Of Warming and Warzones

The Legal Status of Military Emissions in the ICJ's Climate Opinion

Eva Baudichau

08.08.2025 doi: 10.59704/ca99ffd63031501e

Military activities and armed conflicts are a growing climate liability. Along with thousands of deaths, twelve months of war in Ukraine resulted in around 120 million tons of greenhouse gas (GHG) emissions – matching Belgium's emissions over the same period. The climate footprint of the first fifteen months of Israel's war on Gaza exceeds the annual emissions of numerous individual countries – compounding the global climate crisis alongside the devastating human cost. But wartime emissions remain largely unaccounted for; they were exempt from reporting under the Kyoto Protocol, and then left to States' discretion under the Paris Agreement. As of 2022, such emissions made up an estimated 5,5 % of global emissions – enough for "the military" to be the world's fourth-largest emitter. More broadly, armed conflicts are highly destructive of the environment, including carbon sinks and climate-critical ecosystems, and thereby undermine climate change mitigation and adaptation efforts.

With this in mind, I approached the International Court of Justice's (ICJ) climate change advisory opinion with a "ctrl+F" of the words "military" and "armed conflict". The lack of results did not come as a surprise, but it did come with a tinge of disappointment. Despite mounting attention to the impacts of military activities and conflicts on climate mitigation and adaptation in recent years, the issue remains largely absent from international legal scrutiny. Therefore, the very fact that several States and organizations raised it during the advisory proceedings held last December left the few scholars and practitioners working on this issue hopeful.

This post reviews how the issue of armed conflicts and military emissions was addressed during the ICJ advisory proceedings. Despite the ICJ's silence, the post highlights a few interpretative openings that may have legal implications for the regulation of wartime climate harms and explores what the ICJ's ruling means for the legal visibility and accountability of military emissions.

Climate and Conflict: What Did the Participants Say?

In the 91 written statements submitted to the ICJ, and during the two weeks of hearings held in December 2024, references to armed conflicts and military emissions were few and far between. For the most part, the topic was alluded to in discussions about how climate change exacerbates the risks of conflict and insecurity (see, for instance, here, here, here, and here). A small number of participants in the proceedings acknowledged that war itself contributes to harming the climate system and exacerbates the vulnerability of populations most affected by climate change. Among them were statements by Mexico, the Bahamas, the Democratic Republic of Congo (DRC), Colombia, and Palestine.

Colombia's written statement dedicated several pages to the mutually reinforcing relationship between environmental degradation and conflict. It highlighted some national legal innovations, including the recognition by Colombia's Special Jurisdiction for Peace (JEP) of territory as a victim of armed conflict (para. 2.42). Still, Colombia's statement remained largely descriptive, with only vague legal recommendations, such as adopting effective measures to mitigate the detrimental effects of conflicts on biodiversity conservation efforts (para. 2.35). The DRC's submission was slightly more grounded normatively. Building on States' due diligence obligations under international environmental law, the DRC underscored the incompatibility of military activities and armed conflicts

with the objectives of mitigating GHG emissions that States have set (para. 142). It further emphasized that due diligence – as a central part of States' climate obligations – is also embedded in international humanitarian law (IHL) and extends to the protection of the environment. Hence, it is "due in times of peace and in times of war" (para. 146).

The most comprehensive legal *exposé* on this issue came from Palestine. It argued that international law imposes binding obligations on States to prevent harm to the environment, including the climate system, from GHG emissions – even when the harm results from armed conflicts and military activities. It highlighted the customary obligation to prevent significant transboundary harm and its relevance to the issue at hand. In this regard, Palestine contended that States must exercise a stringent level of due diligence in controlling all GHG emissions, including emissions from armed conflicts and other military activities (CR 2024/46, para. 7).

Palestine also underscored the relevance of IHL in addressing the environmental impacts of armed conflicts; in particular, Article 35(3) of Additional Protocol I to the Geneva Conventions, which prohibits methods or means of warfare expected to cause widespread, long-term, and severe environmental damage (*ibid.*, para. 8). Palestine also relied on the International Law Commission's 2022 Principles on the Protection of the Environment in Relation to Armed Conflicts (PERAC Principles, also mentioned in Mauritius' statement), and notably Principle 13, which affirms that the environment must be respected and protected during armed conflicts (*ibid.*, paras. 10-12). Palestine called on the ICJ to recognize the environment, in particular carbon sinks and reservoirs, as civilian objects under IHL and to clarify "that the rules of distinction, proportionality and precaution apply to armed conflicts and other military activities that generate GHG emissions and contribute to climate change" (*ibid.*, para. 16). With respect to occupation, Palestine referred to Principle 19 of the PERAC Principles, which requires occupying powers to take measures to prevent significant environmental harm, and argued this obligation applies equally to activities significantly contributing to GHG emissions (*ibid.*, para. 17). Palestine also contended that all such emissions should be included in States' reporting obligations under the United Nations Framework Convention on Climate Change (UNFCCC). Finally, Palestine concluded by claiming that States failing to exert the appropriate level of due diligence to control and reduce GHG emissions, including wartime and military emissions, should be held internationally responsible (*ibid.*, para. 20).

The Elephant in the Room: Climate, War, and the Military Emissions Gap

Despite Palestine urging the ICJ to clarify States' climate obligations in relation to armed conflicts and military activities (*ibid.*, para. 11), the Court did not directly touch upon the issue. The broader context of the advisory request—in particular the Secretariat-General's 2009 report – recognized that climate change may have security implications, including the risk of internal conflict (para. 67). However, the flipside of how conflict fuels climate harm was not addressed in the request to the ICJ, nor in the advisory opinion it issued. Still, three aspects of the opinion offer potential interpretative openings for engaging with this overlooked dimension.

First, concluding on the most directly relevant law for the first question put before it, the ICJ recognized in passing that rules of IHL could also be relevant in the climate change context (para. 173) – a connection increasingly explored in scholarly work (including here, here, here, and here). Falling far short of Palestine's call for legal clarification, this nevertheless gives an indication that situations of armed conflicts – triggering the applicability of IHL – are (or at least should be) concerned with climate change.

Second, the ICJ's broader discussion of the *lex specialis* principle sheds light on how overlapping legal regimes interact with each other in practice. Although not tied to IHL, the advisory opinion reiterated the view that the applicability of rules from one legal regime does not necessarily displace rules of another, unless displacement is expressly intended or the two are clearly incompatible. In this regard, the ICJ found

that treaty obligations on climate change do not contain language suggesting they override other rules and principles of international law that may be relevant to defining states' climate obligations, and therefore do not trigger the *lex specialis* principle (paras. 168-169). If, in times of armed conflict, IHL is often broadly (and sometimes generically) referred to as a "lex specialis" in relation to other rules and principles of international law, the ICJ's reasoning reminds us that just because a set of rules was specifically designed to apply in certain settings does not mean it automatically displaces other rules. Rules should "to the extent possible, be interpreted so as to give rise to a single set of compatible obligations" (para. 165) and the appreciation of whether, in certain circumstances, a *lex specialis* takes precedence over another rule of international law must be done on a case-by-case basis (para. 166). Provided climate change obligations continue to apply in wartime (see the ILC's 2011 Articles, and arguments in this sense here or here), they would not be displaced unless there is a direct conflict with IHL rules – but they might need to be adjusted to wartime conditions. Most climate-related obligations – such as those to reduce GHG emissions, implement adaptation actions, or adopt measures for the conservation and sustainable use of biodiversity – are obligations of conduct rather than result, allowing flexibility in how states fulfill them, even during war. Their inherently qualified nature (e.g., requiring appropriate measures, or action "as far as possible") allows wartime conditions to shape implementation. However, in certain circumstances, an IHL rule (such as the permissibility of damaging civilian objects, including parts of the environment) may conflict with a climate-related obligation (such as the duty to prevent significant environmental harm) in such a way that it would temporarily prevail over the latter. Of course, these are complex and unsettled questions on which clarification from the Court (although unlikely) would have been most welcome.

Three, the ICJ's broad language in paragraph 94, in which it says that it will consider "the full range of human activities that contribute to climate change as a result of the emission of GHGs" in the material scope of its inquiry, leaves room to include conflict-related and military emissions within the States' climate obligations. Interestingly, this interpretation was put forward by Judge Cleveland, whose declaration takes the view that, given the GHG emissions' from wartime and other military activities, "a comprehensive approach to evaluating and mitigating harms to the climate system arising within a State's jurisdiction or control requires taking such activities into account" (para. 18). As Cleveland proposes, this would notably involve starting to account for wartime emissions in national inventories of anthropogenic emissions under Article 4(1)*(a)* of the UNFCCC and in the context of Nationally Determined Contributions (NDCs) under Article 4 of the Paris Agreement. Climate change obligations, and the stringent standard of due diligence set out by the Court, would require taking adequate measures with a view to decarbonizing military operations, including by minimizing military spending on carbon-intensive activities and equipment. What is more, as others have argued, the obligation under Article 5 of the Paris Agreement to "take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases …, including forests" would take on great importance for climate protection in times of armed conflict. Judge Cleveland's declaration seems to support this point (para. 18).

If the customary international obligation to prevent climate harm requires States to exercise stringent due diligence (para. 138), this standard can be shaped or tempered by a State's national circumstances, as set out in the ICJ's advisory opinion (paras. 247). While this standard could provide flexibility to States in relation to wartime and military emissions in light of their national security context, it does not grant *carte blanche* for doing nothing. On the contrary, this stringent standard of due diligence could also imply heightened duties for States with large, carbon-intensive militaries and the institutional capacity to decarbonize them.

Concluding Remarks: Connected Crises, Disconnected Opinions?

While the ICJ may not have lifted the legal invisibility cloak on wartime GHG emissions, it did leave us with these small threads to pull on. Interestingly, this is the second time in a year that the ICJ has been confronted with the entanglement of armed conflicts and environmental issues. In its 2024 advisory opinion regarding the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, the ICJ dealt – albeit minimally – with the ecological dimensions of the Israeli occupation. It found that an occupying power has an obligation to care for the environment, in particular in its exploitation of natural resources. Incidentally endorsing the ILC's PERAC Principles mentioned above, the ICJ asserted that "the use of natural resources in the occupied territory must be sustainable, and it must avoid environmental harm" (para. 124). Arguably, and although not addressed by the ICJ, the sustainable use of natural resources by an occupying power also needs to be informed by the broader context of the climate crisis, considering how it impacts availability and compounds the adaptive vulnerability of resources.

The ICJ's silence on the climate impacts of armed conflicts and military activities in its 2025 opinion likely reflects judicial caution in the face of a politically sensitive subject. It is not the first time the ICJ has erred on the side of prudence when it comes to balancing environmental considerations and security-related arguments. Alternatively, despite the few submissions addressing this intricate issue, the ICJ may have viewed it as insufficiently developed or irrelevant in light of everything else on the agenda. No matter the reason, this restraint comes with a cost. It leaves unresolved an accountability gap in climate governance at a time when military spending and operations are intensifying environmental harm.

Although it would have been groundbreaking for the ICJ to acknowledge the threat of armed conflicts and military activities for the climate system, one can only concede the ICJ's limited role in relation to a global crisis which, in its own words, "requires human will and wisdom—at the individual, social and political levels." Unfortunately, as Judge Tladi rightly noted:

> *"[t]he truth is that what you invest in reveals what you value. Currently, based on reported military spending compared to spending on other issues of international concern, such as the environment and global poverty, it seems that those who are in a position of authority value war over the plight of humanity and the future of the planet." (para. 38)*

To begin redressing this imbalance, States must treat armed conflicts and military activities as part of the climate crisis, not apart from it. Governing bodies under environmental treaties, whose authoritative interpretive role the ICJ highlighted in its opinion (para. 184), should bear a particular responsibility to develop guidance, standards, and expectations around military emissions. The time to act on this blind spot is long overdue.

ABOUT THE AUTHOR

Eva Baudichau

Eva Baudichau is a PhD candidate with the Grotius Centre for International Legal Studies, where she researches how Multilateral Environmental Agreements can contribute to conflict-sensitive conservation efforts.

SUGGESTED CITATION

Baudichau, Eva: Of Warming and Warzones: The Legal Status of Military Emissions in the ICJ's Climate Opinion, Verfassungsblog, 08.08.2025, doi: 10.59704/ca99ffd63031501e.

Licensed under CC BY-SA 4.0.

Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20250808-122523-0.