



Geneva Water Hub

31 August 2020


Preliminary key findings of the Report on the Implementation of the Principles Enshrined in the Geneva List in National Frameworks

The Geneva Water Hub is a centre of excellence specialised in hydropolitics and hydrodiplomacy. Its objective is to better understand and contribute to the prevention of tensions related to water by taking into account conflicts of uses between public sectors and private sectors, between political entities, and between states. The Geneva Water Hub is the Secretariat of the Global High Level Panel on Water and Peace and engages in the promotion and the implementation of the Panel's recommendations published in September 2017.

The Geneva Water Hub aims at developing the hydropolitics agenda to help prevent water-related conflicts at an early stage at intersectoral and transboundary levels, and to promote water as an instrument of peace and cooperation with the support of the Swiss Development Cooperation (SDC) and the University of Geneva.

For more information, kindly contact the Geneva Water Hub – Secretariat of the Global High Level Panel on Water and Peace at the following e-mail address: contact@genevawaterhub.org and visit our website at www.genevawaterhub.org

With the support of

 Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

**Swiss Agency for Development
and Cooperation SDC**



**UNIVERSITÉ
DE GENÈVE**

The Geneva List of Principles on the Protection of Water Infrastructure is a reference document prepared for the use of parties to armed conflicts, international organizations, and other practitioners working in the contexts of armed conflicts, including in pre- and post-conflict situations. It is the first text that systematizes the main rules applicable to the protection of water infrastructure during armed conflicts, specifically in the conduct of hostilities, and post-conflict situations, and sets forth recommendations that go beyond existing law.

Following the interest of several actors in the Geneva List of Principles, the Geneva Water Hub, in collaboration with other partners, is currently working on the analysis of the implementation of the Principles in national frameworks. This study relies on Principle 24, which enunciates that:

“1. States must incorporate in their domestic frameworks their obligations relating to the protection of water infrastructure stemming from international law, as applicable. 2. States must implement in their domestic frameworks international crimes relating to the protection of water infrastructure, as applicable. 3. States are encouraged to incorporate in their domestic frameworks the recommendations of the Geneva List.”

The following points are the preliminary findings of a report examining the current status of the Principles in domestic frameworks.

1. Under national frameworks, there is an increasing trend of protection for water resources and infrastructure both in peacetime and in time of armed conflicts

Most rules identified under the Geneva List of Principles are recognized under national frameworks. States, either explicitly or implicitly, through their military manuals, and criminal laws recognize the importance of water and prohibited using it as a means of warfare and targeting water infrastructure.

National courts and international dispute settlement mechanisms, including regional human rights and non-judicial bodies, are also significantly contributing to strengthening the recognition of the protection of water infrastructure.

National case law

In 1995, the Constitutional Court of the Russian Federation, in a case which addressed issues on the constitutionality of the Presidential Decrees and the Resolutions of the Federal Government concerning the situation in Chechnya, emphasized the point that provisions of the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II) protecting facilities essential for the survival of the civilian population are binding on both parties to the armed conflict and that the vital protections regarding installations and structures containing dangerous forces are binding on both parties to the armed conflict.

Source: The Russian Federation Constitutional Court, *Situation in Chechnya* case 1995, § 5.

Following the large-scale military operation of the Israeli Defence Forces (IDF) in the Gaza Strip, a case was brought before the Israeli court against the IDF, among other things for destroying water infrastructure and obstructing access to water. During the proceeding, Col. Mordechai admitted that the wells in the Tel A-Sultan's neighbourhood were damaged, and the delay in conducting repairs was because of the hostilities. The court affirmed that it is the military commander's responsibility to ensure the provision of water in the area of combat activities. This includes the responsibility to make sure that no damage is caused to water sources and the positive obligation to provide water in areas of shortage. Everything should be done to ensure water provision; sources of water must be repaired with due speed.

Source: Israel, The Supreme Court sitting as the High Court of Justice, *Physicians for Human Rights et al. v. Commander of the IDF Forces in the Gaza Strip*, 30 May 2004, §§ 27-29.

International dispute settlement mechanisms

In a case between Eritrea and Ethiopia before a Claims Commission established pursuant to Article 5 of the Algiers Agreement of 12 December 2000, and seated at the Permanent Court of Arbitration, Eritrea claimed that Ethiopian forces ‘destroyed property, including water supply systems’ in violation of Article 54 of the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts. The Commission confirmed that the prohibition under Article 54 crystallized into customary international humanitarian law (IHL). It then concluded that those aerial bombardments targeting ‘Harsile Water Reservoir,’ which fortunately failed to damage the reservoir, violated applicable IHL.

Source: Eritrea-Ethiopia Claims Commission, *Western Front, Aerial Bombardment and Related Claims*, 2005, §§ 26 & 99.

At the regional level, in a landmark decision in a case against Sudan in 2009, the African Commission on Human and Peoples’ Rights (AfCHPR) ruled that Sudan should take all necessary and urgent measures to protect victims of human rights violations in Darfur, including rehabilitating infrastructures such as water, and agricultural services.

Source: AfCHPR, *Centre of Housing Rights and Evictions v. Sudan*, 279/03-296/05 (2009), § 229 (5).

The international recognition of the human right to water has enhanced the national efforts to protect water infrastructure during and in the aftermath of armed conflicts.

The African Commission on Human and Peoples’ Rights

In 2019, the African Commission on Human and Peoples’ Rights prepared guidelines on the right to water to assist States in implementing their obligation. It emphasized the States’ obligations to respect, protect, promote, and fulfill the right to water. It also incorporated guidance on an emergency such as a natural disaster or armed conflict. The guidelines require states to prepare an adequate response plan to ensure that people have access to minimum quantities of safe water and basic sanitation without discrimination, and to facilitate the provision of aid to vulnerable and affected persons where necessary. Besides, it also requires states to protect water sources and find ways to store water and prevent wastage.

Source: AfCHPR, “*Guidelines on the right to water in Africa*” adopted during the 26th Extra-Ordinary session, in Banjul, The Gambia, 16 to 30 July 2019, §§ 3 & 30.

2. There are some promising positive practices of armed non-state actors (ANSAs) in the realm of the protection of water and water infrastructure.

Some ANSAs commit themselves, through their unilateral declarations, to respect IHL rules protecting civilian population and objects, including water infrastructure. To that end, ANSAs show restraint against targeting water infrastructure, and whenever such infrastructures are damaged, they try to repair or facilitate their reconstruction.

Unilateral commitment and agreement

The National Transitional Council/Free Libyan Army (NTC/FLA) adopted a guideline that provided that its forces do not target civilian objects and strive to avoid as far as possible any effect on civilians resulting from their military operations, and that should include avoiding targeting works and installations containing dangerous forces. Also, the National Liberation Army (Ejército de Liberación Nacional) (ELN), an armed group in Colombia, declared that its troops shall not target installations more useful to the community than the enemy and that, as far as possible, avoid causing environmental damage.

Source: National Liberation Army (*Ejército de Liberación Nacional*) (ELN), 'Code of war', (Unofficial Translation), available at http://theirwords.org/media/transfer/doc/ut_co_eln_1995_01_eng-07e5677b22c4cfo6bdfc9fo2eff2o6ef.pdf

In January 2017, in the context of the armed conflict in Syria, there were negotiations between the parties to the conflict - the government forces and principally the Free Syrian Army- to repair the al-Feijeh water structure, and it was fixed in early February 2017 after an agreement that ended the Wadi Barada siege.

Source: UN Human Rights Council, Human rights abuses and international humanitarian law violations in the Syrian Arab Republic, 21 July 2016-28 February 2017, A/HRC/34/CRP.3, 10 March 2017, §§ 32-37.

3. However, unfortunately, there are still practices of using water as a weapon or targeting water infrastructure during armed conflicts, which remains a significant threat to people worldwide

There is still a troubling trend in some places in which water infrastructure is being used as a weapon or destroyed, either through deliberate targeting or as collateral damage. For instance, in Syria, Yemen, and Libya, water has been used as a means of warfare. Also, water infrastructures were targeted or damaged by both states and ANSAs, leaving civilian populations without access to safe drinking water. The commitments made by both states and ANSAs should not remain empty rhetoric only, and efforts should be made to improve the situation and develop a culture of compliance.

States, international organizations, and other actors have to play a role in providing guidance on how to enhance the monitoring and accountability mechanisms when the protection for water infrastructure fails. The role of human rights bodies, including UN treaty bodies and inquiry commissions as well as mechanisms such as the International Criminal Court (ICC) and the International Court of Justice (ICJ), should be strengthened during and after armed conflicts.

The role of the international criminal court

For instance, in 2008, the ICC charged the ousted Sudanese President Omar al-Bashir regarding the conduct of Sudan's armed forces in Darfur - for contamination of wells and water pumps of the towns and villages primarily inhabited by members of the Fur, Masalit and Zaghawa groups.

Source: ICC, *Situation in Darfur, (Sudan)*, [ICC-02/05](#), 14 July 2008, § 176.

Also, the Office of the Prosecutor at the ICC released a policy document in September 2016 that informs its particular emphasis on investigation and prosecution of crimes involving the destruction of the environment, the illegal exploitation of natural resources, or the illegal dispossession of land. Though the policy document did not explicitly mention 'water,' the emphasis on 'natural resources' should be understood to cover water resources.

Source: ICC, Office of the Prosecutor. *Policy Paper on Case Selection and Prioritization*, 16 September 2016.