Protecting the Environment in Times of Armed Conflict: The 2023 Elisabeth Haub Award for Environmental Law and Diplomacy Transcript

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PROTECTING THE ENVIRONMENT IN TIMES OF ARMED
CONFLICT: THE 2023 ELISABETH HAUB AWARD FOR
ENVIRONMENTAL LAW AND DIPLOMACY
TRANSCRIPT

OCTOBER 23, 2023*

Horace Anderson: Hello. Good to see you. I am Dean Horace Anderson of the Elisabeth Haub School of Law at Pace University, and I am very pleased to welcome you today to the presentation of the 2023 Elisabeth Haub Award for Environmental Law and Diplomacy. Today’s ceremony is taking place at Pace University in New York City. We are joined by environmental law advocates and supporters both in person and around the world, including Brazil, Peru, South Africa, Tonga, Switzerland, Germany, and France.

We have all come together to honor and celebrate the global impact and achievements of two bold diplomats: Ambassador Marja Lehto and former Ambassador Marie Jacobsson. Ambassador Lehto is Senior Expert on Public International Law for the Ministry of Foreign Affairs of Finland, and until recently, Ambassador Jacobsson served as Principal Legal Advisor on International Law for the Ministry of Foreign Affairs of Sweden. While they were members of the United Nations International Law Commission, both served successively as Special Rapporteur for the Topic of the Protection of the Environment in Relation to Armed Conflicts. In this role, they worked tirelessly for a decade to develop the Draft Principles of International Law to Protect the Environment in Times of Armed Conflicts and then skillfully

* This transcript from the award ceremony has been edited for flow and clarity. To watch a recording of the ceremony, see Elisabeth Haub School of Law, 2023 Elisabeth Haub Award for Environmental Law and Diplomacy, YOUTUBE (Oct. 31, 2023), https://www.youtube.com/watch?v=_lys13QvTYU&t=2s [https://perma.cc/SXE6-A9P7].
led the adoption of the draft Principles by the International Law Commission and their acceptance by the U.N. General Assembly in 2022.¹

The Principles lay out the urgent need and common objectives for reinforcing and advancing the conservation, restoration, and sustainable use of the environment for present and future generations specifically with respect to the protection of the environment in times of armed conflict. This was no easy task, requiring leadership, tenacity, and boundless perseverance. There is no better time than the present to honor the work of Ambassadors Lehto and Jacobsson, especially given recent conflict in Ukraine and the Middle East, and the sure devastating impact not only on innocent civilians but on the environment and the planet we all share.

This year marks the twenty-sixth anniversary of the Elisabeth Haub Award for Environmental Law and Diplomacy, the world’s most prestigious award in the field of environmental law. The award was established in 1997 by Haub Law in cooperation with the Haub family to honor the legacy of Elisabeth Haub: a noted philanthropist and advocate for strong laws for the conservation of nature. It was first established to commemorate the twenty-fifth anniversary of the United Nations Stockholm Conference and the fifth anniversary of the United Nations Rio de Janeiro Earth Summit. Chosen annually by an esteemed jury of global leaders in environmental law and diplomacy, the Haub Award recognizes the innovation, skill, and accomplishments of lawyers, diplomats, international civil servants, and other advocates who work to support the world environmental order.

We are pleased to have with us today members of the Haub family: Pace University Trustee Liliane Haub, Christian Haub, and their daughter Marie-Liliane Haub. With their support, our preeminent environmental law program continues to train lawyers that understand the intersection between justice, the environment, and the law. We are also joined by several members of our faculty and several members of the distinguished Haub Award jury. We thank you for volunteering your time to recognize exceptional accomplishments in this field.

It is now my pleasure to introduce to you Pace University’s President Marvin Krislov, a lawyer by training who is deeply committed to the work of Haub Law’s environmental law program. I will now turn the podium over to President Krislov.

Marvin Krislov: Thank you, Dean Anderson. Ambassador Lehto and Ambassador Jacobsson, thank you for being here and congratulations on your honor. Trustee Liliane Haub, Christian Haub, Marie-Liliane Haub — and I gather Anna-Sophia Haub will be here shortly — thank you all for being here and thank you for your leadership. On behalf of all of us at Pace University and the Elisabeth Haub School of Law, thanks to everyone both here and on Zoom, for joining us as we honor these extraordinary leaders.

The Haub Law School is known for many things. We train committed and engaged attorneys. Our path to practice curriculum ensures that our graduates are prepared to be effective advocates as soon as they start their careers. Our clinics allow our law students to contribute to their community even while they are still in school. But more than anything else, more than anything else, the Elisabeth Haub School of Law is known for its commitment to and excellence in the crucially important field of environmental law, and it is our great privilege to be stewards of the Haub Medal, the most distinguished award for environmental law and diplomacy in the world.

Our partnership with the Haub family and the family’s deep commitment to the environment has been critical to the development both of this school and to the field of environmental law. For decades, our faculty have been pioneers in developing this field, and they continue to serve as world leaders. Our alumni work in environmental agencies, nonprofit organizations, corporations, law firms, and law schools and universities throughout the country and around the world. This is especially true of Professor Nicholas Robinson, who has played such a crucial role in the field and at our law school, and who will lead our program this afternoon. Thank you, Nick, for everything you have done.

Our many law alumni, students, and faculty are all following the model of Elisabeth Haub, who was so devoted to the progress of environmental law. She was a woman before her time. She was a woman focused on environmental law well before it became popular. Long before most of us, she recognized the impact that human development had had on the world’s environment, and she advocated for policies that would preserve and protect our planet and natural resources. We are so pleased to have this law school and this medal named in her honor. We are also pleased to be able to carry on her legacy by recognizing the work of people like Ambassador Lehto and Ambassador Jacobsson. Given the war in Ukraine, and now this situation in Israel and the Middle East, this work is not only important, but is extraordinarily timely.

Professor Robinson is here to introduce the Laureates and I now turn it over to him to discuss in detail the contributions of our honorees.
Nicholas Robinson: A warm welcome to all of us here in person and those who are attending virtually around the world through the internet. We meet this afternoon to commemorate a singular accomplishment and honor two individual jurists without whom this achievement could not have been. It is a unique moment because the event we celebrate fills a gap both in humanitarian law and environmental law. The protection of the environment before, during, and after armed conflicts is our topic and our theme. It also passes a grave obligation onto each one of us attending here today to carry forward the work of these Principles.

Since the 1972 Stockholm Conference on the Human Environment, all nations have enacted laws to protect the environment and have agreed on principles and treaties to protect aspects of the marine environment, the atmosphere, migratory species, hazardous substances, and other themes. States took seriously the urgency of doing so when they agreed by consensus in the great document Agenda 21, a historic 800-page soft law agreement adopted by consensus at the 1992 Rio Earth Summit, the U.N. Conference on Environment and Development (UNCED). That Conference also adopted the “Rio Declaration” that had twenty-seven principles in it. There is a backstory for some of these principles.

In 1991 in New York, the International Council of Environmental Law (ICEL), with the U.N. Association of the USA, convened a small workshop in support of an official drafting group for a possible declaration at UNCED. Ambassador Tommy Koh, who was the chair of the Preparatory Committee for UNCED and then chaired UNCED, assembled the drafting committee in New York to come up with a first draft — they would call it a zero draft these days — of that declaration that could be adopted at the Earth Summit. ICEL shared with the workshop some basic principles of environmental law such as the obligation to have public participation in environmental decision-making, the role of environmental impact assessment, and so on. Sweden’s delegate at that workshop confirmed ICEL’s recommendations to include principles related to the United Nations mandate to cooperate to keep the peace. Eventually, that provision became draft Principle 24, which provides that, “warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and co-operate in its further development, as necessary.” At Rio, UNCED adopted this draft Declaration without

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4. Id.
further debate, and it became the text that the General Assembly accepted. The Rio Declaration has been widely endorsed ever since.

The story of how the Rio Declaration has had an extraordinary success in shaping international environment law belongs to another event. Today we focus specifically on how the U.N. International Law Commission took on the task for states, consistent with Rio Principle 24, to progressively develop and codify their obligations to protect the environment in times of armed conflict. Jurists — for example, the late Professor Alexandre Kiss — have argued that environmental law may not be suspended during armed conflict. But what exactly are the duties that States shall honor, and how? The Rio Declaration’s Principles were silent on these questions.

For much of the past decade, the U.N. International Law Commission has wrestled with these issues. This past year, the International Law Commission (ILC) completed its deliberation, sending to the General Assembly its draft principles on the protection of the environment in relation to armed conflicts — plural. The mandate of the ILC is constituted by the United Nations Charter. We are honored to have here today the chairperson of the International Law Commission, Dr. Nilufer Oral, a professor and the first environmental law expert to chair the commission, so we are doubly pleased to welcome her to this panel.

The General Assembly elects the members of the International Law Commission based on their expertise. It is an arduous task to become a member of the commission and stand for election in the General Assembly. The ILC selects from its members a rapporteur, who is tasked with researching and providing drafts of legal analysis on international law topics that the ILC has elected to study. It must be acknowledged that the United Nations member states do not fund this work adequately, and each rapporteur must be creative in inviting support for the necessary research that is being studied. Each rapporteur must personally invest huge amounts of her time — her own time — in these tasks. The studies of the rapporteur are closely then critiqued across the distinguished jurists who come from different legal traditions, the civil law, the common law, socialist law, and also from national legal systems east-west and north-south.

The two laureates, whom we celebrate today, as with other rapporteurs, have had to run the gauntlet of these critiques and deep inquisitions as to what should be the agreement of the commission to recommend to the States. The importance of the new International Law Commission’s Principles we honor today cannot be underestimated. Preparing this text for

5. See, e.g., Dinah Shelton & Alexandre Kiss, Martens Clause for Environmental Protection, 30 Env't Pol'y & L. 285 (2000).
acceptance was skillfully led throughout the process by each of the two special rapporteurs. First, Professor Marie Jacobsson, and second, Ambassador and Professor Marja Lehto.

After honoring our two laureates, you are invited to participate in a panel discussion on the significance about what these Principles mean for us today. But let it be said briefly at the outset that these Principles are indeed a milestone in humanity’s efforts to safeguard Earth’s biosphere. They are a realistic testament of hope and pragmatic sanity at a time when armed conflict in places such as Myanmar or Burma, The Sahel, Ukraine, and Gaza seems to be violating the most basic norms of humanitarian law.

The skeptic may ask: why celebrate adding some new rules to protect the environment? Well, as Marvin Krislov has indicated, Elisabeth Haub knew the answer. She knew the answer to that question. At a time when the forest die-back in Bavaria was extreme, when pollution in Europe was acute, and monuments were being melted by the acid rain, she knew this behavior could not be sustained. In the 1960s, she advocated for the creation of laws to protect the natural environment. It was a time when virtually no laws prevented the destruction of nature, and many laws expressly allowed harm to nature. She answered the skeptics of her day with a clear vision holding that the law must protect nature, for the day would come when humans would no longer be at home in nature. The pioneers who enacted the initial laws to halt environmental degradation set the ground rules for the future. Today we honor the ILC through our two cherished laureates who have done this pioneering work.

Through conferring the Elisabeth Haub Award, Pace University and the Family Haub are honored to recognize and honor these rare individuals, who are the forerunners for needed environmental reform, and who make it possible for the next generation to campaign to implement and refine the norms that they have developed. Just as the deliberations of the ILC add to continue under successive rapporteurs, one after the other, in like vein it will be up to all of us in this room — each one of you — our students and our students’ students, to see to the implementation of these Principles on protection of the environment in relation to armed conflicts. To inspire us to do so, each Laureate joins us today with a lifetime of service, accomplishment, and expertise dedicated to the rule of law.

First, Ambassador Marie Jacobsson, who has recently concluded her service as the Principal Legal Advisor on International Law at the Swedish Ministry of Foreign Affairs. Parenthetically, she was always an early pioneer.

in advocating international environmental law, for which I am also doubly grateful. She was a member of the International Law Commission from 2007 to 2016, and in 2013 she was appointed Special Rapporteur for the topic, which may have seemed futuristic at that time, on Protection of the Environment in Relation to Armed Conflicts. Marie Jacobsson had served the legal department of the Ministry of Foreign Affairs in Sweden since 1987 and is an Associate Professor of International Law at the University of Lund.

Second, Ambassador Marja Lehto, who is the Ambassador for International Legal Affairs at the Ministry of Foreign Affairs at Finland, and I am happy to say, is also an Adjunct Professor of International Law at the University of Helsinki. She has been a member of the International Law Commission and the Special Rapporteur for the Topic of Protection of the Environment in Relation to Armed Conflicts from 2017 to 2022. She chaired the Committee of Experts on terrorism at the Council of Europe from 2006 to 2007 and chaired working groups on sanctions and terrorism for the Council of the European Union. While at the Finnish Commission to the U.N., she also chaired for a time the special committee on the Charter of the U.N. and strengthening the role of the organization, in 1999.

At this time may I invite Liliane Haub to come forward, and also invite the President of Pace University and the Dean of Haub Law School, to come forward for the conferring of the Elisabeth Haub Award.

Liliane Haub: I am honored to be here with all of you today to present the Elisabeth Haub Award of Environmental Law and Diplomacy to two remarkable women who have made a notable impact in our collective efforts to protect our world’s environment. The Elisabeth Haub Award for Environmental Law and Diplomacy means a great deal to our family. This award recognizes the innovation, skill, and accomplishments of those who work to sustain and strengthen the world environmental order. We can think of no better tribute to the life and legacy of Elisabeth Haub who worked tirelessly to promote an appreciation of nature and the sound stewardship and sustainable development of natural resources.

Through this award, for more than twenty-five years we have recognized the diplomats, policy makers, lawyers, and activists who have sought to protect our environment through the rule of law, the cooperation of world governments, and the group efforts of advocates across the globe. This mission has never been more important as it is today. With the catastrophic warfare that we have witnessed in recent days in the Middle East and over the past year in the Ukraine, the work of our laureates to protect the environment in times of armed conflict is of the utmost importance.
It is, therefore, my pleasure to officially welcome Ambassadors Marja Lehto and Marie Jacobsson as our 2023 laureates. On behalf of the Haub family, please accept my congratulations on this honor, which recognizes your many contributions to the global conversation on environmental protection. Congratulations!

Nicholas Robinson: Before we have an opportunity to learn about the Principles and hear the views of those who worked so hard to draft them, we have greetings from one of the world’s great scholars and activists on environmental law, Carl Bruch from the Environment Law Institute. He has taped greetings:

Carl Bruch: Marie, Marja, congratulations on this well-earned honor. I so wish I could be there to honor you and your efforts in person. As it is, I am in Kyiv, Ukraine, advancing implementation of the Principles.

I would like to take a few moments to reflect on your accomplishments. The Principles are a landmark development in international law in four important ways.

First, they expanded the sources of international law beyond international humanitarian law to include international environmental law, international criminal law, international human rights law, the law of occupation, and other sources. This was an important revolution in international law. Twenty-five years ago, I remember, there was a vigorous debate about whether international environmental law continued to apply during armed conflict or whether IHL (International Humanitarian Law) was *lex specialis* that excluded ongoing application and relevance of international environmental law. Drawing upon the ILC’s previous work, you integrated these disparate threads into a cohesive body of international law protecting the environment in relation to armed conflict.

That leads me to my second point in relation to armed conflict. That phrase extended the timeline beyond the usual exclusive focus on protection during armed conflict. This was important for many reasons. The environment plays a crucial role before, during, and after conflict. Moreover, there are many complex situations where it is not necessarily clear whether conflict is ongoing, ended, or in a pause.

Third, the integration of international environmental law and other bodies of law enabled the Principles to address non-international armed conflicts. This helps to remedy a longstanding gap in international humanitarian law when it comes to the environment.

And finally, the Principles address both damage to the environment and the wrongful exploitation of natural resources by bringing in pillage and
other aspects of natural resources. The Principles have updated, for our times, the framing of protection of the environment in relation to armed conflict.

Before I sign off, I would like to say a few words about how you went about your task. You were consultative. By engaging a wide range of experts in the process, you built buy-in that helped to ensure their success, relevance, and ongoing use. You were also careful. People asked you to incorporate a lot into the Principles. Your judgment about what was lex lata and what was lex ferenda helped to ensure the legitimacy of your work. And you were committed. You had your regular jobs and no staff for this. Yet you have, through an incredible amount of effort, led the creation of a set of principles that will guide us for generations. You and your work are inspirational. And we owe you a huge debt of gratitude. Thank you, and again, congratulations.

Nicholas Robinson: Carl Bruch has set the stage for posing some questions. He has identified four areas of significance of these new Principles. I invite each of you here today to put on your thinking caps, because we invite your questions and your thoughts. So gestate for now while our laureates ponder several questions, and then I shall be pleased to invite your questions.

It really took nearly a decade to get to this moment. When you began a decade ago, you did not know whether you would get to this moment. It was a big challenge. Yet, today we have 27 agreed Principles. What were the notable challenges that each of you found necessary to cope with as you nudged these along and built them from the existing framework of law that you had to deal with, and how has your experience shaped your personal views of the role of the ILC in this? The ILC’s importance has been larger or less large in different decades. I think the ILC’s contributions to International Law loom very large right now. What are your thoughts of this decade of legal scholarship and codification? Marie, shall we start with you?

Marie Jacobsson: Yes, thank you, Professor Robinson. We agreed, Marja and I, that I should start because I was the first rapporteur.

The challenges really that I faced were of two kinds. One was structure; how to cut the cake in a sense. The other one was related to what topics should be included in the work. But before I comment on that, I would like to say that the initiative in the ILC actually came from a report made under the United Nations Environment Programme, the Environmental Law Institute (Carl Bruch’s Institute), and the ICRC (International Committee of the Red Cross) that met in Nairobi and produced a report in 2009, where they recommended that the ILC should look into the areas of human rights law,
international humanitarian law, and environmental law to see if the environment could have more protection during an armed conflict.7

Now, this is how it ended up with me when I was a member of the ILC. And I thought, to be very honest, I thought this would not fly at all. Because I had experiences from my work at the Ministry for Foreign Affairs during the Iraq-Kuwait War and the discussions in the U.N. when we negotiated resolutions on the environmental consequences of the war. It was really, really hard, and it sort of boiled down to very little, and in the end the interest faded away. But I decided that, okay, there is a request from another U.N. body that the ILC should look at it. (We should always remember that the ILC is a collective body. So even if we are honored with this award, Marja and I, we should not forget our colleagues in the ILC because without them it would not have been possible. I just want to say this.) So, the structure in this 2009 report was that it looked at environmental law, international humanitarian law, and human rights law as separate areas, and I realized quite early that that would not fly in the ILC because of the way the ILC works. And we could have gotten stuck with that topic for two decades, basically, because it would never have ended.

So, the question was really how to cut the cake, and that is when I tested the idea on my colleagues in the ILC of whether it would be possible to look from a different perspective, from a temporal perspective. What are the rules before an armed, during an armed conflict, and after an armed conflict. Also encouraged by the work of some of the topics in the ILC, including the topic Effects of Armed Conflicts on Treaties, where the ILC made very clear that environmental law provisions and human rights provisions do not terminate just because of a war. I mean, treaties continue to apply. That is the message.

So, having had a recognition of this approach (the temporal approach) what were the challenges? Well, they were quite a few, I must say. At first, it was the issue of how to deal with all the provisions related to the laws of armed conflict, because everybody knows that the revision of armed conflict provisions requires a different forum than the ILC. So, in essence, the law of armed conflict, I had to promise that I am not going to touch the laws of armed conflicts. The second issue was nuclear weapons. And I have had to promise several colleagues and states I am not going to mention nuclear weapons at all. I am not going to mention nuclear weapons. And the third was of course the non-international armed conflict. Would that be covered?

We had also the issue of the reprisals. That was a very, very tricky one to get into the first draft principles. And, of course, the definition of “environment.” And I am sure that Marja will talk about that a little bit. But also, I had to leave out shared natural resources, occupation, and the Martens clause.8 We could not even address them because we did not have the time either. The number of substantive matters that I had to leave out just to save what we could have in the topic are now, as you see, in the Principles, thanks to Marja. And I will leave the second question.

Marja Lehto: Thank you. I think there is a general challenge that both of us encountered, and that is a challenge that is related to the wide discrepancy between the need for environmental protection in war-torn areas on the one hand and limitations on how this need has been addressed in international law on the other. You can also say that this was a conflict between expectations and what was possible in practice.

Protection of the environment in armed conflicts had been a marginal issue in the context of the law of armed conflict, and it had been largely ignored in international environmental law. You had the Rio Declaration, of course. But there had not been much in the way of follow-up to the relevant principles in the Rio Declaration. When I took over the task of being Special Rapporteur in 2017—and I think this is important to mention—I was able to benefit from the considerable amount of work that had already been done. For instance, the basic frame of the topic, including a temporal scope extending to the entire conflict life cycle, had been already endorsed by the commission and by States in the General Assembly. At the same time, the substantive priorities that remained to be done, those were quite complex issues and posed their own challenges. As Marie already mentioned, they included protection of the environment in situations of occupation, issues of responsibility and liability, overall application of the Principles to non-international armed conflicts, and complementarity with other relevant branches of international law.

Then I should say that there was a further challenge related to the general understanding that the Topic should be brought to conclusion within the same quinquennium. But what happened in practice was that the five-year term was extended to six years, due to the COVID-19 pandemic. This gave, actually, some more time for reflection, I would say, both to the Special Rapporteur and the commission as a whole. And to the States. And in the end, it was beneficial to the topic.

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8. See infra note 21.
You mentioned, Nick, the battles within the commission. Obviously, it was always a challenge to convince the other members of the commission of what was proposed, but that is part of the collegial process. You have to have better arguments than those who object to your proposals.

And maybe I will also come to the second question after you.

Nicholas Robinson: Perhaps before the next question, may I ask Professor Nilufer Oral, as the chair observing and shepherding some of these ILC deliberations forward, how has this affected your view of the ILC, to have this singular success today?

Nilufer Oral: Thank you very much, Nick. And may I say what a tremendous honor it is for me to be part of this very important celebration of two outstanding women, dear colleagues, and friends and of their work, which really is truly remarkable. And I have said this to them, and I say it with all sincerity: In my view, I think this is one of the most important outcomes from the commission, the work that they have done. And, yes, it is the work of the commission as well, but I am going to actually touch upon something that Marja was saying. Without strong leadership in the commission—and that is what Marie and Marja brought. I am a witness, because in the commission we have some very, very rigorous debates, and you really have to be in complete control and have a deep knowledge and commitment to your Topic, which both of them had. You have to be quite formidable to end up with the high-quality product that we do have in my view. So, I did not shepherd any of this really, but I hope that I did give some support to it. But I can say as someone who has been in the commission now for a number of years, it is not an easy feat at all, so this award is well deserved.

Nicholas Robinson: Looking at it from the outside, at a time in which some people think it is hard to get disparate interests to agree on anything, it really is quite extraordinary that you both succeeded in pulling together a consensus out of the diverse juridical views that are represented on the commission. Do you have personal thoughts about how that should shape the commission’s work in the future?

Marja Lehto: Yes, and I am happy to come back to your question about the mandate of the commission. Actually, I think that the commission’s mandate of progressive development and codification of international law is quite good. It is restricted, but I believe it is consistent with the need for close cooperation, close consultation, and interaction with States, which is also required of the commission. It means that the commission cannot have
the same liberty as academic scholars. It cannot be too innovative, and it certainly cannot be out of touch with the existing State practice. But I think this is something that ensures meaningful dialogue with states, and it is important. And I am also quite optimistic regarding the future prospects of the commission.

**Marie Jacobsson:** Yes, I agree. I have a very positive view on the prospects of the commission. I mean, those who used to argue that the golden age of the commission is over because everything is already treaty-based, they are posing the wrong question, and they have the wrong assumption. Because what we have seen in the last quinquennium of the commission, we have seen how the commission has opened up to cooperate more closely with expert bodies, with individuals, and even with NGOs which, when I started in 2007, was not really that easy. But it turns out, in a Topic like the one that Marja and I have worked with, we have been highly dependent on close cooperation with those of the ICRC and the knowledge of newly established NGOs and organizations like the Environmental Law Institute, the Conflict and Environmental Observatory, and also of individual colleagues who we have met—and we have some here in the audience today—that have helped us to develop thoughts and ideas, and many colleagues with an enormous amount of practical experience. I think this is a reflection of the need of international law that the commission, in its working methods, has adapted to. And we see that also now in your quinquennium, Nilufer, with your collective approach to the topic on sea level rise. It would not have been possible when I started. So, this shows the flexibility and an adaption to need.

**Nicholas Robinson:** One of the innovations that you brought forward is in Principle 2, emphasizing that measures to prevent, mitigate, and remediate harm to the environment are to apply in the entire cycle of an armed conflict. You have added the “s” to “conflicts,” and you have not repeated “before, during, and after.” You indicated that this text reflected a willingness of States to allow that temporal debate to go forward and find principles that could help shape behavior. How do you see that as a development in the text, and how was this provision negotiated?

**Marie Jacobsson:** So, I think that we should recall that the environment is not an insulated silo. I mean, environment does not stop at a certain time. The environment is there all the time. It would have been impossible to just focus on one temporal area. And I also think that we must not forget that the focus and the aim of the Principles is to enhance the protection of the
environment in relation to armed conflicts. It is an emphasis that there is already a body of law there. But how can we use that body of law to enhance protection that exists and how can we develop that? And I think that the general awareness among States and the international community has increased enormously of the consequences (for the environment).

You mentioned Ukraine, you mentioned Gaza. This would not have been possible if we had not had the engagement from various actors: the media, pictures are there, you cannot hide from what is happening anymore. You cannot simply say this is okay, because this is war. You can look at what Ukraine has done and is doing now, namely, in the midst of the conflict for the first time ever registering the environmental destruction when the war is ongoing.

Marja Lehto: Thank you. I would like to add the temporal scope extending from the time before to during armed conflict and after armed conflict and including situations of occupation – it is a defining feature of the Topic. And I think it reflects first, the experience of modern conflicts. They are often non-international in nature, maybe with external involvement, and do not have a clear end.

The other aspect—and you mentioned this, Marie—is that there was a recognition that protection of the environment has to be continuous: from the time before the conflict throughout the conflict and in post conflict situations.

There are also quite important practical aspects to the temporal scope when you think of the Topic as a whole. First, because we have this temporal scope, it means that the Topic could not only focus on the law of armed conflict but had to take into account other areas of international law. Second, it meant that the Topic does not only focus on the obligations of the warring parties but has also sought to clarify what obligations other non-belligerent states may have. And what they could and should do to enhance environmental protection in relation to armed conflicts. And third, the temporal scope has also directed the commission to identify environmental problems that are cross-cutting through the different phases of the conflict cycle. Two notable examples of such cross-cutting issues are, first, the illegal and unsustainable exploitation of natural resources and second, issues of responsibility and remediation. Both these issue areas are addressed in several principles.

Nicholas Robinson: The teaching about these Principles, now that they exist, is going to be tremendously important. We have many law students and many early career lawyers here in the hall and also via the internet online.
What would you say to them about what they should do with these Principles now that they are agreed? Do we lawyers have some obligations?

As a footnote, may I note that many of my students at Pace worked with me and others to draft and complete the United Nations Environment Programme’s Training Manual on International Environmental Law. We prepared a chapter on armed conflict and the environment, and it was not allowed to be published. Here we are twenty years later, and some of the law, which we were hoping to publish, has been superseded by the Principles we celebrate today.

So, it is a marathon to carry on this race to clarify International Law in its environmental dimensions. What would you advise all of us to do in universities to address this, now that you have accomplished your tasks?

Marja Lehto: Thank you. Certainly universities, professors could encourage research on issues related to the protection of the environment in relation to armed conflicts. And it seems to me that this is already happening, whether or not triggered by the ILC work. There is much more legal research than before on conflicts and the environment and different aspects of this broad topic including, for instance, rights of animals in armed conflict. And I think it is telling that when the International Review of the Red Cross launched a call for papers last year in view of the upcoming special issue on protection of the environment and armed conflicts, it received more than 140 abstracts from all over the world. So, if this has been a marginal issue, maybe at the time when we began, when the work began in the commission, it has clearly become more mainstream.

Marie Jacobsson: Yes, and I think that is very correct to say. It is mainstream today, and the amount of work that is done is impressive. But it is also important that the work that is done at university reaches the politicians and the decision makers, so it does not stay within the university. It should be disseminated. You can still keep the academic integrity, I think. I think that if there is any sort of advice, which is not really academic: Please, do not be too romantic about the implementation of this. Because if you are too romantic, you are going to be disappointed. And if you are disappointed, there is the risk that you become cynical and put the topic aside. Don’t. Keep up your engagement and be realistic but continue to disseminate and research.

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Nicholas Robinson: One of the important aspects of this set of Principles is to draw on perhaps what ecology is teaching us about the biosphere. You have used the word “environment” rather than “natural environment,” which many humanitarian law instruments refer to. Does this choice of word mean something?

Marja Lehto: Maybe I can shed some light on the use of terms in the context of the Principles.

The term “environment” has been used right from the beginning in most of the Principles. But the term “natural environment” was used until the second reading in those Provisions that draw from Additional Protocol One, because this is the term used in Additional Protocol One.\(^\text{10}\)

In 2019 the commission indicated that it would reconsider the use of terms at the time of second reading. And then several states and international organizations — because we invited not only states but also international organizations and other stakeholders to send in written comments — and the great majority of them expressed their view and preferred the term “environment.” It was pointed out, for instance, that the term “environment” reflected better the developments in the international law in this area since the adoption of the Additional Protocols in 1977.\(^\text{11}\) It was said that it would be consistent with the broad approach that the commission had decided to take on the Topic. References were also made to changes in the scientific understanding of the environment. And it was pointed out that environmental issues were not limited to the natural environment, but also included human rights, sustainability and cultural heritage. The concept of “natural environment” was seen as outdated. These are only few comments that were made. And the commission therefore—and this had been my proposal already in 2019—decided to use the term “environment” throughout the Principles.

And as you ask what this means, whether it does have consequences, I should add that the relevant commentary includes a safeguard clause.\(^\text{12}\) According to it, the fact that the Principles refer consistently to the environment in line with the established terminology of the international environmental law, the commentary says this should not be understood as altering the scope of the law of armed conflict or the notion of “natural

\(^{10}\) Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, art. 55, 1125 U.N.T.S. 3 [hereinafter Additional Protocols].

\(^{11}\) Id.


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environment” as it is used in that law, especially Additional Protocol One. And let me add that the difference is not necessarily that wide. The ICRC, in its updated Guidelines on the Protection of the Natural Environment in Armed Conflict, points out that the concept of “natural environment” should be understood in the widest sense possible.

Marie Jacobsson: For me, when we had a discussion when the work started, this was a very, very tricky question, and the views were not as mature as the ones that Marja just described. There was a very, very strong resistance in the U.N. Sixth Committee, and also among some members of the commission, to use “environment” without any qualification due to the laws of armed conflict provisions. So, this is why, as a compromise—and this was also tough to include—it was in the first suggestions to draft from the drafting committee. We, the commission that I was a member of, decided to use “natural environment,” the term from the laws of armed conflict, in the section that dealt with the timeframe of during armed conflict.

But it was really a good example that the international community, States, and also members of the commission, as times change, they have come to a different understanding that we cannot have this distinction. We needed a different view on it. And I can say that this was an issue that could have hindered our entire project when I was on the commission. It was so sensitive. So yes, I just put it aside.

Marja Lehto: If I may add, I think this was a very important point that shows that there has been a learning process during the ten years that the Principles have been in the making, a learning process within the commission and within the broader international community.

Nicholas Robinson: The broader international community, as reflected in IUCN’s World Commission on Protected Areas, was very pleased when you added Principle 18. The Principle focuses on the protection of protected areas that are already designated as wildlife sanctuaries and national parks, and the like. Part of the popular enthusiasm of states for protecting the environment, which we see in the 2022 Kunming-Montreal Global Biodiversity Framework of the Convention on Biological Diversity, calls for States to

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13. Id.
protect thirty percent of the biosphere of the planet by 2030. What do you think the implications are for Principle 18 and the duty of States with respect to this prospect that maybe a third of the planet will be off limits?

**Marja Lehto:** Principle 18 is, of course, closely related to Principle 4, which concerns designation of protective zones. The two Principles are the latest addition to, I would say, a series of proposals concerning area-based environmental protection in armed conflict. The earlier ones include a proposal that was discussed already in the negotiations on the two Additional Protocols to the Geneva Conventions in the 70s, the IUCN draft convention, and the San Remo Manual on Armed Conflict at Sea. And there are more recent examples: a proposal contained in the ICRC guidelines I mentioned earlier, its call for designating areas of particular importance or fragility as the militarized zones. And one proposal was quite recently made by the U.N. Secretary General. The proposal that was made in the negotiations of the Additional Protocols in the latter half of the 70s did not make its way to Additional Protocol One.

And there were specific problems that were highlighted, reasons for leaving it out. These problems were related, first, to the difficulty of identifying the selection criteria. Second, the perceived lack of objectivity in the designation and the risk of abuse was seen as a problem. And third, there were questions about how it could be secured that the designation of the selected area is respected. I think it can be said that two of these three problems, those regarding the criteria and the problem of objectivity of designation, have now largely been overcome exactly because there are widely ratified environmental agreements that provide for area-based protection.

What is left is the question of respect in times of armed conflict. And Principle 18 envisages exactly this situation. Principle 18 provides that the zone that is designated by agreement shall be protected against any attack, except insofar as it contains a military objective. Whether such a designated area will remain protected in armed conflict will also depend on the agreement concerning its establishment. Ideally, there should be measures of active protection. There should be provisions concerning measures that

17. See Additional Protocols, supra note 10.
reduce the likelihood that the zone would be affected by military operations. Much work remains to be done to implement this Principle, but it gives a certain basis for States to do so.

**Marie Jacobsson:** I think that the Principles as they now look, in their final form, have really developed the thoughts that were in earlier suggestions, but which were not, at the time, ripe to be formulated in the most strict way as they are now.

Just to have a reference to a protected area, was a difficult suggestion and a difficult issue to handle because, again, we have a question of “who would do this?” It was like establishing a zone in an international water area. How do you do that? How do you respect it? We know that the law of armed conflicts is very clear on what can be done, but it does not really protect. But now we have a clear signal that the parties that are engaged in an armed conflict will have to take this possibility into account, but also that States are encouraged to consider: Are there any areas to be protected in advance of an armed conflict or when there is no conflict? So that is really a development.

**Nicholas Robinson:** One of the great successes, in my opinion, of the Principles is including in Principle 12 a “Martens Clause for the environment.”

Principle 12 provides that, “in cases not covered by international agreements, the environment remains under the protection and authority of the principles of international law derived from custom principles, from the principles of humanity and from the dictates of the public conscience.” There are many aspects of the Biosphere not yet subject to international environmental law safeguards.

The public conscience, as everyone has said on this panel, is clearly evolving. Professor Oral, as the ILC Chair, you have introduced some of these

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21. The original “Martens Clause” appeared in 1899 Hague Convention and read:

> Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience.

Hague Convention (II) with Respect to the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land, July 29, 1899, 32 Stat. 1803, 187 C.T.S. 429. The Martens Clause ensures that conduct in situations of armed conflict is subject to basic and customary principles of international law even if not explicitly governed by an international agreement.

new topics apparent from this Anthropocene Era that we are in today, such as the ILC’s deliberations on sea level rise. Do you have thoughts about where this ecological Martens Clause should go?

**Nilufer Oral:** Well, first of all, I should say that it was also an important success because as both Marja and Marie have indicated, not all members of the commission necessarily embrace these concepts being extended into the environment. And in this case, there was a debate, and it did happen and indeed it is an important part of the Principles. Where could they apply? Hopefully there will not be armed conflict with sea level rise, sea level rise alone already is challenging. But certainly, it is a great protective device, I think. So here we know that even where there is not specific codification that there will be protection of the environment. And I think this is a very important development.

I just wanted to add too that I think just looking at that ten-year trajectory and seeing how it evolved and that, it is true, we would not have had these Principles at the beginning, so sometimes certain things have to, shall we say, be brewed over time so that people can understand. And I think that is for States as well, not just members of the commission. So clearly, including the Martens Clause for the environment in the Principles, the time had come.

I do not know if I answered your question exactly.

**Nicholas Robinson:** Wonderful answer. But now our audience has had time to think about their questions. Do any of you have questions you want to pose? Certainly, the conscience of mankind and the Martens Clause should be triggering some thoughts. What do you want to see these Principles develop into, or do you have any questions?

**Audience Question 1:** How would you grade the different Principles that you have had adopted with regard to the future prospects for an effective implementation.

**Marie Jacobsson:** I will try to give my view on that.

I think that one of the things that I learned when I was a Special Rapporteur was not grading the importance of the Principles because the situation is not static. So, what was not accepted as a recognition of law, of a binding rule ten, fifteen years ago may be recognized as a rule now. We have an enormous amount of case law, we have numerous resolutions adopted in the General Assembly, and also new developments within the field of treaty law: biodiversity, for example. So, I think I would be reluctant to grade
the Principles because you cannot freeze customary international law, for example. It develops. What was not customary law twenty years back, might have developed into customary law now.

So, I think that I would be reluctant to map them in different categories.

Marja Lehto: I fully agree with Marie’s point. Many of the Principles reflect existing customary rules—it might be more than one third—which have been interpreted in light of subsequent developments in international law. And there are, of course, principles that have to be seen as proposals for progressive development of international law. But as you said, what they now classify as progressive development might become firm law in a decade’s time or even sooner.

One example, a proposal concerning the protection of the lands and territories of the Indigenous peoples. It was seen as a recommendation when it was adopted in first reading and used the term “should.” But then the commission agreed that, in light of the legal developments, it should be written in a prescriptive form. And that was the final outcome.

Let me add just one additional aspect. Given that the Principles and commentaries have been prepared very much in consultation with States and international organizations, it can be hoped that these end users will find them useful and take steps to consult them in their practice.

Audience Question 2: I am delighted to have the opportunity to congratulate two women who are amongst those I admire most for the work that you have done. Richly deserved. So, taking the trend of this conversation one step further, do you have hopes or would you advise that the Principles might be introduced into rules of engagement or military handbooks? Are there ways that you could imagine them being applied in the current conflicts that we are looking at? Would you even like to see journalists just talk about them in an editorial tomorrow in the newspaper?

Marja Lehto: You mentioned current conflicts. If I may take an example of the ongoing armed conflict in Ukraine, I believe the Principles are quite relevant. If we only focus on the provisions concerning situations of occupation, taking into account that Russia has been occupying the Peninsula of Crimea for eight years or more and is now occupying large parts of the eastern Ukraine, the Principles identify a number of legal obligations that an occupying power has towards the occupied population, the occupied State, and other States. I believe these are quite relevant in the context of the war in Ukraine, and also taking into account recent jurisprudence by the International Court of Justice, which has clarified, in an important way, the
responsibility of an aggressor state,\textsuperscript{23} as well as the special responsibility of an occupying power.\textsuperscript{24} And also the compensability of environmental damage including damage to the environment in and of itself, meaning pure environmental damage. All this is reflected both in the Principles and in the commentaries, and I think it is most relevant when we think of where we go from this situation in Ukraine.

\textbf{Marie Jacobsson:} Thank you for that question. I think that, about the rules of engagement, I would certainly hope so. I think that there is a misunderstanding among many individuals that Principles like this are not included in rules of engagement. I had an opportunity to work closely with several States when I worked on the ‘applicability during armed conflict.’ To my great surprise, I found that you already have quite a few rules of engagement, instructions, or guidelines, because if it is a decent party to an armed conflict, they know that they would benefit themselves from proper rules of engagement that take this into account.

What I would say also about the role of the Principles, I very much would like to stress the post-conflict phase, which we forgot to talk about perhaps a little bit earlier. Because we have today a recognition — if you look at Ukraine, for example — of the fact that what we are talking about are environmental crimes of which some might be war crimes, some might be just plain environmental crimes. There is a liability. There is an accountability. And you can see that also in the Principles, which include also the post-conflict phase and the rebuilding of a society that is war-torn, as Marja referred to in one of her initial comments.

We also need to know that the international community has a responsibility and so have international organizations, because this has transboundary effects. It is not only a question for warring parties. And this is also, for example, why we had such an engagement at an early stage from the Pacific Island States. They were affected from the effects of the Second World War in their area by activities that were not necessarily illegal at all, but it affects their territory and their environment now. And we cannot simply say, well, this was not illegal, so we can skip it. The international


community has to step in. So, this is also foreseen in the Principles, and I think that is very important.

**Audience Question 3:** Thank you so much for the panel discussion. You have discussed the temporal scope of applying the Principles. With respect to the personal scope of the Principles, while they are predominantly addressed to states, they also cover others, such as non-state actors and international organizations, and, if I remember correctly, even corporations. So, could you share your thoughts on why these others were included?

**Marja Lehto:** Thank you. The Principles generally do not make a distinction between international armed conflicts and non-international armed conflicts. Generally, I said, because there are some areas that only apply to international armed conflicts, for instance, the Principles applicable in situations of occupation, because that concept is not, so far, legally recognized in non-international armed conflicts. But then there are many Principles that have particular relevance for non-international armed conflicts. And we have also — in the context of the second reading — extended the personal scope of some of the Principles to cover other relevant actors including non-state groups and de facto authorities, taking into account that it has been a common feature in many recent conflicts that non-state actors have exercised control over people and territories, sometimes for a very long time.

You also mentioned, corporations. There are two Principles regarding due diligence of business enterprises and liability of business enterprises. But actually, these Principles are addressed to States. States are requested to take legislative and other measures to make sure that business enterprises, when they operate in conflict-affected areas, exercise due diligence and can be held liable if they cause environmental damage. But there are many other examples of Principles that are addressed also to international organizations and other actors in addition to States.

**Audience Question 4:** Thank you for your presentations and for your contribution in such an important area of the law. This question is from Professor Edith Brown Weiss, attending online. What issues will artificial intelligence raise for the content of and implementation of the Principles? Should we be concerned? Thank you.

**Nicholas Robinson:** Professor Edith Brown Weiss, a former Haub laureate, has always challenged us to look into the future, and now poses one of the biggest questions of the present. Do you see a role for AI in these Principles?
Marja Lehto: Maybe in the implementation of the Principles. Why not? We have seen how new technologies have really changed how environmental damage can be documented. There are many innovative ways to do it from satellite imagery to crowd sourcing in a way, public participation. I am not an expert of artificial intelligence, but I would think that an ability to deal with information — great masses of information — could certainly be useful in the implementation of the Principles.

Nicholas Robinson: Well, I think generative AI needs to be programmed with algorithms that are going to advance these Principles. How we get to the algorithm writers is going to be the next challenge. Nilufer, do you have a comment?

Nilufer Oral: I just wanted to add something just to inform that some months ago, the elders in a statement of concern about AI, actually recommended that the ILC take up the issue of AI. So, if that ever happens, perhaps we could include armed conflict in that.

Nicholas Robinson: Professor Edith Brown Weiss has raised a very provocative way for us to end our formal discussion, but this final challenge will stimulate the further informal discussion at the reception honoring the laureates now, and in our scholarly and professional studies of the Principles in the future.