Briefing paper: UNEA-2 Briefing Paper on the draft resolution “Protection of the environment in areas affected by armed conflict”.

INTRODUCTION

In this our fourth civil society briefing paper on the resolution proposed by Ukraine and now co-sponsored by the DRC, Jordan, Iraq, South Sudan and Norway, we aim to provide an overview of the key issues that have emerged during negotiations and highlight themes that should be addressed by States during UNEA-2. As NGOs supporting the renewed international discourse on strengthening the protection of the environment in relation to armed conflicts, we hope that these insights and observations will be of use to States during negotiations. The recommendations are based on the outputs of our monitoring and research programmes since 2012, throughout which we have utilised the views of experts working across the conflict and environment field.

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• Green Room event: Addressing the environmental dimensions of armed conflict to achieve the SDGs, May 24th, 17:00

*Paragraph numbering based on the draft text as of 3rd May 2016
**CONTEXT**

In 2009, UNEP published a major study on the state of legal protection for the environment in relation to armed conflicts. Questioning the lack of substantive progress in the field compared to other areas of environmental law, it made a number of recommendations on where improvements should be made. It was followed in 2011 by a report to the 31st International Conference of the Red Cross and Red Crescent that formed part of its study on Strengthening Legal Protection for the Victims of Armed Conflicts, in which the humanitarian imperative for minimising and restoring wartime environmental damage was examined.

Following one of the recommendations in UNEP’s 2009 report, the topic - the protection of the environment in relation to armed conflicts - was also accepted for review by the International Law Commission (ILC), a study that will be completed during 2016 with the publication of a third report on the subject.

The draft UNEA-2 resolution therefore comes not only at time when the international community’s legal and policy framework on environmental protection in conflicts is under review, but also at a time of serious humanitarian crises. Around the world, armed conflicts are leading to environmental degradation and with it harm to civilian health, lives and livelihoods, together with damage and disruption to ecosystems and natural resources. The lesson from the MDGs - whereby fragile conflict-affected States made the least progress - and the path towards the 2030 Agenda, are further underlining the timeliness and importance of the topic and with it the necessity for the international community to more fully address the environmental dimensions of armed conflicts.

> “The toll of warfare today reaches far beyond human suffering, displacement and damage to homes and infrastructure. Modern conflicts also cause extensive destruction and degradation of the environment. In turn environmental damage, which often extends beyond the borders of conflict affected countries, can threaten the lives and livelihoods of people well after peace agreements are signed.”

**UNEP (2009) Protecting the Environment During Armed Conflict.**

### 1. MAIN THEMES IN THE NEGOTIATIONS TO DATE

Announcing their intention to table a UNEA-2 resolution on conflicts in October 2015, Ambassador Tsymbaliuk of Ukraine’s recognised: “...the crucial role of UNEP in post-crisis environmental assessment, risk reduction and recovery,” and wished to “…initiate a UNEA resolution, in the first place, to raise awareness of the governments about the risks and challenges to the ecology inflicted by armed conflicts, to reinforce implementation of existing international instruments by appealing to countries to reflect the relevant provisions in national legislations and to call on the international community to cooperate closely on preventing and reducing the consequences.”

It was Ukraine’s hope that the resolution would reach

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consensus among delegations, and constitute an environment-oriented document rather than a politically motivated one. But by the February meeting of the OECPR, elements of the text were facing opposition from a minority of States. Foremost among their objections was the current and future role of UNEP in relation to conflicts.

1.1 The importance of taking a life-cycle approach to conflicts

To fully understand and address the environmental dimensions of armed conflict, it is not enough to simply assess the damage on the battlefield when the guns fall silent. Environmental degradation and natural resources can help trigger and sustain conflicts. A failure to ensure the equitable and sustainable management of natural resources after conflicts may reignite them, and the environmental consequences of conflicts typically extend beyond the battlefield and national borders.

From climate change to e-waste and chemicals, effective environmental policy-making takes a life-cycle approach to environmental problems. Yet a minority of States have opposed any reference to the importance of taking a similar life-cycle approach to conflicts, one that addresses environmental issues throughout the conflict cycle.

In considering this resolution, States will not just face a decision about whether the environment and its dependent populations are in need of greater protection from the impact and legacy of armed conflict than exists at present – they are. They will also need to decide whether a weak UNEP, which does little more than assess environmental damage in the wake of conflicts, is up to the task of addressing the serious environmental and public health dimensions of current and future humanitarian crises.

In relation to this second question, States should review the driving principles behind the establishment of UNEA – that tackling environmental issues requires joined-up thinking and action, both within the UN system and globally. Environmental challenges are almost invariably cross-cutting and dealing with them requires temporal and transboundary approaches. The environmental dimensions of armed conflict are no different, and this resolution and the future work of UNEP must reflect that. Those elements of the preamble and operative part of the resolution that relate to UNEP’s conflicts work are considered in more detail below.

1.2 The state of legal protection for the environment in conflict

The second of the two main themes in the resolution has related to the current state of legal protection for the environment in relation to armed conflicts. UNEP’s 2009 report reflected the overwhelming consensus from legal scholars that the existing provisions, found primarily in international humanitarian law and which largely date back to the 1970s, are both inadequate and at times poorly implemented.

The draft resolution has a number of paragraphs relating to implementation and compliance, with language agreed at the intersessional meetings of the CPR not only stressing the need for compliance but also welcoming the role that UNEP could play in legal capacity building. Ensuring that militaries are aware of their legal obligations during operations is crucial and UNEP has also argued that international legal practitioners should be trained in enforcing the existing international law protecting the environment during armed conflict.

On the question of the inadequacy of existing legal protection, how this should be resolved is currently a matter of debate among States, experts and civil society but what is clear is that within the context of the

“The protection of the natural environment has gained increasing prominence in the last few decades. States are now aware of the need to confront global warming, deforestation, marine pollution, the depletion of natural resources, and the loss of habitat and extinction of species, among others. As a result of this awareness, international environmental law has expanded considerably. At the same time, the protection of the environment has also come to be seen as important during armed conflicts, including non-international conflicts. However, the clarification and development of international humanitarian law for the protection of the environment has lagged behind. The ICRC is of the opinion that international humanitarian law in this area should be made more explicit and developed to safeguard the well-being and livelihood of present and future generations.”


2030 Agenda this debate is both timely and necessary. Together with the recent UN Sixth Committee debates on the ongoing study by the ILC8, this resolution is a valuable opportunity to help encourage further consideration of the bodies of law relevant to the protection of the environment in relation to conflicts.

As with other important questions governing the conduct of hostilities, since the 1990s there has been a tendency to examine the relevance and applicability of human rights law and peacetime legal regimes. Environmental protection has been no exception and the current discourse is rightly considering the norms, principles and agreements comprising international environmental law, as well as the increasingly well-developed customary norms that make up environmental human rights.

This is clearly justified by the fact that the environmental dimensions of conflicts are not temporally restricted to the period of fighting and that wartime environmental degradation carries with it serious consequences for the civilian population. Elements of this approach have been present in the resolution from the outset and States that support a progressive outcome to the resolution - which not only reflects the current discourse but which also helps to create the space for the topic’s further consideration - should lend support to their continued inclusion.

2. ANALYSIS OF KEY ELEMENTS OF THE RESOLUTION

2.1 The scope of UNEP’s future work on conflicts

PP5 on the historical and future role of UNEP
PP8 on UNEP’s role within the UN system
PP9 on UNEP’s technical reports
OP7 on the enhanced provision of support

• The final wording of these four paragraphs will help to define how UNEP’s conflicts work contributes to the delivery of the 2030 Agenda.

The delivery of the 2030 Agenda and the SDGs requires that UNEP has the flexibility to support UN-wide efforts to meaningfully address the environmental dimensions of armed conflicts, through the provision of its technical and policy expertise at all stages of the conflict cycle. Delivering the SDGs will need substantial international progress on mainstreaming the environment in peacebuilding and reconciliation, in peace-keeping operations and in humanitarian response and recovery. UNEP has an important role to play in these complementary processes within the UN system.

Our knowledge of the vital role that environmental quality and natural resources play in sustainable development has vastly increased in recent decades thanks to the work of UNEP and other actors. It has also become clear that the environmental degradation caused by many armed conflicts poses a serious threat to sustainable development. This reality must be reflected in the text and a growing number of States have already recognised this. Those that support an outcome for the resolution that contributes towards the delivery of the SDGs should work to ensure that draft PPs 5, 8 and 9, and OP7 strengthen, rather than diminish, UNEP’s work on the environmental dimensions of armed conflicts.

**PP5:** For draft PP5 this means looking forward, not back, and acknowledging that the international community and UN system can ill-afford to ignore the environmental drivers and consequences of armed conflicts. UNEP can and does contribute towards these important objectives in collaboration with those elements of the UN system already mandated for conflict prevention and related themes. However, addressing the increasingly complex and interrelated environmental issues associated with contemporary armed conflicts requires the more comprehensive utilisation of UNEP’s expertise and programmes.

**PP8:** PP8 is important because it recognises and welcomes the technical contribution that UNEP can make within the UN system and in supporting Member States at risk of or recovering from armed conflict. Lack of capacity and technical expertise is a perennial problem for States affected by armed conflict. Environment ministries are typically under-resourced prior to the onset of conflicts; following conflicts, where wartime environmental degradation may be significant, they face enormous challenges in responding to and remediating environmental threats. Timely support from the UN system is therefore critical to help minimise environmental and civilian harm and to tackle the environmental risks that may lead to the re-occurrence of conflicts.

**PP9:** UNEP’s technical reports contain a wealth of field experience whose findings should help inform the design of new approaches to environmental protection throughout the conflict cycle. This should be acknowledged by the resolution.

**OP7:** OP7 seeks to further secure PP8’s technical assistance function, not merely in assessing harm after conflicts but throughout the conflict cycle. This will require the integration of environmental management in recovery to help build sustainable peace and the ability to support States affected by all forms on conflict-related environmental threats, such as those from human displacement.

Together, these four paragraphs should help define how UNEP’s work on conflicts will contribute to the achievement of the SDGs as part of the 2030 Agenda. These are neither radical nor novel approaches but are instead based on the considerable field experience gained by UNEP through assisting Member States affected by armed conflict since 1999.

### 2.2 Implementing the existing law

**PP6 on implementation and capacity building**

**PP7 on the ICRC’s military guidelines**

**OP3 on compliance with international humanitarian law**

**OP4 on relevant international law**

**OP5 on guidelines in military manuals**

- Increasing awareness and respect for the existing law protecting the environment in conflict, and strengthening its implementation, will not resolve the problem entirely but they are an important first step towards minimising harm to civilians and ecosystems.

International humanitarian law’s current inability to prevent most wartime environmental damage is widely acknowledged and its provisions for environmental protection in conflict need clarifying and strengthening, with particular focus needed on non-international armed conflicts. Nevertheless, efforts to improve the operationalisation of both the standards from international humanitarian law and the environmental norms found in an increasing number of military guidelines would bring immediate benefits for environmental
and civilian protection. This applies for both combat and peacekeeping operations.

**PP6:** PP6’s focus on the existing law applicable to the protection of the environment in times of armed conflict is welcome. It goes without saying that States should abide by the limited legal provisions that currently exist. There is also considerable merit in the recognition that better implementation may require assistance in capacity building, upon request, for which UNEP could play a role.

**PP7:** The 1994 ICRC guidelines had their origin in the environmental aftermath of the 1991 Gulf War⁹. They were not an attempt to codify new law but instead a reflection of existing legal obligations and State practice. As such they are modest in scope and were merely: “...intended as a tool to facilitate the instruction and training of armed forces in an often neglected area of international humanitarian law.” States should welcome the guidelines as a legal baseline and efforts are currently underway to update them to better reflect developments in practice during the last 20 years.

**OP3:** Although legal protection for the environment under international humanitarian law is weak, as with other areas of the law, compliance in recent conflicts has been poor. OP3 should serve as a reminder that common Article 1 of the Geneva Conventions requires States to “respect and ensure respect” for the conventions in all circumstances. This obligation applies domestically but also creates a negative obligation to neither encourage a party to an armed conflict to violate international humanitarian law nor take action that would assist in such violations.

**OP4:** In light of the weak standard of protection and historically poor compliance it is extremely regrettable that objections were registered for draft OP4 during negotiations. Given that consensus was quickly reached on PPs 1-3, which established the importance of safeguarding the environment in times of armed conflict, and in expressing deep concern about the damage all too regularly inflicted – whether by particular methods or means or otherwise – rejecting one of the tools at the disposal of States to prevent harm - no matter how inadequate - makes little sense. States supporting PP6 should also endorse OP4 and be mindful that adoption of the relevant law is of little use without its meaningful implementation.

**OP5:** As noted above in relation to PP7, the ICRC’s guidelines should be viewed as a baseline for the environmental conduct of military operations. This minimum standard should be reflected in all States’ military manuals and guidelines, with sufficient effort made to ensure they are fully operationalised by military legal counsel and forces.

### 2.3 Reflecting the current legal debate

- These four elements not only reflect the prevailing discourse on the protection of the environment in relation to armed conflicts but should also help encourage further legal debate on how environmental and civilian harm can be minimised.

As noted in 2.1, existing legal protection for the environment is widely viewed as inadequate by international organisations and legal experts. Recognition of this fact has stimulated fresh debate in recent years, particularly on the applicability of peacetime environmental norms and over how environmental protection might interact with the protection of fundamental human rights. The delivery of the 2030 Agenda is adding increased urgency to this debate and the resolution should contribute to this by referencing relevant elements of the legal discourse.

**PP3:** Environmental damage in armed conflict is not restricted to the harm caused by the methods and means of warfare alone, or the actions that occur

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during active conflict. Recognising these wider consequences is the first step in preventing, mitigating, and recovering from these environmental consequences of conflict. While specific weapons and tactics can have particularly negative effects, damage also commonly results from the collapse in environmental governance and services, from the coping strategies of civilian populations, from human displacement and from the over-exploitation of natural resources. In this respect PP3, as with the legal debate itself, should not be restricted solely to the damage caused by particular methods and means of warfare during conflicts but should instead reflect the wider direct and indirect consequences of armed conflict on the environment.

PP11: As the ILC’s study is ongoing, it is understandable that States opted just to take note of the study, rather than adopt its findings outright. The study is essentially a review of national practice and the elements of the law that might be applicable to the topic and we would urge all States to contribute their views to the ILC’s Special Rapporteur. The next UNGA Sixth Committee debate on the third ILC scoping report will take place in November 2016 and thus far 43 States have delivered statements across the three previous debates. In 2015, a number of conflict-affected States expressed their views, which was particularly welcome, and we would encourage all governments to engage with this important and timely conversation.

PP12: In light of the immediate and long-term impact of wartime environmental damage on human health, lives and livelihoods, the resolution would be incomplete without recognition of the now customary body of law on the interaction between human rights and the environment. While it has proved contentious for some, protection for the environment in conflict is inseparable from the protection of civilians and the resolution should therefore recognise the close relationship between fundamental human rights and the enjoyment of a safe, clean, healthy and sustainable environment. A separate briefing on the customary status of environmental human rights is available.

PP13: PP13 on vulnerable groups is closely linked with PP12 on human rights and we welcome the decision by States to specify that children, youth, migrants, the elderly, persons with disabilities, as well as marginalised groups and indigenous people can be particularly at risk from environmental degradation linked to armed conflict. It’s clear that policies that seek to minimise or monitor environmental harm from conflict must take the specific needs of such groups into account. For why we do not believe that women should be singled out as a vulnerable group in PP13, please see 2.5 below.

2.4 Displacement

OP1 on the impact of displacement

OP7 on the enhanced provision of support

- The environmental footprint of displacement can be significant and is one of a number of indirect environmental consequences of conflict that must be more fully addressed by the international community.

It is estimated that more than 60m people were displaced by crises during 2015. Where they go, how they get there, the coping strategies they use to survive and how humanitarian response is planned and delivered all have implications for environmental protection. Human displacement is one of the indirect environmental consequences of armed conflicts but one that can have severe transboundary impacts for countries hosting large refugee populations. The language on displacement was introduced into the resolution after Jordan elected to merge its draft text on the impacts of displacement in countries neighbouring Syria with Ukraine’s draft.

OP1: The footprint of migration can be particularly acute for States with sensitive or resource poor environments and these impacts, and the impacts of


humanitarian assistance and recovery, can both create complex and persistent environmental risks that can translate into political instability with little respect for national boundaries. For example, Jordan and Lebanon have both recently sounded the alarm over the impact on natural resources and environmental quality from the Syrian refugee populations they are hosting.

**OP7:** At present, the international community is underperforming when it comes to mitigating and responding to the environmental impacts caused by migration, even as climate change looks set to multiply these problems further. UNEP has a role to play within the UN system in responding to the environmental dimensions of displacement and this resolution should acknowledge this as part of UNEP’s work on disasters and conflicts.

### 2.5 Gender

**PP14 on the negative effects on women**

- A specific PP on gender is welcome but States should consider clarifying what gendered approaches could constitute in the context of environmental protection in relation to armed conflict.

There is significant value in highlighting the importance of gender perspectives when assessing or responding to environmental issues throughout the conflict cycle. Gender does not and should not be viewed as relating only to women but instead gendered approaches should be used as a tool for understanding socio-political dynamics that in turn help inform more effective policy responses.

**PP14:** Ensuring a gender perspective in the text is important but this should avoid identifying women simply as another vulnerable group. In the case of women, Member States should instead be guided by UNSC resolution 1325, which reaffirmed: “...the important role of women in the prevention and resolution of conflicts and in peace-building, and stressing the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution.”

An additional benefit of integrating gender-based approaches in the context of wartime environmental degradation is in providing a clearer understanding of patterns of harm from armed conflict. In turn this can help improve the design and implementation of policies and interventions to minimise harm and increase participation. An instructive example is UNGA resolution 69/61 on women, disarmament, non-proliferation and arms control, which encourages Member States to, inter alia: “...better understand the impact of armed violence, in particular the impact of the illicit trafficking in small arms and light weapons on women and girls, through, inter alia, strengthening the collection of data disaggregated by sex and age.”

We support the inclusion of gender as a separate paragraph and encourage States to consider elaborating on the ‘gender perspective’ to specify how participation, inclusion and data collection can help improve policy responses - for both women and men. In so doing it could build on UNEP Governing Council decision 23/11 on gender equality in the environmental field, which requested: “...the Executive Director to give an account of lessons learned about gender-related aspects of environmental issues in conflict situations and to apply its conclusions to the post-conflict assessment work of the United Nations Environment Programme.”

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2.6 Biodiversity, crime and protected areas

**PP10 on organised environmental crime**

**OP8 on World Heritage Sites**

- Armed conflict presents a unique and ongoing threat to natural World Heritage sites and biodiversity hotspots. These areas deserve particular recognition due to the serious consequences of damage to them and the opportunities they present for peacebuilding and cooperation.

The exploitation of biodiversity rich or protected areas is a common hallmark of armed conflicts. They may be damaged through their use by militaries or armed groups for shelter or sustenance or may become the target of illicit resource extraction to fund conflicts.

**PP10:** The conditions created by armed conflict and insecurity often facilitate the activities of organised criminal groups. This can range from the exploitation of minerals and timber to wildlife crime and hazardous waste dumping. In turn the revenues from these activities can fuel and sustain conflicts. Affected States may require assistance in strengthening national legislation, building capacity and strengthening enforcement mechanisms to reduce the impact of organised crime. Globally, efforts are needed to build consumer awareness and enhance international cooperation and intelligence gathering across the supply chain to track and disrupt illegal operations.

**OP8:** Since 1991, UNESCO natural World Heritage Sites in the Central African Republic, Côte d’Ivoire, Croatia, the DRC and Niger have been threatened or seriously degraded by armed conflict. At present, four of the DRC’s five UNESCO natural heritage sites remain under threat as a result of the ongoing conflict. The impacts of conflict on these unique ecosystems include the harvesting of valuable animal parts to fund paramilitaries, reliance on fauna and flora for subsistence, and collateral damage from military operations. In addition to impacting biodiversity, conflict may also damage park infrastructure and imperil staff.

More broadly, armed conflict presents a persistent threat to biodiversity hotspots worldwide, with a study published in 2009 finding that more than: “...90% of the major armed conflicts between 1950 and 2000 occurred within countries containing biodiversity hotspots, and more than 80% took place directly within hotspot areas. Less than one-third of the 34 recognized hotspots escaped significant conflict during this period, and most suffered repeated episodes of violence. This pattern was remarkably consistent over these five decades.”

Given the implications for biodiversity globally, the particular risks that armed conflict can pose to these highly significant sites and their potential role as an entry point for cooperation and peacebuilding, they clearly warrant inclusion in any consideration of the impact of armed conflict on the environment. Moreover, UNEP and UNESCO already have a long history of collaboration on biodiversity and habitat protection. One particularly relevant example is the Great Apes Survival Partnership, currently celebrating its 15th anniversary, and which undertakes programmes on conflict-sensitive conservation. These methods seek to minimise conflicts between actors on the ground and maximise the sustainable management of resources while supporting local livelihoods.

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ABoUT ThE gREEN RooM EVENT

The three draft resolutions that were tabled by Ukraine, Jordan and Morocco ahead of UNEA 2 reflect the growing international interest in armed conflict and the environment. It is also becoming increasingly clear that efforts to understand and mitigate the environmental drivers, impact and legacy of conflicts are crucial for ensuring the successful delivery of the environmental dimensions of the SDGs. This is particularly true for the objectives of SDGs 3, 6, 15 and 16.

The direct and derived consequences of armed conflicts can seriously degrade environmental quality and systems of environmental governance, harming human health, livelihoods and economies. Nevertheless these linkages remain under-addressed and existing protection for the environment before, during and after armed conflicts is widely viewed as inadequate.

Since 2009, a renewed and long-overdue international discourse on strengthening the protection of the environment in relation to armed conflicts has emerged. This is creating opportunities for debate among States, international organisations and civil society on measures to address these shortcomings. But developing the practical and policy measures necessary to increase protection for civilians and their environment first requires greater awareness and acceptance of the environmental dimensions of armed conflict.

The process has been made all the more urgent because for many fragile or conflict-affected States, and their neighbours, meeting the environmental targets set by the SDGs will be impossible without first addressing how we minimise the environmental degradation associated with armed conflicts and mitigate its effects on human health and ecosystems.

ABOUT THE GREEN ROOM EVENT

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