



The protection in International Law of the Marine Biodiversity in Post-Conflict

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Introduction

- ▶ Environment as “**the silent victim of the warfare**”
- ▶ **Environment** and natural resources often the **cause of armed conflict**
- ▶ Armed conflict may have **long-lasting effects on marine environment**
- ▶ UN International Law Commission (ILC) – topic “**The protection of environment in relation to armed conflict**”
- ▶ Focus on **remnants of war at sea** (i.e. chemical munitions dumped at the sea or sunken ships)
- ▶ Analyze **existing IL to protect marine biodiversity in post-conflict** and determine who should have primary responsibility to carry out this protection and restore the damage cause by armed conflict

Remnants of war



Armed conflict has impact on natural environment:

Direct result of means and methods of warfare

Direct consequence of hostilities



There are few legal rules that regulate environmental consequences of AC → the most developed ones are in the context of **Explosive Remnants of War**



There is **no legal definition** of “remnants of war”



Some refer to them as “**Toxic Remnants of War**”



Examples

- ▶ Sea-dumped chemical munitions after I and II World War
- ▶ The use of Agent Orange for defoliation purposes in Viet Nam war
- ▶ Igniting of oil wells in Kuwait by the retreating Iraqi armed forces in 1991
- ▶ The use of depleted uranium ammunition in Kosovo by the NATO in 1999

Threats of Chemical weapons on the seabed



Can self-detonate without warning



Human activities (fishing, dredging and pipe laying) in areas with dumped chemical weapons agents may result in human exposed to CW agents

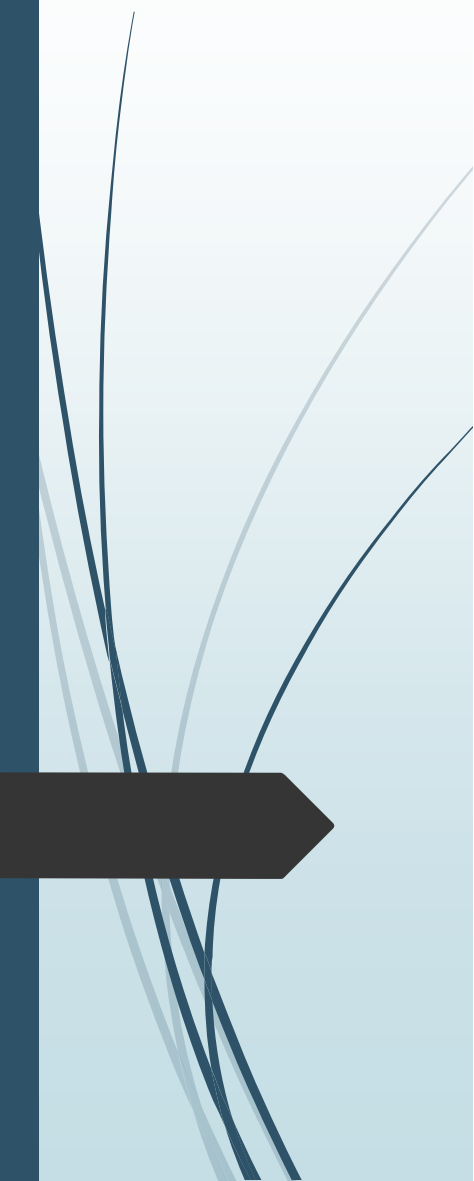
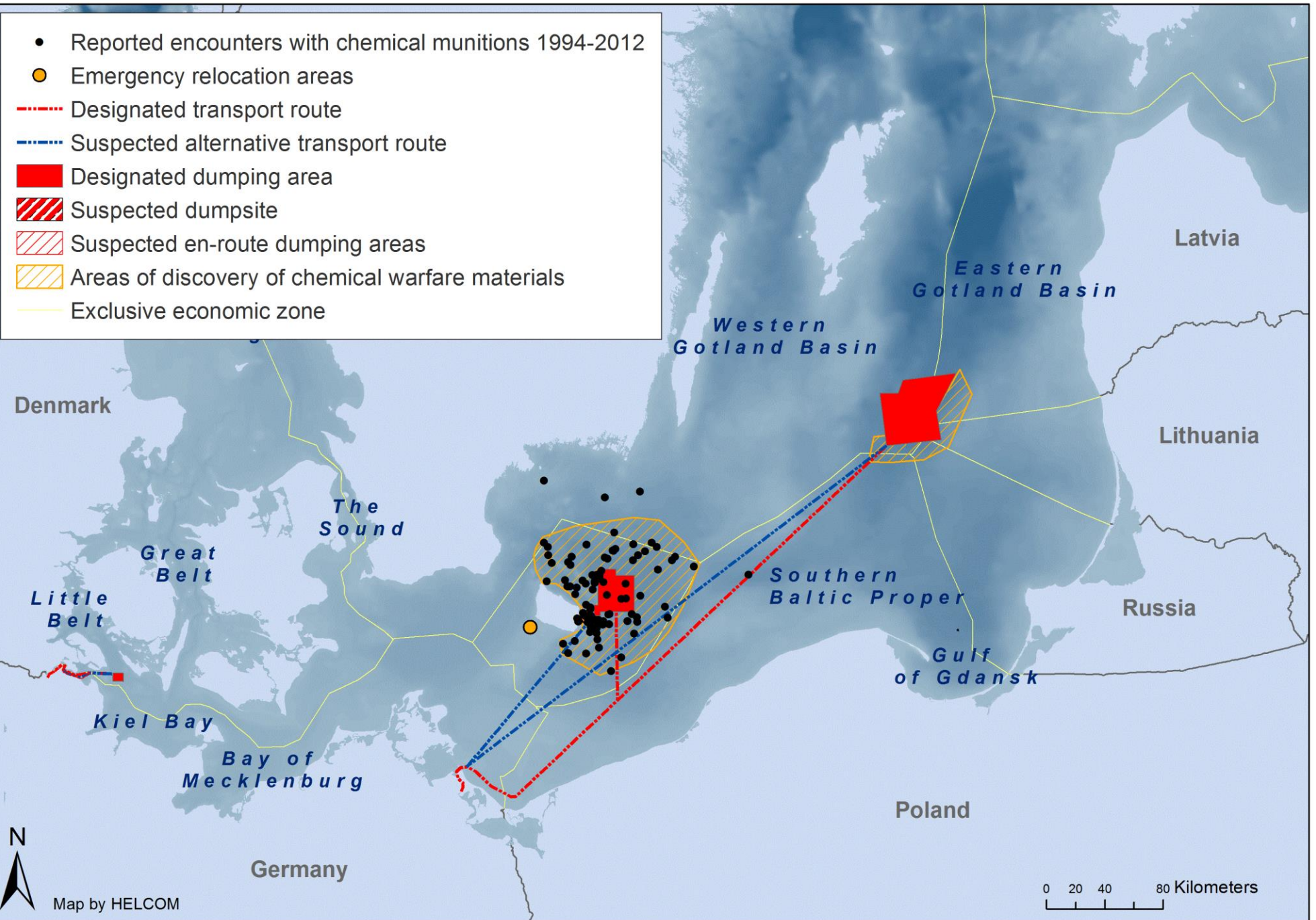


Degradation of CW agents can cause direct/ indirect damage to marine environment

CW dumped at the sea

- ▶ Only information about 40-50% of the sites
- ▶ The sites best known are **Baltic Sea** and North Atlantic
- ▶ Baltic sea: **50.000 tons** of CW dumped
- ▶ Skagerrak Strait: **170.000 tons** of CW were dumped
- ▶ Source: www.nonproliferation.org





Baltic Sea

- ▶ It was an area of “high sea” status → now 10 States have Exclusive Economic Zone and Continental Shelves
- ▶ **Munitions lie in areas heavily trafficked** and subject to hydro-technical projects, including submarine cables and pipelines, offshore wind farms and tunnels
- ▶ **Project CHEMSEA:** Chemicals munitions, search & assessment (Baltic States +EU)
- ▶ Baltic Marine Environment Protection Commission (**Helsinki Commission**) → Convention on the Protection of the Marine Environment of The Baltic Sea Area





Relevant
International
Legal
Framework


Main applicable set of rules → International Humanitarian Law (IHL)

IHL provides a general protection of environment through basic principles of distinction, proportionality and precaution

Also specific rules (art. 35 and 55 Additional Protocol I 1977)

1977 Additional Protocol I to the Geneva Conventions of 1949

- ▶ **Art. 35** : “It is prohibited to employ methods or means of warfare which are intended, or may be expected, **to cause widespread, long-term and severe damage to the natural environment**”
- ▶ **Article 55 - Protection of the natural environment**
 1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected **to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.**
 2. Attacks against the natural environment by way of reprisals are prohibited.



Main issues of the legal framework



High **threshold for environmental damage** under art. 35 and 55 of Additional Protocol I (“wide-spread, long-term and severe”) making finding the breach almost impossible



Lack of enforcement of these IHL rules



Interaction of IHL with other rules like International Environmental Law and human rights protection is still unexplored



International Humanitarian Law

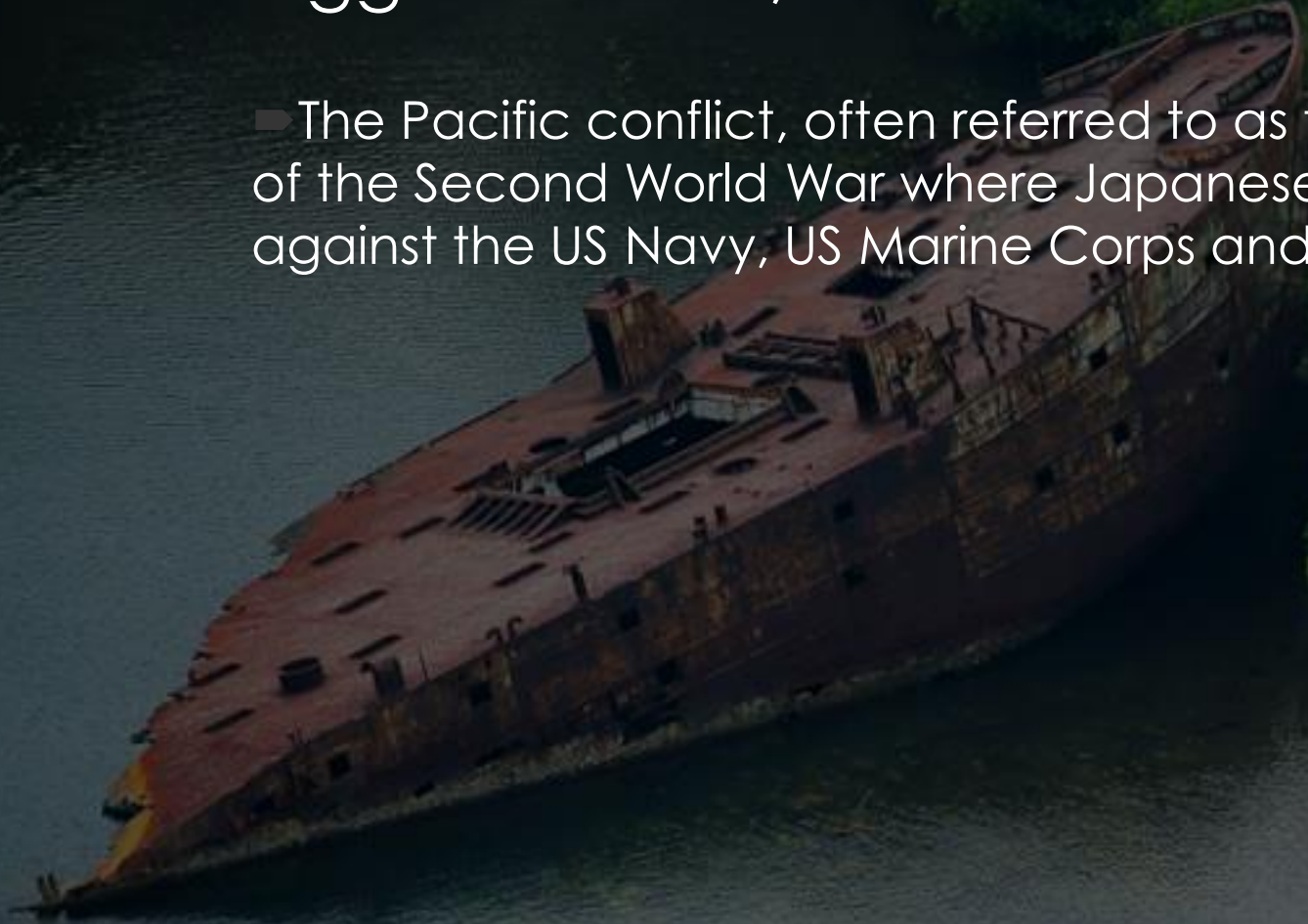
- **Protocol on Explosive Remnants of War (Protocol V to the 1980 CCW Convention), 28 November 2003 (95 State Parties)**
 - Reduce the threat posed by unexploded artillery shells, mortar shells, hand grenades, cluster munitions, bombs and similar weapons often found after the end of active hostilities
 - First multilateral agreement to deal with the wide range of unexploded and abandoned ordnance that regularly threaten civilians, peacekeepers and humanitarian workers after the end of an armed conflict.
 - This Protocol applies to explosive remnants of war on the land territory including internal waters of High Contracting Parties



A United States M4 Sherman tank remains in shallow water off Chalan Kanoa beach in Saipan, Northern Mariana Islands

Debris of a United States Naval transport vessel remains abandoned after being stranded in Nggela Islands, Solomon Islands

- ▶ The Pacific conflict, often referred to as the Pacific Theatre, was part of the Second World War where Japanese forces fought primarily against the US Navy, US Marine Corps and US Army.





Debris of the Japanese Imperial Navy transport vessel Kinugawa Maru lies at Tassafaronga beach in Guadalcanal Island, Solomon Islands

ILC Study- Protection of the Environment in relation to Armed Conflict (PERAC)

- ▶ The study includes:
- ▶ 1) preventative measures to enhance protection **before** armed conflicts
- ▶ 2) legal framework protecting environment **during** conflicts
- ▶ 3) principles designed to restore and response to environment damage in a **post-conflict** context



INTERNATIONAL LAW COMMISSION



ILC- Draft principles applicable after an armed conflict

- Draft principle III-1: Peace agreements
- Draft principle III-2: Post-conflict environmental assessments and reviews
- Draft principle III-3: Remnants of war
- **Draft principle III-4: Remnants of war at sea**
- Draft principle III-5: Access to and sharing of information



ILC- Draft principles applicable after an armed conflict

► **Draft principle III-3: Remnants of war**

- 1. After an armed conflict, parties to the conflict shall seek to remove or render harmless toxic and hazardous remnants of war under their jurisdiction or control that are causing or risk causing damage to the environment. Such measures shall be taken subject to the applicable rules of international law.
- 2. The parties shall also endeavour to reach agreement, among themselves and, where appropriate, with other States and with international organizations, on technical and material assistance, (...)
- 3. Paragraphs 1 and 2 are without prejudice to any rights or obligations under international law to clear, remove, destroy or maintain minefields, mined areas, mines, booby-traps, explosive ordnance and other devices.

ILC- Draft principles applicable after an armed conflict

► **Draft principle III-4: Remnants of war at sea (first version)**

- 1. States and international organizations shall cooperate to ensure that remnants of war do not constitute a danger to the environment, public health or the safety of seafarers.
- 2. To this end States and organizations shall endeavour to survey maritime areas and make the information freely available.

Draft Principles 17: remnants of war at sea (final version)

States and relevant international organizations should cooperate to ensure that remnants of war at sea do not constitute a danger to the environment.



Challenges- protection of marine biodiversity in postconflict

- **Marine environment linked to legal status of the sea** → ranging from internal waters to high seas
- **The legal protection of marine environment is weak** → difficult to invoke liability and state responsibility
- Need to adopt restorative measures to ensure remnants of war don't continue to destroy marine biodiversity → **international cooperation** is essential
- Multilateral **environment agreements** are generally **silent** on questions concerning protection of environment in relation to armed conflict
- **UN Security Council** → focus on illicit trade, exploitation and smuggling of natural resources and wildlife poaching connected to threat to international peace and security (new approach on **environmental security?**)
- Often lack of neutral/reliable **access to information on environmental conditions** during and after conflict

Thank you

