



Geneva Water Hub

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Geneva List of Principles on the Protection of Water Infrastructure

Advanced unedited version

This document, prepared by the Geneva Water Hub's Platform for International Water Law, has been drafted in follow-up to the recommendations of the High-Level Panel on Water and Peace contained in its 2017 report "A Matter of Survival". Academics from the University of Geneva and other partners' institutions contributed to its development. The final edited version of the Geneva List of Principles on the Protection of Water Infrastructure and its commentary will be made available by the end of the summer 2019.

The Geneva Water Hub is a knowledge centre focusing on hydropolitics and hydrodiplomacy, based at the University of Geneva with the support of the Swiss Agency for Development and Cooperation. It acts as the secretariat of the Global High-Level Panel on Water and Peace. The Geneva Water Hub's Platform for International Water Law brings together researchers and practitioners working in international water law and its relationship with other areas of international law, including international humanitarian law, human rights law, international environmental law and international economic law.

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Introductory Note

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, as well as in pre-conflict and post-conflict situations and sets forth good practices.

Contemporary armed conflicts have seen an increase in attacks against and the weaponization of water infrastructure. These acts have had severe consequences on the environment and most importantly on the civilian population, especially on the most vulnerable groups, such as children. Indeed, the most vulnerable groups are usually the ones the most affected by, for example, the disruption of water services, which may, among others, lead to the outbreak of water-borne diseases or exacerbate the spread of epidemics. Other challenges not specific to, but important for the respect for and implementation of the rules on the protection of water infrastructure are the protracted and urban natures of the recent armed conflicts and the proliferation of actors, especially non-state armed groups involved in these conflicts.

The need to strengthen the protection of water infrastructure emerged during the Think Tank Roundtable “Protection of Water During and After Armed Conflicts” held in Geneva in June 2016 convened by the Geneva Water Hub (GWH) to feed the work of the Global High-Level Panel on Water and Peace.¹ The Geneva List has been drafted in follow-up to the recommendations of the High-Level Panel on Water and Peace contained in its 2017 report “A Matter of Survival”, including on strengthening respect for and implementation of International Humanitarian Law in relation to water.

The Panel’s findings and recommendations in relation to post-conflict situations were also discussed during the Workshop on “Water in Post-Conflict Situations and the Role of the Security Council”, co-organized by the GWH, the Lund University and the Swedish Ministry of Foreign Affairs in February 2018.²

The drafting process of the Geneva List has been led by the GWH, acting as the Secretariat of the High-Level Panel, and included collaborations with other academic institutions such as the American University of Beirut, University of Amsterdam, Duke University, University of North Hampshire, Leiden University, Lund University, University of León and University of Trento. and international and non-governmental organizations, including Amnesty International, the Global Observatory on Environment and Conflict, the Environmental Law Institute, UNICEF and UN Environment.

During the 2018 Geneva Peace Week, the GWH, in collaboration with UN Environment as well as Duke University, presented concrete examples demonstrating the targeting of water infrastructure during armed conflicts in different regions of the world, including in South America, Middle East, Northern Africa, and Europe. Moreover, back-to-back to the Geneva Peace Week, the Environmental Peacebuilding Association and the GWH joined their forces to launch an Interest Group on Water to bring water at the forefront of reconstruction efforts.

The GWH convened an expert meeting bringing together leading academics and practitioners in Geneva in December 2018 with the aim to discuss the “zero draft” of the Geneva List. The experts participating in the meeting gave detailed comments on this document. The GWH’s Platform for International Water Law wishes to express its deepest gratitude for the inputs received in the process of revision of the “zero draft” of the Geneva List.

¹ Geneva Water Hub, Protection of Water During and After Armed Conflicts, Report (2016). The Global High-Level Panel is co-convened by 15 countries: Cambodia, Colombia, Costa Rica, Estonia, France, Ghana, Hungary, Jordan, Kazakhstan, Morocco, Oman, Senegal, Slovenia, Spain and Switzerland.

² See for the report of the workshop <https://www.genevawaterhub.org/news/transforming-water-strategy-warasset-peace> accessed 18 January 2018.

The initiative of drafting the Geneva List stems from the increasing number of attacks against water infrastructure in situations of armed conflict, both in urban and rural contexts.³ Recent armed conflicts on the agenda of the UN Security Council have been characterized by water-related issues, and the Council addressed them in its resolutions. It has especially expressed grave alarm at attacks against civilian infrastructure including deliberate interruptions of water supply⁴ and called on all parties to armed conflict to comply with their obligations under International Humanitarian Law.⁵

Beyond the actors traditionally working in the field on international peace and security, some international organizations have started working on the linkages between water and peace, including the UN Economic Commission for Europe (UNECE) and the UN High-Commissioner for Human Rights. In their last meeting held in October 2018 in Astana, the parties to the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes have noted the need to create bridges between transboundary water cooperation, conflict prevention and post-conflict reconstruction.⁶ Moreover, the UN Special Rapporteur on the Human Rights to Water and Sanitation presented in 2018 a report on forcibly displaced persons and human rights obligations which also included recommendations regarding situations of armed conflict.⁷ This increasing interest can also be linked to Sustainable Development Goal 16 on promoting peaceful and inclusive societies for sustainable development.⁸ The importance of the protection of the environment in peace processes is also underlined in the works of the International Law Commission.⁹

Building on these different initiatives, the objective of the present document is to gather for the first time in a single document the rules on the protection of water infrastructure under different branches of international law, namely International Humanitarian Law, Human Rights Law, International Environmental Law and International Water Law. The aim of the Geneva List is not only to restate obligations stemming from different branches of international law, but also to demonstrate their interaction with and significance for one another. In this sense, it aspires not only to enumerate the existing binding obligations, but also to supplement them by setting forth further recommendations and good practices, including by means of references to soft law documents.

The scope of the Geneva List is limited to the protection of water infrastructure and installations essential to their functioning such as electrical facilities; the protection of water resources is dealt with, when necessary, in connection with the protection of infrastructure. This is the case, for example, for the principle on the attacks against water infrastructure, such as wastewater treatment facilities, which are intended, or may be expected, to cause significant damage to the environment.

The Geneva List focuses on the protection of water infrastructure during and after armed conflicts. However, due to their nature, some principles are also applicable prior to the onset of an armed conflict. For example, States are encouraged to establish joint commissions or mechanisms with a view to ensuring the protection of water infrastructure located on transboundary water resources in pre-conflict situations.

³ See for example Amnesty International, *Iraq: Dead Land: Islamic State's Deliberate Destruction of Iraq's Farmland*, Report (2018) and also on the effects of protracted armed conflicts on urban services, International Committee of the Red Cross, *Urban Services during Protracted Armed Conflicts: A Call for a Better Approach to Assisting Affected People*, Report (2015).

⁴ UNSC Res 2165 (14 July 2014).

⁵ UNSC Res 2417 (24 May 2018).

⁶ See for the draft decisions https://www.unece.org/fileadmin/DAM/env/documents/2018/WAT/10Oct_10-12_8thMOP/Other_documents_for_the_web/List_of_decisions_MOP8_12Oct_for_distribution_ENG.PDF accessed 18 January 2018.

⁷ Human Rights Council, "Report of the Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation", A/HRC/39/55 (3 August 2018). Human Rights Council, "Report of the Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation", A/HRC/39/55 (3 August 2018).

⁸ "Sustainable Development Goal 16" <https://sustainabledevelopment.un.org/sdg16> accessed 18 January 2018

⁹ International Law Commission, "Text of the draft principles provisionally adopted during the present session by the Drafting Committee", A/CN.4/L.876 (3 August 2016).

While the List does not include specific principles on the management of water infrastructure during occupation, it does not exclude the applicability of the present principles in occupied territories, for example in the case of conduct of hostilities in such territories. The List is without prejudice to the specific International Humanitarian Law rules on occupation.

The Geneva List is addressed to both States and non-State actors. While the issue of the obligations of the latter under International Human Rights Law, International Environmental Law and International Water Law remains unsettled, the existence of International Humanitarian Law obligations of non-State armed groups is undisputed. Consequently, the List sets forth these obligations alongside recommended practices derived from other branches of international law.

It is expected that the Geneva List of Principles will be disseminated in international conferences and workshops. The next step will be to examine the application of the principles of the List to selected case studies. This analysis will allow to enrich the documentation of existing good practices and potentially contribute to the identification of the new developments in the law.

The Geneva List of Principles on the Protection of Water Infrastructure

Principle 1: Objective and Scope

1. The objective of the List is to ensure the protection of water infrastructure and water-related infrastructure during armed conflicts as well as to safeguard their utilization both in conflict and post-conflict situations.
2. The List is intended for international and non-international armed conflicts as well as post-conflict situations.
3. The List is addressed to States and non-State actors.
4. The List is without prejudice to the applicable obligations of States and non-State actors under international law.

Principle 2: Definitions

For the purposes of this List:

- (a) “Water infrastructure” means all water and wastewater works, installations and facilities;
- (b) “Water-related infrastructure” means facilities, installations and other works which make an essential contribution to the functioning of water infrastructure so that their destruction or damage would render of the water infrastructure inoperable.

Principle 3: The human rights to water and sanitation

Everyone has the rights to water and sanitation, which are essential for the full enjoyment of all human rights.

Principle 4: Using water infrastructure as a means of attack

1. Parties to the conflict should refrain from using water infrastructure as a means of attack.
2. The use of water infrastructure as a means of attack must respect all the rules regulating the conduct of hostilities. In particular, it must respect the principles of distinction, proportionality and precautions.

Principle 5: Poison or poisoned weapons

The use of poison or poisoned weapons against water infrastructure is prohibited.

Principle 6: Attacks against water infrastructure and water-related infrastructure

Water infrastructure and water-related infrastructure are presumed to be civilian objects and, in such case, must not be attacked.

Principle 7: Attacks against the personnel working for water infrastructure and water-related infrastructure

Personnel responsible for carrying out tasks related to the operation, maintenance, assessment, repair and rehabilitation of water infrastructure and water-related infrastructure are presumed to be civilians and, in such case, must not be attacked.

Principle 8: Indiscriminate attacks

Attacks which do not or cannot distinguish between military objectives and civilian objects, including water infrastructure and water-related infrastructure are prohibited.

Principle 9: Proportionality in attacks

1. Attacks against water infrastructure and water-related infrastructure which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated are prohibited.
2. Attacks against military objectives which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, including water infrastructure and water-related infrastructure, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, are prohibited.
3. The reverberating, or indirect, effects that are foreseeable in the circumstances at the time of the attack should be taken into account in the assessment of proportionality.

Principle 10: Precautions in attack

1. In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects, including water infrastructure and water-related related infrastructure.
2. Prior to an attack against water infrastructure or water-related infrastructure, those who plan, decide upon and execute attacks must do everything feasible to verify that these are military objectives and that it is not prohibited to attack them.
3. Those who plan, decide upon and execute attacks, including against water infrastructure and water-related infrastructure must take all feasible precautions with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects, including water infrastructure and water-related infrastructure.

Principle 11: Precautions against the effects of attacks

1. The parties to the conflict must take all feasible precautions to protect the civilian population and civilian objects, including water infrastructure and water-related infrastructure, under their control against the effects of attacks.
2. The parties to the conflict should avoid locating military objectives in the vicinity of water infrastructure and water-related infrastructure.
3. The parties to the conflict are encouraged to establish protected zones around water infrastructure and water-related infrastructure.

Principle 12: Starvation and attacks against water infrastructure indispensable to the survival of the civilian population

1. The use of starvation of the civilian population as a method of warfare is prohibited.
2. Parties to the conflict must not attack, destroy, remove or render useless water infrastructure indispensable to the survival of the civilian population.

Principle 13: Attacks against water infrastructure containing dangerous forces

1. Water infrastructure containing dangerous forces, namely dams and dykes, should not be made the object of attack, even when these are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population.
2. In any case, particular care must be taken if dams, dykes and other installations located at or in their vicinity are attacked, in order to avoid release of dangerous forces and consequent severe losses among the civilian population.

Principle 14: Acts or threats of violence the primary purpose of which is to spread terror among the civilian population

Acts or threats of violence the primary purpose of which is to spread terror among the civilian population, including but not limited to the release of dangerous forces from dams and dykes, the poisoning or retention of water, are prohibited.

Principle 15: Causing significant damage to the environment

Water infrastructure and water-related infrastructure should not be made the object of attack, even when these are military objectives, if such attack is intended, or may be expected, to cause significant damage to the environment.

Principle 16: Forced displacement

The control over the delivery of water, and deprivation thereof, must not be used to force the displacement of civilians.

Principle 17: Relief actions

1. Humanitarian relief personnel, including those involved in water-related activities, and their equipment must be respected and protected.
2. Parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief personnel, including those involved in water-related activities, and their equipment for the operation, maintenance, assessment, repair and rehabilitation of water infrastructure and water-related infrastructure, especially those which provide water indispensable to the survival of the civilian population.
3. Civil defence organizations, including those involved in the repair of water infrastructure and water-related infrastructure, and their personnel must be respected and protected.
4. Parties to the conflict are encouraged to collaborate for the operation, maintenance, assessment, repair and rehabilitation of water infrastructure and water-related infrastructure.
5. Parties to the conflict should negotiate water ceasefire agreements in order to allow the safe passage of humanitarian relief personnel, including those involved in water-related activities.

Principle 18: Peace and ceasefire agreements

Peace and ceasefire agreements should be concluded in accordance with the principle of equitable and reasonable utilisation of water resources. In no case shall they deprive peoples of their rights to water and sanitation.

Principle 19: Joint mechanisms and commissions

Watercourse States should create joint mechanisms and commissions, or in any case cooperate and coordinate with a view to ensuring the protection, safe operation and maintenance of water infrastructure located on transboundary water resources.

Principle 20: Reconstruction, rehabilitation and repair of water infrastructure and water-related infrastructure

1. Destroyed and damaged water infrastructure and water-related infrastructure should be reconstructed, rehabilitated and repaired.
2. The equipment and other goods necessary for the reconstruction, rehabilitation and, repair, operation and maintenance of water infrastructure and water-related infrastructure should be exempted from sanctions and countermeasures.

Principle 21: Peacekeeping operations

Protection of water infrastructure and water-related infrastructure and their reconstruction, rehabilitation and repair should be included in the mandates of the peacekeeping operations, where appropriate. Peacekeeping operations should support and provide assistance to the local authorities in the reconstruction, rehabilitation, repair, operation and maintenance of the water infrastructure and water-related infrastructure.

Principle 22: Martens Clause

In cases not covered by international agreements, water infrastructure and water-related infrastructure remain under the protection and authority of the principles of international law derived from established custom, the principles of humanity and the dictates of public conscience.

Principle 23: Implementation

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