

SYMPOSIUM: THE ENVIRONMENTAL LAW OF WAR

A NOTE FROM THE EDITORS: AN INTRODUCTION TO *VERMONT LAW REVIEW'S SYMPOSIUM ON THE* **ENVIRONMENTAL LAW OF WAR**

When war is waged, the environment is one of its first casualties. Each bullet, bomb, rocket, and chemical weapon fired has immediate and long-lasting effects on our natural environment. With recent advances in technology, modern weaponry has become much more destructive and widely distributed. In addition, the raw volume of ordnance expended in each successive conflict during this century has steadily increased.

The war in the Persian Gulf was a sobering reminder of how environmentally costly a "conventional war" can be. In addition to massive air and ground strikes launched by coalition forces, Iraqi President Saddam Hussein used the environment itself as a weapon. During the early part of 1991, CNN greeted Americans almost daily with pictures of environmental catastrophes. We watched in disbelief the burning Kuwaiti oil fields, ignited as Hussein's forces tried to thwart American air strikes, and the creation of one of the largest oil spills in history in an attempt to prevent United States Marines from landing on Kuwaiti beaches.

Although it is unrealistic to think that in the midst of a battle a commander will give thoughtful consideration to the environmental effects of military actions, much that happens during war can be determined far in advance, from planning and training for combat, to the design of weapons. Some feel that as a nation we must make a choice between our natural environment and our national security. However, it is possible in almost any situation for us to preserve the one effectively without sacrificing the other. Environmental security is beginning to, and should continue to be, a fundamental part of all national security decisions.

This issue of the *Vermont Law Review* brings together nationally respected experts from government, academia, and public interest organizations to discuss and analyze one of the most important topics facing the world today. The editors and staff of the *Vermont Law Review* hope that ultimately it will provoke further reflection on environmental defense issues and encourage greater sensitivity in national defense planning.

Professor Laurent R. Hourcle is a retired Air Force colonel who was the Pentagon's top environmental lawyer for a number of years. In his article, *Environmental Law of War*, Professor Hourcle provides an overview of the development of the Law of War and its application to the protection of the environment from ancient to modern times. He provides a review of the current principles of the Law of War that may be useful in curbing environmental damage today and in the future. He also examines the nature

of current armed conflicts, as distinguished from those that were contemplated in the creation of the various Laws of War. He concludes that since the end of the Cold War, the focus has been on bringing stability and the rule of law to local and regional conflicts. As a result of this shift in priorities, Professor Hourcle questions whether the current Laws of War are adequate to protect the environment in these smaller conflicts.

Carl E. Bruch is a senior attorney and director of the Africa Program at the Environmental Law Institute. In his article, *All's Not Fair in (Civil) War: Criminal Liability for Environmental Damage in Internal Armed Conflict*, Mr. Bruch acknowledges that while internal conflicts make up the vast majority of military encounters in the world today, there are very few legal models that can be used to prosecute combatants for international or domestic law violations. Mr. Bruch discusses the state of the law today in this area and considers possible ways to hold combatants accountable for their actions during internal armed conflict, particularly those that harm the environment.

In his article, *Nuclear War: Still the Gravest Threat to the Environment*, Vermont Law School professor Stephen Dycus illustrates the catastrophic threat that nuclear weapons still pose to civilization and to the environment. Professor Dycus emphasizes that the human environment is an aspect of national security and that environmental values must be taken into consideration in military planning. Consequently, he argues that the United States must ensure that the environmental implications of nuclear weapons are factored into its nuclear policies. He maintains that the United States should conduct a NEPA-style environmental impact analysis in planning to maintain, deploy, and use nuclear weapons. Professor Dycus also argues that any plausible threat or use of nuclear weapons would violate the laws of armed conflict and therefore international environmental law.

Michael J. Matheson, the Principal Deputy Legal Advisor for the U.S. State Department for many years, was one of two lawyers to argue the 1996 *Nuclear Weapons* case before the World Court on behalf of the United States. In his article, *The Environmental Effects of Nuclear Weapons and the 1996 World Court Opinion*, Mr. Matheson argues that in light of the World Court's opinion in 1996, international law now requires states to ensure that activities within their jurisdiction and control respect the environment of other states, but that this general principle is to be applied in wartime in accordance with the rules of armed conflict rather than as an absolute prohibition on nuclear weapons.

William M. Arkin, a journalist and frequent contributor to the *Washington Post*, is one of the nation's most respected experts on weaponry. In his essay, *Cyber Warfare and the Environment*, Mr. Arkin discusses the environmental effects of targeting during combat. The essay explains the effects of smart weapons and how the targeting of non-military assets, such as

electric power grids, roads, oil refineries, and water treatment facilities, can have severe consequences for the human environment. Mr. Arkin specifically links the environmental effects of destroying secondary military targets to human rights violations. He emphasizes his points by eyewitness accounts of the massive destruction of the enemy infrastructure during Kosovo and Desert Storm.

The *Vermont Law Review* would like to thank each of the authors for contributing their hard work, dedication, and insight to this issue of our Twenty-Fifth Anniversary Volume. In addition, the editors of this year's Symposium would like to recognize the support of the Environmental Law Institute, George Washington Law School, and Vermont Law School's Environmental Law Center. As co-sponsors of this year's Symposium, these organizations played a crucial role in the development of this program. Finally, the *Vermont Law Review* would like to give special thanks to Vermont Law School professors Stephen Dycus and Karen Sheldon. Their insight and guidance in planning this Symposium were instrumental in achieving a lasting contribution to this important area of law.

Sean C. Flynn
Symposium Editor

