. June 8, 1977, 1125 U.N.T.S. 3.

¹⁶⁷ G.A. Res. 37/7, World Charter for Nature (Oct. 28, 1982).

¹⁶⁸ Emily Stone, *Calculating the Environmental Cost of War*, UIC (Apr. 17, 2024) <https://today.uic.edu/environmental-impact-ukraine-war> [https://perma.cc/T69V-89GC].

installations.¹⁶⁹ Additionally, in order to prove the extent of the damage, Azerbaijan may be forced to seek cooperation with neighboring Iran to prove the damage to its waterways.

The inhabitants of the formerly occupied region, those who lived close to the borders of the conflict as well as those downstream, are more than likely affected by these environmental hazards. The European Court of Human Rights (“ECtHR”) established that if an environmental impact assessment determines that individuals have been exposed to an activity’s dangerous effects, this could be a violation of private and family life.¹⁷⁰ The ECtHR established that, in situations lacking medical evidence, it can be ruled that extensive exposure to contaminants above safety levels could in fact make victims vulnerable to a number of illnesses.¹⁷¹ While the ECtHR did not make these rulings in relation to armed conflict, it certainly establishes a precedent where Armenia would be liable for actions that led to the exposure of the region’s and its neighbors’ inhabitants to contaminants and environmental hazards during the occupation. Special attention, however, must be placed on pollution that may not show immediate effects until the settled pollutants are disturbed, as in the case of the polluted Danube River’s silt from the former Yugoslavian conflicts.¹⁷²

The ICJ, however, established that a nexus must be established between the violated rule and the extent of the injury.¹⁷³ Lingjie Kong and Yuqing Zhao argue that the level of effective control Armenia would have exercised over the disputed region must be given consideration.¹⁷⁴ Armenia’s control over the occupied territory is undisputed; however, more attention should be given to the environmental damage that affected surrounding and downstream regions. These populations, who depend on farmland for their livelihood and those who depend on its agricultural output, heavily depend on a healthy environment that was damaged by this occupation.¹⁷⁵ It is these reverberating pollution effects, however, that may indicate civilians were the real target of Armenia’s military

¹⁶⁹ Serhiy Kurykin, Comm. on Env’t, Reg’l Plan. & Loc. Auths., *Report on the Environmental Impact of the War in Yugoslavia on South-East Europe*, COUNCIL EUR. (Jan. 10, 2001), <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=9143> [<https://perma.cc/KZA9-857G>].

¹⁷⁰ Taşkın and Others v. Turkey, App. No. 46117/99, ¶¶112–13 (Nov. 10, 2004), <https://hudoc.echr.coe.int/eng?i=001-67401> [<https://perma.cc/8UH9-3BRP>].

¹⁷¹ Locascia and Others v. Italy, App. No. 35648/10, ¶¶127–30 (Oct. 19, 2023), <https://hudoc.echr.coe.int/eng?i=001-228155> [<https://perma.cc/84E6-MVPX>].

¹⁷² Frank R. Finch, *This Land Is Our Land: The Environmental Threat of Army Operations*, 69 INT’L L. STUDS. 99, 111 (1996). The air strikes on the Yugoslavian Novi Sad oil refinery and the Pančevo petrochemical complex led to spills of oil, heavy metals, and various toxic chemicals into the Danube River.

¹⁷³ Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), Judgment, 2005 I.C.J. 168, ¶72 (Feb. 2022).

¹⁷⁴ Lingjie Kong & Yuqing Zhao, *Remedying the Environmental Impacts of War: Challenges and Perspectives for Full Reparation*, 105 (924) INT’L REV. RED CROSS 1141, 1455 (2023).

¹⁷⁵ GENEVA WATER HUB, THE PROTECTION OF WATER DURING AND AFTER ARMED CONFLICTS 7 (2016), https://www.genevawaterhub.org/sites/default/files/atoms/files/gwh_gwhlp_roundtable_armedconflict_s_rev_march2017nomail_0.pdf [<https://perma.cc/8J6V-AFH2>].

activity.¹⁷⁶

VI. ENFORCING ENVIRONMENTAL PROTECTION IN ARMED CONFLICT: INSIGHTS FROM THE BERN CONVENTION ARBITRATION

The Bern Convention arbitration should not be viewed as merely a standalone case. Instead, its importance lies in the broader implications for international law and the protection of the environment during armed conflict. Therefore, by using the Bern Convention Arbitration as an example, this section discusses the challenges, ambiguities, and emerging trends that international law faces in holding States accountable for causing environmental harm during armed conflict.

A. *Clarifying the Applicability of IEL Treaties in Armed Conflict*

One issue reflected in the Bern Convention arbitration is the ambiguity surrounding the applicability of environmental treaties in situations of armed conflict or occupation. Many environmental treaties, including the Bern Convention, were drafted primarily with peacetime conditions in mind and often lack explicit provisions addressing the unique legal and practical challenges posed by conflict. This creates uncertainty about whether and how such treaties can be applicable during armed conflict or under occupation. While recent years have seen growing support for the applicability of IEL and IHRL in conflict situations, concerns from the contracting parties of the environmental treaties remain. For example, the Ramsar Resolution XIV.20 on the protection of Ukrainian wetlands highlighted divisions among Contracting Parties, with some expressing doubt over whether addressing armed conflict—a highly politically sensitive topic—aligns with the scientific and environmental mandates of such treaties.¹⁷⁷ In this light, the Bern Convention Arbitration, if able to proceed, has the potential to provide an opportunity to clarify these ambiguities, particularly for treaties that lack explicit provisions regarding their application in armed conflict scenarios.

B. *A Potential Avenue for Enforcing Environmental Obligations in Armed Conflict*

Arbitration under the Bern Convention presents a potential avenue for enforcing environmental protection obligations during armed conflict. Historically, the enforcement and compliance mechanisms of international law in this area have been limited. From an IHL perspective, the International Humanitarian Fact-Finding Commission is an organ tasked with investigating grave breaches and other serious violations of IHL.¹⁷⁸ Established under Article 90 of the API to the 1949 Geneva Conventions, the Commission provides parties

¹⁷⁶ Alice Hills, *The Intractable Nature of Urban Operations*, 4 CIV. WARS 99, 99–120 (2001).

¹⁷⁷ Meng Wang, *The Unprecedented Ramsar Resolution: Ukrainian Wetlands Protection in Armed Conflict*, 70 NETH. INT'L L. REV. 323, 350 (2023).

¹⁷⁸ *The International Humanitarian Fact-Finding Commission – Factsheet*, ICRC (Aug. 31, 2018) <https://www.icrc.org/en/document/international-humanitarian-fact-finding-commission-factsheet> [<https://perma.cc/WEC8-AKDE>].

to an armed conflict with an independent and confidential mechanism to investigate “any facts alleged to be a grave breach [...] or other serious violation of the Conventions or of this Protocol.”¹⁷⁹ In addition to examining the facts surrounding potential breaches, the Commission is authorized to promote respect for the Geneva Conventions and API through its good offices.¹⁸⁰ This allows the Commission not only to present its findings on the facts, but also to make observations and recommendations aimed at encouraging the warring parties to comply with the treaties.¹⁸¹

However, since its establishment in 1991, the Commission has been limited in investigating any alleged breaches or violations, due to the requirement of consent by the parties involved.¹⁸² In practice, obtaining such consent is often difficult, as conflicting parties typically have divergent interests and may be unwilling to subject themselves to external scrutiny. As a result, the consent requirement significantly limits the practical utility of the Commission’s inquiry mechanism, making it an underutilized tool in the enforcement of IHL.

From an IEL perspective, the adoption of Ramsar Resolution XIV.20 demonstrates how compliance and enforcement under environmental treaties can be promoted through resolutions. However, this approach also has limitations, raising questions about the broader applicability of such actions. Due to the sensitivity of armed conflict as a topic, the adoption of Ramsar Resolution XIV.20 faced significant objections and disagreements among Contracting Parties.¹⁸³ Ultimately, the resolution had to be adopted by a simple majority vote—a last resort when consensus could not be reached.¹⁸⁴ This highlights a challenge: most environmental treaties require resolutions or similar documents to be adopted by consensus. If Contracting Parties fail to agree on measures to mitigate environmental harm during armed conflict, it could severely hinder coordinated action within these legal frameworks.

In this light, arbitration can help address these challenges by providing a structured, legally binding process for resolving disputes. It has the potential to fill the gap left by weak compliance and enforcement mechanisms in IHL and to serve as an alternative when consensus-based mechanisms prove ineffective in IEL treaties. Unlike resolutions, which normally rely on State consensus, arbitration provides a legally binding process for dispute resolution. This can strengthen compliance by ensuring that environmental obligations under international treaties are upheld even when states disagree. However, arbitration is not without their own limitations. Jurisdictional challenges and

¹⁷⁹ API, *supra* note 13, art 90.

¹⁸⁰ API, *supra* note 13, art. 90 (commentary at ¶ 3624). Good offices are a diplomatic means for the settlement of disputes. See Ruth Lapidoth, *Good Offices*, OXFORD PUB. INT’L L. (Dec. 2006), <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e31> [<https://perma.cc/EVZ9-Y7KE>].

¹⁸¹ API, *supra* note 13, art. 90 (commentary at ¶ 3624).

¹⁸² *Id.*

¹⁸³ 14th Meeting of the Conference of the Contracting Parties to the Ramsar Convention on Wetlands, *supra* note 129, ¶ 241.

¹⁸⁴ *Id.* ¶ 279.

procedural barriers may still arise, particularly when disputes involve sovereignty issues or overlapping legal frameworks like IHL and the law of occupation. Despite these hurdles, arbitration remains a crucial tool for strengthening environmental protection in conflict situations by providing a legal pathway when diplomatic negotiations fall short.

C. Promoting Regime Interactions

The protection of the natural environment is an issue that spans multiple legal regimes, including IHL, IEL, and IHRL. Regime interaction helps when one legal framework falls short—such as when IHL struggles with compliance and enforcement in relation to environmental protection—and other regimes can step in to fill the gap. One of the most recent cases in terms of regime interaction can be drawn from the International Tribunal for the Law of the Sea Advisory Opinion on climate change, which exemplifies how one regime—the law of the sea—can engage with topics primarily governed by climate change law and related treaties.¹⁸⁵

The last decade has seen a shift in attitudes towards the importance of environmental protection in relation to armed conflicts through increased documentation and growing global attention on accelerating biodiversity loss and on the potential role of nature in peacebuilding and post-conflict recovery.¹⁸⁶ This reflects several important contributions made by organizations such as the International Committee of the Red Cross and the ILC in relation to environmental protection during armed conflict. For instance, the ILC's Draft Articles on the Protection of the Environment in relation to Armed Conflicts demonstrate regime interaction by incorporating insights from one branch of law to clarify ambiguous areas in another.¹⁸⁷ This is noticeable in the Draft Principle relating to general environmental obligations of an Occupying Power.¹⁸⁸ The commentary on this section points out that because IHRL regulates the same subject matter and shares the same objective, it may be possible to draw on one branch of law to enrich and deepen the rules of the other.¹⁸⁹ It suggests that sometimes IHRL may provide clearer and more detailed regulations which can still be adapted to the realities at hand.¹⁹⁰ This comment is in line with the ICRC's report, *Occupation and Other Forms of Administration of Foreign Territory*, which suggests that international human rights law can be used to complement the law of occupation in matters in which the latter is silent, vague,

¹⁸⁵ Lan Ngoc Nguyen, *A Piece of the Puzzle: Regime Interaction in the ITLOS Advisory Opinion on Climate Change*, in 28 MAX PLANCK Y.B. U.N.L. 367, 385 (2024).

¹⁸⁶ For literature on this topic, see e.g., Lucy Rist, Albert Norström & Cibele Queiroz, *Biodiversity, Peace and Conflict: Understanding the Connections*, 68 CURRENT OP. ENV'T SUSTAINABILITY 101431, 6 (June 2024); Lorena Jaramillo Castro & Adrienne M Stork, *Linking to Peace: Using BioTrade for Biodiversity Conservation and Peacebuilding in Colombia*, in LIVESHOODS, NATURAL RESOURCES, AND POST-CONFLICT PEACEBUILDING 253, 265-266 (Helen Young & Lisa Goldman eds. 2015).

¹⁸⁷ Int'l L. Comm'n, *supra* note 127.

¹⁸⁸ *Id.* at Part Four, Principle 19.

¹⁸⁹ API, *supra* note 13, arts. 90, 159, 160.

¹⁹⁰ *Id.*

or unclear.¹⁹¹ Arbitrations such as the Bern Convention Arbitration have the potential to promote dialogue between IEL and IHL by addressing issues in relation to armed conflict via the platform of an environmental treaty. Such interactions are crucial for creating a more cohesive and comprehensive approach to addressing environmental harm in conflict.

VII. CONCLUSION

The Nagorno-Karabakh conflict has had profound and lasting impacts on both the political and environmental landscape, resulting in devastating consequences for the environment and biodiversity of this region. The arbitration proceedings initiated by Azerbaijan under the Bern Convention represent a crucial step in holding states accountable for environmental degradation in occupied territories. In this context, this article has explored the potential legal challenges arising from this arbitration, as well as the broader implications of this case for international law in safeguarding the environment during armed conflict.

The legal challenges presented in this arbitration revolve around several key issues, particularly the applicability of the Bern Convention during times of occupation, jurisdictional concerns, and the difficulty in proving and assessing environmental damage in conflict zones. The Bern Convention, as an environmental treaty, is designed to protect endangered species and their habitats across Europe. However, the Convention's applicability in situations involving armed conflict and occupation remains uncertain. Whether the PCA will refrain from addressing issues that might necessitate the examination and involvement of the law of occupation is still in question. At the same time, while the Bern Convention provides a legal framework for biodiversity conservation, its application to post-conflict scenarios, such as the one in Nagorno-Karabakh, raises significant concerns about the enforceability of its provisions when the occupying state is accused of violations.

Nevertheless, arbitration under the Bern Convention offers valuable insights into how international law can address environmental protection in conflict zones. It has the potential to further clarify the applicability of IEL treaties in armed conflict, particularly for treaties that have no provision regarding their applicability during times of armed conflict. Besides, by providing a legal process for adjudicating disputes over environmental damage, the Bern Convention arbitration could set a precedent for future cases where states can be held accountable for the environmental consequences of armed conflict. This is particularly important as the compliance and enforcement mechanisms within IHL are relatively weak, and from an IEL standpoint there is often reluctance within some environmental treaties to address what can be seen as politically contentious security issues. The arbitration also underscores the importance of a stronger and more integrated approach to address

¹⁹¹ INT'L COMM. RED CROSS, EXPERT MEETING REPORT: OCCUPATION AND OTHER FORMS OF ADMINISTRATION OF FOREIGN TERRITORY 8 (2012), <https://www.icrc.org/sites/default/files/external/doc/en/assets/files/publications/icrc-002-4094.pdf> [<https://perma.cc/X48V-HPE3>].

environmental emergencies that combine IHL and IEL. The potential outcome of this arbitration could influence the development of more comprehensive legal mechanisms for environmental protection during armed conflict.