

# Impulses from the Max Planck Trialogues on the Law of Peace and War

## Climate Change and the Law Surrounding Armed Conflict

### The Climate of War

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### I. Introduction: The Double Burden of War and Warming

The deadly ‘scourge of war’ (to cite the United Nations [UN] Charter) has in the past years erupted with all its force.<sup>1</sup> So has the ‘existential problem’ of

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<sup>1</sup> SIPRI Yearbook 2026: Armaments, Disarmament and International Security, Summary, 2: ‘[T]he number of interstate armed conflicts doubled from three in 2024 to six in 2025 and involved at least 13 states [...]. The overall estimated number of conflict related fatalities reduced slightly (by 4.2 per cent) from 249 000 in 2024 to 238 000 in 2025 but this was still higher than in any other year in the period 2018-25 (the period for which consistent data is available).’ Shawn Davies, Thérèse Pettersson and Magnus Öberg, ‘Organized Violence 1989-2025, and Violent Political Protests’, JPR 63 (2026), 705-772 (706) note that in 2025, fatalities remain among the highest levels in the post-1989 period, with only 2021, 2022, and 2024 being more violent (relying on data of the Uppsala Conflict Data Program <<https://ucdp.uu.se/>>, last access 3 August 2026).

climate change which ‘imperils all forms of life’ (to cite the International Court of Justice [ICJ]<sup>2</sup>). And although these two issues are – as a matter of principle – global concerns, bringing ‘untold sorrow to mankind’ (the UN Charter), and having ‘planetary proportions’ (the ICJ), they predominantly hit populations in the global south: those regions of the world that are most affected by climate change are, at the same time, those that are more prone to armed conflict. Moreover, the two afflictions do not exist independently from each other but are linked: war contributes to global warming to a not-insignificant degree, and global warming is itself often one of several drivers of armed conflict.<sup>3</sup>

Initial stocktakes of the climate costs of only the most visible ongoing wars in Ukraine (since 2022),<sup>4</sup> Gaza (since 2024),<sup>5</sup> and Iran (since February 2026)<sup>6</sup> show how even their direct CO<sub>2</sub> emissions by far outstrip the annual emissions of many countries. In the Iran war, for example, tit-for-

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

<sup>3</sup> Already the drafters of the UNFCCC were aware of this link. The disastrous climate effects of the oil spills and oil fires in the Gulf war of 1990-1991 (the UN-authorized military operation Desert Shield and Desert Storm against Iraq for the liberation of Kuwait) were heavy on the minds of the negotiators of the UNFCCC of 1992. See Pasquale Amoroso, ‘Climate Change and Warfare as Interconnected Concerns in International Legal Negotiations’, in this issue. See further below, also on the controversial conceptualisation of climate change as a threat multiplier, text with notes 27-30.

<sup>4</sup> The initiative ‘GHG accounting of War’, led by Lennard de Klerk, has produced annual assessments of the GHG emissions of the Russian war against Ukraine, last in 2026. Lennard de Klerk, Mykola Shlapak, Sergiy Zbitsev, Viktor Myroniuk, Oleksandr Sohenskyi, Roman Vay-sylshyn, Svitlana Krakovska, Lidiia Kryshchok and Rostyslav Bun, *Climate Damage Caused by Russia’s War in Ukraine: 24 February 2022 – 23 February 2026*, p. 3: ‘Russia’s Full-Scale Invasion of Ukraine Drove Greenhouse Gas Emissions (GHG) up by 75 Million Tonnes of CO<sub>2</sub> Equivalent (tCO<sub>2</sub>e) in the War’s Fourth Year, Bringing the Total Since 24 February 2022 to 311 Million tCO<sub>2</sub>e.’, <<https://en.ecoaction.org.ua/climate-damage-4-years-numbers.html>>, last access 3 August 2026.

<sup>5</sup> Abdo Hassoun, Khawla Al-Muhannadi, Amira Haddarah, Farah Slim, Dalal Iriqat, Ahmed Hamad, Alix Faddoul and Mohamed Buheji, ‘Environmental Consequences of Conflict: Lessons from the Recent War on Gaza’ in: Abdo Hassoun (ed.), *War on Gaza: Consequences on Sustainability and Global Security* (Springer 2025), 173-188 (177): ‘Within just 60 days, the war emitted 281,315 metric tons of CO<sub>2</sub>, far surpassing the 77 metric tons released in the first 18 months of the Ukraine war. This figure equates to burning 150,000 tons of coal and exceeds the annual emissions of over 135 countries combined.’ See also Benjamin Neimark, Frederick Otu-Larbi, Reuben Tete-Larbi, Patrick Bigger, Linsey Cottrell, Lennard de Klerk and Mykola Shlapak, ‘Israel-Gaza Conflict Carbon Emissions Exceeded 30 Million Tons’, *One Earth* 9 (2026), <<https://doi.org/10.1016/j.oneear.2026.101648>>, last access 3 August 2026.

<sup>6</sup> Patrick Bigger, Benjamin Neimark and Fred Otu-Larbi, ‘Two Weeks of War in Iran Unleashed More Carbon Pollution than Iceland Does in a Year’, *Climate & Community Institute*, 21 March 2026, <[https://climateandcommunity.org/wp-content/uploads/2026/03/Research-Snapshot\\_Iran-Emissions-Methodology.pdf](https://climateandcommunity.org/wp-content/uploads/2026/03/Research-Snapshot_Iran-Emissions-Methodology.pdf)>, last access 3 August 2026.

tat strikes by Israel and Iran on energy infrastructure such as gas fields, oil refineries, oil storages in Iran, Saudi Arabia, Bahrain, and Qatar have led to oil spills, fires, and ‘black rain’.<sup>7</sup> The uncontrolled combustion may lead to relatively more emissions of methane, ozone, and short-lived ‘climate-forcers’ such as black carbon than if the oil products had been burned in the intended way.<sup>8</sup>

Beyond such climate costs of armed conflict that can be determined and measured in scoping exercises, looser relationships between the twin evils of warming and war should also be kept in mind: every euro spent on armament is a euro not used for the transition needed towards CO<sub>2</sub>-neutral societies. And any conventional rebuilding the infrastructure destroyed in a war again generates CO<sub>2</sub> that would otherwise not be emitted.

Despite these direct and indirect links between the deterioration of the climate system and armed conflict, the bodies of international law addressing those two issues have so far barely been connected. Even more, such a connection appears frivolous or absurd to many observers.<sup>9</sup> International climate law does not even work in peace times, so how could it possibly be expected to work in the extraordinary condition of war?<sup>10</sup> Against such qualms, the Max Planck Trialogues on the Law of Peace and War<sup>11</sup> and the Impulses from the workshop held in Berlin in the spring of 2026 sought to overcome the traditional neglect and refutation of climate concerns in the law surrounding armed conflict, by examining the potential for ‘regime interac-

<sup>7</sup> Human Rights Watch, ‘Iran: Israel’s Oil Depot Strikes Endanger Environment, Health’, 13 April 2026, <<https://www.hrw.org/news/2026/04/14/iran-israels-oil-depot-strikes-endanger-environment-health>>, last access 3 August 2026; Human Rights Watch, ‘Israel, Iran: Unlawful March Attacks on Energy Infrastructure’, 22 April 2026, <<https://www.hrw.org/news/2026/04/22/israel-iran-unlawful-march-attacks-on-energy-infrastructure>>, last access 3 August 2026; CEOBS, ‘Black Rain: the Health and Environmental Risks from Tehran’s Oil Fires’, 9 March 2026, <<https://ceobs.org/black-rain-the-health-and-environmental-risks-from-tehrans-oil-fires/>>, last access 3 August 2026.

<sup>8</sup> Scientists for Global Responsibility (SGR), ‘Devastation and Pollution: Impacts of the Iran War on Present and Future Life’, Responsible Science Blog, 4 May 2026, <<https://www.sgr.org.uk/resources/devastation-and-pollution-impacts-iran-war-present-and-future-life>>, last access 3 August 2026.

<sup>9</sup> See Moritz Vinken, ‘The Enlightened Uncanny and International Law’, in this issue.

<sup>10</sup> I will return to the practical and moral objections at the end of this essay.

<sup>11</sup> In a Max Planck Trialogue, three authors discuss one topic within the international law surrounding armed conflict. Each trio is composed so as to engage different modes of legal thinking, intellectual paradigms, regional backgrounds, and professional specialisation. By bringing the pluralism of premises and methods to the fore, the Trialogues facilitate the emergence and global refinement of common legal understandings. <<https://www.mpil.de/en/pub/research/areas/public-international-law/max-planck-trialogues.cfm>>, last access 3 August 2026.

tion'<sup>12</sup> during the entire cycle of armed conflict – in the phases *pre bello*, *ad bellum*, *in bello*, and *post bellum*.

## II. Pre Bello: The Military Emissions Gap

The military's carbon footprint is huge.<sup>13</sup> The entire sector is estimated to account for 5.5 percent of all anthropogenic greenhouse gas emissions (GHG), compared to, for example, the 2.5 percent stemming from aviation.<sup>14</sup> In most states of the world, the military sector is overall the largest single organisation and responsible for the largest share of energy consumption. The battlefield is only the tailpipe of a military greenhouse gas emissions chain starting with building infrastructure and weapons, testing, and deploying them.

Despite its enormous climate relevance, the military sector has largely escaped the attention of climate policy and law activists, and has been neglected in reporting and transition efforts. North Atlantic Treaty Organization (NATO) and several European countries have started to develop decarbonisation strategies, but these have mainly focussed on transforming the infrastructure as opposed to actual operations.<sup>15</sup> These strategies do not mention any legal obligations, and can therefore hardly be counted as evidence of an emerging *opinio iuris*.

<sup>12</sup> Term coined by Margaret Young, *Trading Fish, Saving Fish* (Cambridge University Press 2011), Chapter 6.

<sup>13</sup> See for the data e.g. <<https://militaryemissions.org>>, last access 3 August 2026. See also Grace Alexander (Conflict and Environment Observatory, CEOBS), *Military Spending and Emissions are Rising but Reporting is Getting Worse*, 6 November 2025, <<https://ceobs.org/new-data-reveals-the-military-emissions-gap-is-growing-wider/>>, last access 3 August 2026.

<sup>14</sup> Tipping Point North South, *Climate Collateral: Why the Military's Impact on Climate Change Can no Longer be Ignored*, Tipping Point North South's Transform Defence for Sustainable Human Safety Series Briefing of November 2025, <<https://transformdefence.org/publication/climate-collateral-2025/>>, last access 3 August 2026.

<sup>15</sup> NATO, Climate Change and Security Action Plan: Compendium of Best Practice (July 2023); NATO Climate Change and Security Impact Assessment (3rd edn, 9 July 2024); Gry Thomasen, 'NATO and Climate Change: Towards a Joint Understanding and Response', *International Journal* 80 (2025), 312-322. See Madara Melnika, 'NATO's Responsiveness to Climate Change', in this issue. See on various national strategies the table in Ben Barry (with contributions from Shiloh Fetzek and Lieutenant Colonel Caroline Emmett), *Green Defence: The Defence and Military Implications of Climate Change for Europe*, International Institute for Strategic Studies (IISS), 8 February 2022, Annex I, 25. For Germany: Federal Ministry of Defence (Germany), *Strategy on Defence and Climate Change*, March 2024, <<https://www.bmvg.de/resource/blob/5759520/5308c4904ff6fc0780061b6e424fc27e/strategy-on-defence-and-climate-change-data.pdf>>, last access 3 August 2026.

The climate policies' negligence of the military sector runs against various international climate law expectations.<sup>16</sup> Especially the Paris Agreement (PA) covers the military sector and does not exempt it from the contractual reporting and transparency obligations (unlike the Kyoto Protocol had done).<sup>17</sup> Military activities fall in the PA's scope, because the Agreement encourages developed country parties to 'continue taking the lead by undertaking *economy-wide* absolute emission reduction targets'.<sup>18</sup> Also, the PA is – technically speaking – a protocol to the United Nations Framework Convention on Climate Change (UNFCCC) which insists that the state parties' mitigation policies measures 'should [...] be comprehensive, cover *all relevant sources* [...] and comprise *all economic sectors*'.<sup>19</sup> Finally, Article 14 of the PA on the global stocktake requires '*comprehensive*' reporting.

It follows that military emissions should figure in the National Greenhouse Gas Inventories under Article 4(1)(a) of the UNFCCC,<sup>20</sup> should be taken into account when preparing the Nationally Determined Contribution (Art. 4(2) and (3) PA), should be reviewed in the global stocktake (Art. 14 PA), and may be examined by the Paris Agreement Implementation and Compliance Committee (PAICC) (Art. 15 PA<sup>21</sup>).<sup>22</sup>

<sup>16</sup> Given the mostly 'soft' legal nature of the clauses of the climate treaties, incompatibilities of state conduct with those provisions do not lead to the verdict of an actual breach or violation of international law. Nevertheless, the disappointment of expectations and the failure to honour the however 'soft' commitments of the climate regime are not only a political problem, but are normatively relevant within the international rules-based order.

<sup>17</sup> On the Kyoto protocol exemptions which had been requested by the US: Axel Michaelowa, Tobias Koch, Daniel Charro and Carlos Gameros, *Military and Conflict-Related Emissions: Kyoto to Glasgow and Beyond* (Perspectives Climate Group 2022), 2-3; Burkely Hermann (ed.), 'National Security and Climate Change: Behind the U.S. Pursuit of Military Exemptions to the Kyoto Protocol', National Security Archive, 20 January 2022, Briefing Book #: 784, <<https://nsarchive.gwu.edu/briefing-book/environmental-diplomacy/2022-01-20/national-security-and-climate-change-behind-us>>, last access 3 August 2026.

<sup>18</sup> Art. 4(3) of the Paris Climate Agreement of 14 December 2015 (emphasis added).

<sup>19</sup> Art. 3(3) of the United Nations Framework Convention on Climate Change (UNFCCC) of 9 May 1992 (emphasis added).

<sup>20</sup> IPCC, 2019 Refinement of the 2006 IPCC Guidelines for National Greenhouse Gas Inventories (IPCC 2019), page 8.14: 'Military fuel use is reported under "1A5 Non-specified", and this category includes fuel deliveries for all mobile and stationary consumption (e. g., ships, aircraft, road and energy used in living quarters) of the country. Emissions from multilateral operations pursuant to the Charter of the United Nations are not included in national totals. It is good practice to document clearly which activities have been included under the category multilateral operations and report as memo item in the reporting tables.', <<https://www.ipcc-nggip.iges.or.jp/public/2019rf/index.html>>, last access 3 August 2026.

<sup>21</sup> With Decision 20/CMA.1: 'Modalities and procedures for the effective operation of the committee to facilitate implementation and promote compliance referred to in Article 15, paragraph 2, of the Paris Agreement'.

<sup>22</sup> Lavanya Rajamani, at the Max Planck Trialogue workshop.

As far as international *customary law* is concerned, I submit that the no-harm-obligation to exercise stringent due diligence in controlling, recording, and preventing greenhouse gas emissions that risk to cause significant harm to the climate system also extends to the military sector.<sup>23</sup> While the ICJ Advisory Opinion on Climate Change did not specifically address this question, the declaration of Judge Cleveland explicitly gave a positive answer.<sup>24</sup> Moreover, several states mentioned armed conflict in their contributions to the ICJ proceedings.<sup>25</sup> Especially Palestine submitted ‘that the climate crisis requires application of the same stringent standard of due diligence to the protection of the global environment, from all emissions of GHG that contribute significantly to global warming, including emissions from armed conflict and other military activities, as well as occupation’.<sup>26</sup>

All this suggests that both treaty law and customary law demand the military sector to decarbonise. But in the current era shaped by leaders who openly espouse war as a means of politics, without consideration for the law and in denial of climate change, it is hard to believe that decarbonisation is still high on the agenda of the military.

### III. Ad Bellum: Climate Change as a ‘Threat Multiplier’

The intertwinement of climate degradation and conflict dynamics has been intensely scrutinised. The upshot of numerous case studies is that climate change and its consequences such as drought, floods, storms, and crop failures can contribute especially to non-international armed conflict, but are neither a necessary nor a sufficient condition for the outbreak of a war which depends on many contextual factors and non-climatic risk drivers (such as low state capacity, non-inclusive political institutions, competition between pastoralists and settled farmers, and poverty).<sup>27</sup> In order to describe how the climate

<sup>23</sup> ICJ, *Climate Change*, Advisory Opinion (n. 2), paras 134-135 applied the no-harm principle to climate harm.

<sup>24</sup> ICJ, *Climate Change*, Advisory Opinion (n. 2), Declaration of Judge Cleveland, paras 15-20 on ‘International Humanitarian Law and Armed Conflicts’.

<sup>25</sup> Eva Baudichau, ‘Of Warming and Warzones: The Legal Status of Military Emissions in the ICJ’s Climate Opinion’, *Verfassungsblog*, 8 August 2025, doi: 10.59704/ca99ffd63031501e.

<sup>26</sup> ICJ, Ms Nilüfer Oral on behalf of the State of Palestine, On the Obligations of States in respect of Climate Change, Verbatim Record of 9 December 2024, CR 2024/46, para. 7.

<sup>27</sup> See e.g. Tobias Ide, Michael Brzoska, Jonathan F. Donges and Carl-Friedrich Schleussner, ‘Multi-Method Evidence for When and How Climate-Related Disasters Contribute to Armed Conflict Risk’, *Global Environmental Change* 62 (2020), 102063, 1-8; Joshua W. Busby, *States and Nature: The Effects of Climate Change on Security* (Cambridge University Press 2022); Halvard Buahug, Tor A. Benjaminsen, Elisabeth A. Gilmore and Cullen S. Hendrix, ‘Climate-

change effects interact with and have the potential to exacerbate pre-existing threats and other drivers of instability to contribute to security risks, it has become popular to describe climate change as a ‘threat multiplier’.<sup>28</sup> The ‘threat multiplier’ perspective has however been questioned and criticised, not without merit, because it tends to depoliticise climate change and risks to deflect from its social and economic root causes.<sup>29</sup> Overlapping, the reservations against (over-)securitisation as a rhetoric apply:<sup>30</sup> The framing of climate change as an existential threat serves to take the issue out of normal politics and may divert attention away from problems that have not been designated as security threats, and can lead to an escalation of military violence.

The related legal and policy question whether the Security Council may and should address climate change as a threat to peace and security, especially in terms of chapter VII of the UN Charter, has also been intensely discussed.<sup>31</sup> In fact, the Council has since 2007 recurrently debated climate change and issued a number of presidential statements and country- or region-specific resolutions on the adverse effects of climate change on regional stability.<sup>32</sup> In 2021, the last proposal for a Security Council resolution that would have integrated climate-related security risks as a central component into comprehensive conflict-prevention strategies was defeated by a Russian veto.<sup>33</sup> Since 2023, several

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Driven Risks to Peace Over the 21st Century’, *Climate Risk Management* 39 (2023), 100471; Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the IPCC* (Cambridge University Press 2022), 1045, 1102, 1128, 2414.

<sup>28</sup> Sherri Goodman and Pauline Baudu, ‘Climate Change as a “Threat Multiplier”: History, Uses and Future of the Concept’, Center for Climate & Security, Briefer No. 38, 3 January 2023.

<sup>29</sup> Critically Gabrielle Daoust and Jan Selby, ‘Understanding the Politics of Climate Security Policy Discourse: The Case of the Lake Chad Basin’, *Geopolitics* 28 (2023), 1285–1322.

<sup>30</sup> Barry Buzan, Ole Wæver and Jaap de Wilde, *Security: A New Framework for Analysis* (Lynne Rienner Publishers 1998), 24.

<sup>31</sup> Anne Dienelt, ‘The Climatization of International Peace and Security: A Missed Opportunity?’, in: Sandrine Maljean-Dubois and Jacqueline Peel (eds), *Climate Change and the Testing of International Law* (Brill Nijhoff 2023), 199–224; Rouven Dieckjobst, ‘Sea-Level Rise at the Security Council: On Multiplied Threats and Implied Powers’, *Völkerrechtsblog*, 8 May 2023, doi: 10.17176/20230508-204341-0; Larissa van den Herik, ‘The UN Security Council: A Reflection on Institutional Strength’ in: Congyan Cai, Larissa van den Herik and Tiyanjana Maluwa, *The UN Security Council and the Maintenance of Peace in a Changing World*, Anne Peters and Christian Marxsen (eds), *Max Planck Trialogues on the Law of Peace and War*, Vol. 5 (Cambridge University Press 2024), 109–185 (175–181); Erin Pobjie and Kira Vinke, ‘Climate Tipping Threats’, DGAP Policy Brief 16 (2025), German Council on Foreign Relations, <<https://doi.org/10.60823/DGAP-25-42667-en>>, last access 3 August 2026; Nicolas S. Reetz, *The Slippery Slope of Securitisation: Climate Change and the International Law on the Use of Force*, Dissertation (European University Institute 2025).

<sup>32</sup> E.g. UNSC Res 2524 of 3 June 2020 on Sudan.

<sup>33</sup> UNSC Draft Resolution S/2021/990, 13 December 2021.



members of the Security Council regularly issued 'Joint Pledges to Climate, Peace, and Security'.<sup>34</sup>

The view has consolidated that from a doctrinal perspective, the Security Council may qualify climate change as a threat to the peace without overstepping its competences. However, because of the risks of an overly militarised response, the Council should exercise this competence with self-restraint.<sup>35</sup> To conclude, 'the resort to security [might be] ineffective at best, counterproductive at worst'.<sup>36</sup>

#### IV. In Bello: Inter Arma Silent Leges Climaticae?<sup>37</sup>

Obviously, rockets, bombs, tanks, and drones are bad for the climate.<sup>38</sup> Therefore, international climate law should have a bearing on the conduct of hostilities. Climate law can and should be applied directly and indirectly (as a guideline for the interpretation and development of international humanitarian law [IHL]).<sup>39</sup> This is all the more plausible as some principles that govern environmental (including climate) law and IHL bear striking similarities.<sup>40</sup> The environmental precautionary approach which is part of the due diligence standard under the duty to prevent climate harm<sup>41</sup> bears a family resemblance with the IHL-based duties of care and precautions.<sup>42</sup> The environmental due diligence overlaps with the IHL-based 'due regard' principle.<sup>43</sup>

<sup>34</sup> See letter dated 5 January 2026 from the Permanent Representatives of Denmark and Sierra Leone to the United Nations addressed to the President of the Security Council, 6 January 2026, S/2026/15.

<sup>35</sup> Leonie Brassat, 'Climate Change as a Threat to International Peace and Security?', in this issue.

<sup>36</sup> Niklas Reetz, 'Security, with Caveats', in this issue.

<sup>37</sup> See Marco Tulli Cicero, 'Pro T. Annio Milone Oratio ad Iudices', in: Johan Willem van Rooyen (ed.), *Pro T. Annio Milone Oratio ad Iudices* (Brill 1963), 7.

<sup>38</sup> See some data above in notes 4-8.

<sup>39</sup> See on these two avenues Stavros-Evdokimos Pantazopoulos, 'Navigating Legal Frontiers: Climate Change, Environmental Protection and Armed Conflict', *Int'l Rev. of the Red Cross* 106 (2024), 366-392.

<sup>40</sup> But see on structural *differences* in those bodies of law: Jérôme de Hemptinne, 'From Tactical Law of Armed Conflict to Macro-Perspective of Climate Law', in this issue; Giorgia Berrino, 'Climate Change and Armed Conflict Beyond the Crisis Paradigm', in this issue.

<sup>41</sup> ICJ *Climate Change*, Advisory Opinion (n. 2), para. 294.

<sup>42</sup> Art. 55(1), 57, 58 AP I; Principle 13(2) lit a) PERAC. This family resemblance is not eliminated by the fact that the environmental precautionary approach relates to risks that are in scientific terms uncertain while the IHL-based precautions relate to foreseeable risks.

<sup>43</sup> Para. 44 of the San Remo Manual on International Law Applicable to Armed Conflicts at Sea of 12 June 1944, *Int'l Rev. of the Red Cross* 309 (1995), 583-594; Customary Law Rule 44, Customary IHL database, <<https://ihl-databases.icrc.org/en/customary-ihl>>, last access 3 August 2026.



It is generally agreed that international climate law remains *directly applicable* in armed conflict; the relevant treaties are not ipso facto terminated or suspended.<sup>44</sup> Given their subject matter and purpose, these treaties are presumed to apply in times of war, and the inbuilt flexibility of international climate law allows for their continued but nuanced application.<sup>45</sup> Especially the climate law-principle of common but differentiated responsibilities *in the light of different national circumstances* (Art. 2(2) PA) arguably not only refers to long-term structural conditions but also allows to take armed conflict into account as a relevant ‘circumstance’ which may lead to a modification of the climate obligations of warring parties. In a similar way, the customary obligation to act with due diligence to prevent significant harm to the climate system is flexible and has a ‘varying character’.<sup>46</sup> In the words of the ICJ, the determination of due diligence-obligations ‘calls for an assessment in concreto’, which allows and even mandates to recalibrate the conduct that is reasonably required by law and to adapt what is ‘due’ to times of war.<sup>47</sup> This however does not inevitably lead to a relaxing of the ‘stringent’ standard of diligence in climate law<sup>48</sup> – quite to the contrary: armed conflict may well demand a ‘heightened’ due diligence for some actors such as business.<sup>49</sup> States engaged in armed conflict cannot invoke ‘necessity’ as a ground precluding the wrongfulness of their lack of accounting, reporting, and controlling emissions, because a licence to unbridled CO<sub>2</sub>-emissions would ‘seriously impair an essential interest [...] of the international community as a whole’ (Art. 25 (1)(b) Articles on Responsibility of States for Internationally Wrongful Acts [ARSIWA]). It could also, a bit boldly, be argued that the climate-related due diligence obligations implicitly exclude reliance on neces-

<sup>44</sup> ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, ICJ reports 1996, 226, para. 30; ILC, Art. 3 of the Draft Articles on the Effects of Armed Conflicts on Treaties with Commentaries, in: ILCYB 2011, Vol. II, Part Two, para. 100-101, A/CN.4/SER.A/2011/Add.I (Part 2).

<sup>45</sup> See for the presumption of the continued application of treaties relating to the protection of the environment: ILC Draft Articles (n. 44), Art. 6, 7 in conjunction with Annex subpara. g).

<sup>46</sup> ICJ, *Climate Change*, Advisory Opinion (n. 2), paras 134-137, quote in para. 247.

<sup>47</sup> ICJ, *Climate Change*, Advisory Opinion (n. 2), para. 137. The ICJ Climate Opinion here specifically cited the ICJ judgment on the Bosnian genocide, a decision dealing with the duty to prevent harm (genocide) in an armed conflict. See for ‘war’ as a possible ‘national circumstance’ Baudichau (n. 25).

<sup>48</sup> ICJ, *Climate Change*, Advisory Opinion (n. 2), para. 138.

<sup>49</sup> UNDP, *Heightened Human Rights Due Diligence for Business in Conflict-Affected Areas: A Guide* (2022); ILC, PERAC (United Nations General Assembly, *Protection of the environment in relation to armed conflicts: resolution / adopted by the General Assembly*, UNGA Res 77/104 of 7 December 2022; UN Doc A/RES/77/104, Annex: *Principles on protection of the environment in relation to armed conflicts*, ILCYB 2022, Vol. II, Part Two, 96-187), Principle 10. See Amanda Kron, ‘Stringent Due Diligence and Corporate Climate Harm in Conflict-affected Contexts’, in this issue.

sity, because they are so important (even if not specifically intended to apply in abnormal situations of peril for the responsible state).<sup>50</sup>

A kind of *indirect application* of climate law lies in the interpretation and development of IHL in the light of the former.<sup>51</sup> When climate issues aggravate the situation of armed conflict, the IHL-duties become stronger.<sup>52</sup> For example, the prohibition to attack drinking water installations and supply and irrigation works under Art. 54(2) AP I becomes more urgent when climate change has increased water scarcity.

Following this logic, the explicit IHL-rules on protection of the environment (Art. 35(3) and 55(1) AP I<sup>53</sup>) should apply to the climate system which forms part of the natural environment for purposes of international law.<sup>54</sup> These rules should be interpreted dynamically in the light of the best available science on the pernicious and long-lasting effects of climate change.<sup>55</sup> On this basis, the thresholds in these two rules that have been traditionally understood to be extremely high need to be lowered.<sup>56</sup> GHG emissions may qualify as ‘widespread, long-term and severe damage to the natural environment’ in the sense of those provisions.<sup>57</sup> Moreover, the IHL principle of proportionality should be interpreted in a way that takes climate impacts of attacks into account.<sup>58</sup>

Along these lines, Human Rights Watch qualified as unlawful Israel’s attack on the Iranian South Pars Gas Field and Iran’s attack on Qatar’s Ras Laffangas infrastructure in March 2026, because of their foreseeable knock-on effects on the climate, the environment, and human health.<sup>59</sup> Overall, the

<sup>50</sup> See ILC, ARSIWA Commentary on Art. 25, para. 19, A/CN.4/SER.A/2001/Add.1 (Part 2), 84.

<sup>51</sup> According to the ICJ, international humanitarian law can be a source of climate-related obligations of states (ICJ, Climate Change Advisory Opinion (n. 2), para. 173).

<sup>52</sup> Danish Bashir Mangi, Ihsanullah Butro and Somro Hamidullah, ‘The Role of International Humanitarian Law in Addressing the Humanitarian Consequences of Climate Change’, *Research Journal for Social Affairs* 3 (2025), 129-138 (133).

<sup>53</sup> See also Principle 13(2)(b) ILC PERAC (n. 49) and the war crime in IAC under Art. 8(2) (b) (iv) Rome Statute.

<sup>54</sup> ICJ, *Climate Change*, Advisory Opinion (n. 2), para. 95.

<sup>55</sup> See ICRC, Guidelines on the Protection of the Natural Environment in Armed Conflict (ICRC 2020), Rule 2, para. 54 (p. 34).

<sup>56</sup> Mario Pasquale Amoroso, ‘Fighting in a Warming World: The Emergence of Climatic Considerations in the Conduct of Hostilities Under International Humanitarian Law’, *Review of European, Comparative & International Environmental Law* 35 (2026), 198-209 (206).

<sup>57</sup> Romina Pezzot, ‘Wartime GHG Emissions as Widespread, Long-Term and Severe Damage to the Environment’; Britta Sjöstedt, ‘The Lived Experiences of Wars in a Climate Crisis’, both in this issue.

<sup>58</sup> Amoroso (n. 56), 208. For the factoring of environmental impacts into the proportionality assessment: ILC PERAC (n. 49), Principle 14; ICRC Guidelines 2020 (n. 55), Rule 7.

<sup>59</sup> Human Rights Watch of 22 April 2026 (n. 7).

direct and indirect application of climate law in armed conflict would lead to more restraint in the conduct of hostilities and to a reduced admissibility of concrete strikes.

## V. Post Bellum: Climate Change ‘Piecemeal’

The international law post bellum, the law of peacebuilding, and the transitional justice regimes have so far neglected climate aspects, although peacebuilding activities themselves have a carbon footprint and are not climate neutral.<sup>60</sup> Most importantly, climate change and its negative impacts make peacebuilding more complicated.<sup>61</sup> For example, the United Nations Mission in South Sudan (UNMISS) was in 2022 confronted with a large-scale flooding threatening the largest UNMISS protection of civilians site in Bentiu, hosting over 100,000 internally displaced persons. This raised the question of additional obligations of both the UN and troop contributing states.<sup>62</sup>

Generally speaking, refugee resettlement and the right to return are important peacebuilding topics which today need to address the climate- and conflict-induced displacement of humans. It is estimated that in the last years, 20 to 30 million persons have been on the move due to weather-related events, and this number is expected to rise, with estimates ranging between 40 million and 216 million until 2050.<sup>63</sup> Given that the overwhelming portion of displacements occur in the southern hemisphere, they constitute a destabilising factor in anyway vulnerable and conflict-prone societies. Climate change is being recognised as an intensifier of extant drivers for migration

<sup>60</sup> An ongoing project, led by Christina Binder, seeks to map the bits and pieces of legal and political measures that address the effects of climate in regional and universal peacekeeping operations, identifies the applicable law and legal gaps, and suggests institutional responses. ‘Peacekeeping in the Anthropocene: Changing Law for a Changing Climate’ (PeaceCLaCC), <<https://www.unibw.de/recht/peaceclacc>>, last access 3 August 2026. See for a first output: Jane A. Hofbauer and Philipp Janig, ‘Friedenssicherung in Zeiten des Klimawandels: Wieso Klimagerechtigkeit auch friedenserhaltende Missionen betrifft’, *Nachhaltigkeitsrecht: Zeitschrift für das Recht der nachhaltigen Entwicklung* 5 (2025), 129-137.

<sup>61</sup> Richard Matthew, ‘Climate Change Adaptation and Peacebuilding’, in: Ashok Swain and Joakim Öjendal (eds), *Routledge Handbook of Environmental Conflict and Peacebuilding* (Routledge 2018), 109-120 (116), found that ‘climate change adaptation has not been integrated into peacebuilding except in ad hoc and piecemeal ways’: this has apparently not much changed in the last years.

<sup>62</sup> Philipp Janig, Jane A. Hofbauer und Christina Binder, ‘Peacekeeping in the Anthropocene: the Effects of Climate Change and Positive Human Rights Obligations in “Protection of Civilians” Mandates’, *Max Planck UNYB* 26 (2023), 602-630.

<sup>63</sup> Viviane Clement et al., *Groundswell: Acting on International Climate Migration: Part II* (World Bank Group 2021), xxii and xxvii.

such as war, persecution, discrimination, and poverty. This observation has not (yet) led to the creation of a novel and distinct legal category of refugees or migrants, but has triggered developments in human rights law and refugee law. Especially the UN Human Rights Committee has recognised that the risk of an entire country being submerged by sea-level rise may expose individuals to a violation of their right to life with dignity and therefore trigger non-refoulement obligations of the states that ‘climate-refugees’ seek to enter.<sup>64</sup> Besides, climate change may also undermine the peremptory right to self-determination of peoples who are threatened by sea-level rise in their very existence.<sup>65</sup>

These developments suggest that for the law post bellum, the task at hand is to reconcile climate adaptation and peace-building in a mutually beneficial manner.<sup>66</sup> For example, climate-related human rights in their local adaptations could be activated and might give rise to positive obligations of relevant actors, although difficult questions of attribution and extraterritoriality arise.<sup>67</sup> Overall, the ‘call for making peacebuilding more climate-sensitive’ demands a comprehensive response.<sup>68</sup>

## VI. Conclusion: At the Vanishing Point

The Max Planck Trialogue Impulses seek to bring armed conflict into the climate debate, and make the climate question part of the analysis of war. The relevant rules and principles of international climate law and the bodies of law surrounding armed conflict are not actually inconsistent, and therefore lend themselves to a harmonious, mutually supportive interpretation, and systemic integration.<sup>69</sup> The task at hand is to coordinate legal principles that partly point into different directions. This task is not novel, because such

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<sup>64</sup> United Nations Human Rights Committee, *Teitiota v. New Zealand*, decision of 23 September 2020 (UN Doc CCPR/C/127/D/2728/2016). In this case, the committee did not find a violation of Arts 6 and 7 ICPPR by New Zealand, because the authorities that had denied Teitiota’s asylum request and removed him to his country of origin (Kiribati) had provided an adequate and individualised assessment finding that there was no imminent risk for his life.

<sup>65</sup> Margaretha Wewerinke-Singh, ‘Self-Determination, Jus Cogens, and the Climate/Security Nexus’, in this issue.

<sup>66</sup> Florian Krampe et al., ‘Climate Change and Peacebuilding: Sub-themes of an Emerging Research Agenda’, *Int’l Aff.* 100 (2024), 1111-1130 (1119).

<sup>67</sup> Leon Seidl, ‘Climate Adaptation in a Changing Peacebuilding Environment’, in this issue.

<sup>68</sup> Krampe et al. (n. 66), 1111.

<sup>69</sup> See ICJ, *Climate Change*, Advisory Opinion (n. 2), Section 8 (paras 162-173), esp. paras 164 and 168, also paras 311 and 404.

tensions are built into all relevant bodies of law. For example, international climate law seeks to reconcile the protection of the climate with industrial development.<sup>70</sup> International humanitarian law, in turn, is traditionally characterised as (slightly) tempering the urge for military effectiveness by humanitarian principles, so that care for the climate would just add one additional consideration to the trade-off.

Technically speaking, the interpretation of the IHL-treaties and of the climate change treaties can rely on the principle of Article 31(3) lit. c) Vienna Convention on the Law of Treaties (VCLT) and mutually take the relevant other treaties into account, because both sets of treaties enjoy a quasi-universal membership so that the states parties have a high degree of overlap.<sup>71</sup>

However, introducing climate principles into the law of armed conflict faces serious objections. Would not a ‘CO2-friendly war’ be morally perverse? How can we dare demand the ‘greening’ of war, knowing that war not only destroys the environment including its climatic elements but most of all human lives and livelihoods? Would not a ‘greener’ war unduly endanger the lives of combatants and of civilian populations who should enjoy priority protection over the environment?

Moreover, ‘climatising’ IHL seems factually unattainable. An inter-governmental agreement on such principles seems out of reach, the rules would not be complied with anyway, they might even be counterproductive, because they would weaken the deterring effect of disastrous wars, and such a regulation is undesirable because it sanitises war and conveys a false aura of legitimacy to violence, instead of terminating it.

Most of these objections sound familiar. In fact, they were voiced against the proposals to introduce humanitarian principles to the laws of war at the end of the nineteenth century.<sup>72</sup> Still, and against these objections, a body of

<sup>70</sup> See the prominent and recurring references to ‘sustainable development’ in the Paris Agreement, e.g. in Art. 2(1) PA.

<sup>71</sup> ICJ, *Right to Strike under ILO Convention No. 87*, Advisory Opinion of 21 May 2026, paras 91–92. See for the relevance of the ‘entire legal system’: ICJ, *Climate Change*, Advisory Opinion (n. 2), para. 311.

<sup>72</sup> Carl Lueder, ‘Krieg und Kriegerrecht im Allgemeinen’ in: Franz von Holtzendorff (ed.), *Handbuch des Völkerrechts*, Vol. 4 (Hamburg Verlagsanstalt und Druckerei AG 1889), 171–367 (187, 193, 275–277); Julius von Hartmann, *Kritische Versuche: 2. Militärische Nothwendigkeit und Humanität* (Gebrüder Paetel 1878), 101. In secondary literature: Chris Jochnik and Roger Normand, ‘The Legitimation of Violence: A Critical History of the Laws of War’, *Harv. Int’l L.J.* 35 (1994), 49–96 (esp. 54–59); Jochen von Bernstorff, *L’essor et la chute du droit international humanitaire: Une brève histoire de la codification de la protection des civils en temps de guerre (1899–1977)* (Editions Pedone 2024), 12–13 and 16–17; Raphael Schäfer, *Humanität als Vehikel: Der Diskurs um die Kodifikation des Kriegerrechts im Gleichgewichtssystem des europäischen Völkerrechts in den formgebenden Jahren von 1856 bis 1874* (Nomos 2025), 24, 606, and passim.

international humanitarian law has been successively codified, and this law continues to lead a frail existence, even if only ‘at the vanishing point’ of international law.<sup>73</sup> It is submitted that the idea of decarbonising war is not less revolutionary and utopian than the idea of humanising it, and that both objectives should be firmly upheld as regulative ideas. That said, we should keep in mind that the best way to protect the climate system (and all life forms) is to prevent war with all possible means.

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<sup>73</sup> Hersch Lauterpacht, ‘The Problem of the Revision of the Law of War’, *BYIL* 29 (1952), 360–382 (382).