

Self-Determination, Jus Cogens, and the Climate/Security Nexus

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The intensifying interaction between climate change and armed conflict tests the limits of how international law is ordinarily brought to bear. The customary obligation to prevent transboundary harm, the collective security architecture of the United Nations Charter, and the international climate change regime are each typically analysed in terms of obligations owed between States, and have not yet been fully trained on the position of peoples whose very existence as political communities is imperilled by the combined force of environmental breakdown and war. This impulse argues that the right to self-determination – already established in international law as a peremptory norm generating obligations *erga omnes* – belongs at the centre of that analysis.

I. The Peoples the Frameworks Miss

Consider small island developing States and other acutely vulnerable communities. Rising seas, intensified storms, and prolonged droughts threaten

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the territorial foundations of their political self-governance and cultural continuity.¹ The International Court of Justice acknowledged in 2025 that the consequences of climate change are ‘existential’ and of ‘planetary proportions’.² For peoples at the frontline – many of whom achieved independence only in recent decades – the climate crisis is an ongoing assault on the material preconditions of self-determination.

Armed conflict compounds this from both directions. Military activities are estimated to account for some 5.5 per cent of global greenhouse-gas emissions, yet they remain largely shielded from accountability: reporting of military emissions is voluntary under the climate regime and is, in practice, systematically incomplete.³ In her declaration appended to the advisory opinion, Judge Cleveland urged that States pay closer attention to armed conflict and military activities as sources of emissions – assessing, reporting and mitigating them, and accounting for the emissions caused by conflict-related destruction of carbon sinks – and that a failure to do so may engage State responsibility.⁴ The direct and indirect climate impacts of warfare are, meanwhile, escalating at a moment of acute strain in the international legal order. The applicable legal frameworks – harm prevention, collective security, and the climate treaty regime – are typically cast in terms of State obligations. But the peoples whose existence is most acutely threatened by the convergence of climate change and conflict are not merely passive beneficiaries of those obligations: they are the holders of a right that the international legal order places at the apex of its normative hierarchy.

II. Self-Determination as a Peremptory Floor

Self-determination is firmly established as a peremptory norm of general international law (*jus cogens*).⁵ A peremptory dimension has separately been identified in the environmental field: the Inter-American Court of Human

¹ Alex Green and Margaretha Wewerinke-Singh, ‘State Continuity, Self-Determination and Sea-Level Rise’ ICLQ 74 (2025), 555–585.

² ICJ, *Obligations of States in Respect of Climate Change*, Advisory Opinion of 23 July 2025, para. 456.

³ Ellie Kinney et al., *Accounting for the Uncounted: The Global Climate Impact of Military Activities* (Griffith University 2025).

⁴ ICJ, *Obligations of States in Respect of Climate Change* (n. 2), Declaration of Judge Cleveland, paras 18–20.

⁵ ILC, *Draft Conclusions on Peremptory Norms of General International Law (Jus Cogens)*, Conclusion 23 and Annex (2022); ICJ, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, para. 233 (concerning the context of occupation).

Rights has held that the prohibition of conduct capable of causing irreversible damage to the ecological balance that sustains life is itself peremptory.⁶ The two norms are complementary rather than redundant. The environmental prohibition protects the planetary conditions of life; self-determination protects the political existence and agency of peoples – their continuing capacity to constitute and govern themselves, and to transmit a culture across generations. It is this latter interest that is uniquely at stake when climate change and armed conflict together threaten not merely a habitable environment, but the survival of a people as a distinct political community. The added value of self-determination lies precisely there: it speaks to who is harmed, and to what it means for a people to be extinguished, rather than to the ecological integrity that the environmental norm safeguards.

Both norms, moreover, generate obligations *erga omnes*, in which all States have a legal interest;⁷ and under Articles 53 and 64 of the Vienna Convention on the Law of Treaties, a treaty that conflicts with a peremptory norm is void, or becomes void upon the emergence of a new one.⁸ Where climate harm compounded by armed conflict threatens to extinguish a people's capacity for self-governance, the obligation in play engages the very apex of the normative hierarchy.

III. Implications for a Climate-Security Order

At least three implications follow for any legal order seeking to govern the nexus of climate change and armed conflict.

First, on military emissions. If climate obligations are read in the light of the peremptory status of self-determination, the persistent failure to account for military emissions is not merely a question of transparency but a failure to protect a peremptory interest – for the same emissions that escape scrutiny contribute directly to the existential threats borne by the most vulnerable peoples. This strengthens the case for mandatory reporting of military emissions, for closing the exemptions that persist in practice, and for treating their continued exclusion as a systemic compliance concern under Article 15 of the Paris Agreement.

⁶ IACtHR, *Climate Emergency and Human Rights*, Advisory Opinion AO-32/25 of 29 May 2025, paras 287–294.

⁷ ICJ, *East Timor* (Portugal v. Australia), judgement of 30 June 1995, ICJ Reports 1995, 90 (para. 29); IACtHR, *Climate Emergency and Human Rights* (n. 6), para. 294; ICJ, *Obligations of States in Respect of Climate Change* (n. 2), para. 440.

⁸ Vienna Convention on the Law of Treaties of 23 May 1969, 1155 UNTS 331, Arts 53 and 64, see also Art. 71.

Second, on harm prevention in wartime. The peremptory character of self-determination reinforces the argument that the customary obligation to prevent environmental harm is not displaced by the *lex specialis* of the law of armed conflict where what is at stake is the destruction of the conditions under which a people can continue to exist and govern itself. The point is not abstract: in its written statement in the 2025 advisory proceedings concerning the Occupied Palestinian Territory, Vanuatu argued that environmental degradation under occupation – soil contamination, the destruction of water systems, agricultural collapse – itself undermines the affected people's right to self-determination.⁹ The stringent standard of due diligence affirmed by the International Court of Justice – requiring 'deep, rapid, and sustained reductions' in emissions¹⁰ – acquires additional force when the harm implicates a *jus cogens* norm.

Third, on collective security. Any framework that treats climate change as a collective-security problem must confront the distributional question of who may be asked to bear the costs of compromise. Self-determination supplies a principled floor: whatever trade-offs such a framework entails, it cannot lawfully sacrifice the conditions that enable distinct peoples to exercise political self-governance. The post-1945 order was in many respects morally compromised, yet it rested on the anti-colonial premise that all peoples are entitled to determine their own destiny. A framework centred on climate security must preserve that commitment – not as aspiration, but as legal constraint.

Much work remains to elaborate these implications in detail. But any serious engagement with the nexus of armed conflict and climate change must reckon with the fact that, for some peoples, what is at stake is not merely security, environmental integrity, or human rights in the aggregate, but the very right to exist as a self-determining political community – a right that occupies the highest rank in the international legal order.

⁹ Written Statement of the Republic of Vanuatu, 28 February 2025, in: ICJ, *Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in relation to the Occupied Palestinian Territory*, Advisory Opinion of 22 October 2025.

¹⁰ ICJ, *Obligations of States in Respect of Climate Change* (n. 2), para. 282.