TOXIC REMNANTS OF WAR NETWORK

Briefing paper: Priorities for the draft UNEA-3 resolution '*Pollution prevention and control in areas affected by terrorist operations and armed conflicts*'.

INTRODUCTION

This briefing for governments on the draft UNEA-3 resolution '*Pollution prevention and control in areas affected by terrorist operations and armed conflicts*', tabled by Iraq, is intended to highlight key themes that should be protected or enhanced by delegations during negotiations. The briefing has been prepared by the Toxic Remnants of War Network, civil society organisations from the fields of the environment and humanitarian disarmament advocating for a greater standard of environmental protection before, during and after armed conflicts.

BACKGROUND

Armed conflicts of all forms can be a direct source of pollution - causing significant emissions of hazardous pollutants from both civil and military sources, and can indirectly create the conditions where pollution is more likely to occur, or where its consequences for human health and ecosystems are more severe. Conflict pollution is an increasing global problem: its growth is closely linked to growing urbanisation and industrialisation; to the rise in hybrid and internal armed conflicts, and the military tactics employed in them by both state and non-state actors; and to the aggressive utilisation or weaponisation of natural resources.

Recent and ongoing conflicts have seen widespread attacks on environmentally sensitive civilian infrastructure;[1] they have seen the re-emergence of scorched earth policies;[2] they have witnessed intense fighting in heavily industrialised regions that has risked triggering environmental emergencies;[3] they have been marked by the rapid expansion of polluting coping strategies by communities desperate for fuel and income;[4] and they have led to intense environmental pressures on states hosting displaced populations.[5]

1. Sowers et al. Targeting environmental infrastructures, international law, and civilians in the new Middle Eastern wars, Security Dialogue Vol 48, Issue 5, 2017, pp. 410 – 430: http://journals.sagepub.com/doi/abs/10.1177/0967010617716615?journalCode=sdib&

2. UN Environment (2017) Environmental issues in areas retaken from ISIL, Mosul, Iraq, rapid scoping mission July-August 2017: http://postconflict.unep.ch/publications/Iraq/Iraq%20Technical%20Note_September2017.pdf

3. Sebastian Kurz, *Preventing disaster in Donbas*, Politico, August 2017: http://www.politico.eu/article/preventing-disaster-donbas-ukraine-sebastian-kurz-oped

4. PAX (2016) Scorched earth and charred lives - Human health and environmental risks of civilian operated makeshift oil refineries in Syria: https://www.paxforpeace.nl/media/files/pax-scorched-earth-and-charred-lives.pdf

5. Doug Weir, *Jordan grapples with the environmental consequences of its refugee crisis*, The Ecologist, April 2016: http://www.theecologist.org/News/news_analysis/2987616/jordan_grapples_with_the_environmental_consequences_of_its_refugee_crisis.html

UNEA-3's focus on pollution is a valuable opportunity to draw attention to this cross-cutting issue, to address the conduct of contemporary conflicts, and to consider whether the mechanisms through which the UN system currently responds to these serious threats to the health and livelihoods of civilian populations is adequate for the task. Conflict pollution not only creates acute and chronic health risks for affected communities, it can also result in long-term environmental degradation, which impedes recovery and breeds resentment, in turn interfering with efforts to build sustainable peace.

PRIORITY AREAS

UNEA-2 saw the successful passage of an historic resolution on the *'Protection of the environment in areas affected by armed conflict'* (2.15).[6] Some delegations have therefore questioned whether a UNEA-3 resolution on conflicts adds value to 2.15. However, what is currently understood as "conflict and the environment" is extremely broad in scope, and this was reflected in 2.15, which highlighted everything from biodiversity and protected areas, to the impacts of human displacement, to international humanitarian law and environmental human rights. What 2.15 did not do was specifically consider conflict pollution. In this regard, Iraq's draft has the potential to make a useful contribution to efforts to better address this global problem.

The references to terrorist activities throughout the text will inevitably stimulate debate among delegations. Delegates may wish to consider issues such as accountability or liability for environmentally harmful acts perpetrated by non-state actors;[7] questions of responsibility that may impede the identification or recording of hazardous sites when damage is caused by non-state actors; the role of international humanitarian law in non-international armed conflicts; that the affected state remains the ultimate duty bearer for protecting the rights of citizens harmed by the actions of non-state actors; and whether domestic or interna-

tional legal mechanisms are capable of holding non-state actors to account for environmental damage.[8]

These complex questions aside, if the text is to make a meaningful contribution to efforts to address conflict pollution, there are five themes that we believe should be protected or strengthened by states during negotiations:

1. Protect core principles on the humanitarian impact of conflict pollution

In line with other draft texts tabled for UNEA-3, the resolution must make the link between pollution and health and livelihood impacts explicit. In this respect we welcome preambular paragraph **(PP) 1**'s reference to sustainable development and the 2030 Agenda, and we also welcome **PP5**'s reference to environmental human rights.[9]

As particular societal groups face different risks to their health from pollution, **PP6**'s reference to vulnerable groups must be retained, as must **PP7** on the need to consider and address the gendered impacts of conflict pollution when assessing harm or responding to threats. Finally, and importantly, **PP11** draws attention to the often lasting socio-economic consequences of conflict pollution and its impact on livelihoods.

2. Promote awareness and understanding of the problem

The resolution is a valuable opportunity to build international awareness of the sources of conflict pollution, a point emphasised by operative paragraph **(OP) 1**. From attacks on industrial sites to deliberate spills, there are numerous examples of where conflict pollution has caused local, regional and transboundary harm, as seen recently in the case of the deliberate

6. UNEP/EA.2/Res.15 Protection of the environment in areas affected by armed conflict: http://wedocs.unep.org/handle/20.500.11822/11189

7. For discussion on the environmental conduct of non-state armed groups, see: Somer, J (2015) Environmental protection and non-state armed groups: setting a place at the table for the elephant in the room: http://www.trwn.org/blog-environmental-protection-and-non-state-armed-groups-setting-a-place-at-the-table-for-the-elephant-in-the-room/

8. For a discussion of current international legal mechanisms, see: Cusato, E (2017) ISIL's scorched earth policy in Iraq: options for its victims to be recognised under international law: http://www.trwn.org/isils-scorched-earth-policy-in-iraq-international-law/

9. Preamble A/HRC/RES/28/11 Human rights and the environment: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/28/11

fire at the Al-Mishraq sulphur plant in Iraq;[10] a theme addressed by **PP2**. As the sustainable management of natural resources is increasingly viewed as a critical component for building peace,[11] this is reflected in **PP4**. As these same resources, be they oil, water or mineral, can be both a source and victim of pollution during conflicts (**PP3**), which encourages their protection during conflicts, and their sustainable use in their wake, is vital.

Oil and water resources in particular have recently been utilised for scorched earth policies in Iraq and Syria,[12] a point noted in **PP9**. **PP9** also rightly highlights the means through which inadvertent or deliberate damage to industrial facilities and civilian infrastructure can cause pollution during conflicts. There has long been concern over the serious risks that toxic industrial chemicals and radioactive materials could pose if used by armed groups. While this theme has been addressed in other fora, its inclusion in **PP10** is useful.

While the PPs above address many of the direct forms of conflict pollution, **PP12**'s focus on the indirect health and environmental consequences of the collapse of governance during conflicts speaks to a near universal problem. The collapse of basic environmental services, and the diminution of national authorities' ability to deliver effective governance, can affect communities and the environment both locally and nationally, and often for years after the end of conflicts; for example through the inability to meet their obligations under multi-lateral environmental agreements or, as **PP13** notes, to control or regulate the movement of Persistent Organic Pollutants.[13]

3. Address the causes of conflict pollution

The elements of the text cited above provide a good starting point for efforts to raise awareness of the diverse means through which conflicts can cause or exacerbate pollution. To complement this, the text should also suggest the means through which the causes of conflict pollution may begin to be addressed. While there is clearly scope for additional national commitments in the draft, **OP2** and **OP3** already recognise that governments have a role to play in minimising the production and impact of conflict pollution.

OP2 addresses the role that affected states should play in tackling pollution, for example by ensuring that efforts to address sources of harm are based on recognised international standards and legal norms. Meanwhile **OP3** urges parties to conflicts to minimise damage to environmentally sensitive infrastructure – much of which qualifies as civilian objects under international humanitarian law, for example by ensuring that it is not targeted; or by ensuring that the risks from potentially harmful sites are minimised, for example by securing or removing hazardous materials from facilities.[14]

OP11's reference to the ongoing study by the International Law Commission on the *'Protection of the environment in relation to armed conflicts'* is also welcome.[15] Cooperation between UN Environment and the Commission has already been of assistance in the identification of draft legal principles that could eventually serve to enhance legal protection for the environment from the consequences of conflict, and should continue.

4. Encourage rapid assistance for affected communities

While there are a range of steps that governments could take to help minimise conflict pollution, there remains an urgent need to improve how affected communities are assisted. **PP14** is vital in this regard, stressing as it does the need for the swift identification, assessment, remediation and rehabilitation of affected areas.

10. Björnham et al. The 2016 Al-Mishraq sulphur plant fire: Source and health risk area estimation, Atmospheric Environment Volume 169 November 2017, Pages 287-296 http://www.sciencedirect.com/science/article/pii/S1352231017306167

11. UNEP (2009) From Conflict to Peacebuilding The Role of Natural Resources and the Environment: http://postconflict.unep.ch/publications/pcdmb_policy_01.pdf

12. von Lossow, T. The Rebirth of Water as a Weapon: IS in Syria and Iraq, The International Spectator, Italian Journal of International Affairs, Volume 51, 2016 - Issue 3: http://www.tandfonline.com/doi/abs/10.1080/03932729.2016.1213063; Zwijnenburg, W. Hazardous Legacies; An Open source Investigation of the Destrution of Deir az Zor's Oil Industry, Bellingcat: https://www.bellingcat.com/news/mena/2017/10/18/hazardous-legacies-open-source-overview-destruction-deir-ez-zors-oil-industry/

13. TRW Project (2017) How armed conflicts impact the Basel, Rotterdam and Stockholm conventions: http://www.trwn.org/how-armed-conflicts-impact-the-basel-rotterdam-and-stockholm-conventions/

14. For example, water treatment plants at risk from shelling can substitute chlorine for the more stable sodium or calcium hypochlorite.

15. Analytical Guide to the Work of the International Law Commission, Protection of the environment in relation to armed conflicts: http://legal.un.org/ilc/guide/8_7.shtml

The inadequacy of current responses was recently highlighted by the UNHRC's Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. He found that: *"Existing laws intended to protect the environment during armed conflict have proven insufficient to prevent serious pollution and other forms of exposure to hazardous substances,"* ensuring that: *"Communities in and around conflict zones continue to face substantial legacies of toxic exposure."* He also noted that these health risks are regularly compounded by the fact that: *"States recovering from conflict often lack technical assistance and funding to remediate toxic remnants of war, leading to further harm post-conflict."*[16]

Assistance measures should be guided by the core humanitarian principles outlined in 1 above and, as noted in **OP4**, those communities affected by conflict pollution should be empowered to meaningfully participate in projects and programmes aimed at assessing and remediating harm. **OP4** also underscores the importance of properly integrating health and environmental data, something which is often underdeveloped in the wake of conflicts, yet which is vitally important for identifying the humanitarian consequences of conflict pollution, and in minimising harm, for example through risk awareness programmes.

Acknowledging that the negative effects of conflicts on environmental governance are often beyond the capacity of national authorities to address alone, **OP9** highlights the role that the UN system, and a wide range of other stakeholders, can play in providing technical assistance to affected states in its restoration.

5. Support UN Environment's capacity to monitor and respond to conflict pollution

The final priority area for governments relates to the effective functioning of UN Environment. UN Environment's work monitoring and responding to the environmental dimensions of armed conflicts has grown organically since 1999. The complex political and security contexts in which it has sought to operate has meant that its country-level work has often been ad hoc. After resolution 2.15 provided fresh recognition of its mandate, as well as its considerable experience in this field, this latest resolution is an opportunity to review how its work on disasters and conflicts could be strengthened to reflect the needs of the 2030 Agenda, and the needs of those affected by conflicts.

The question of reform is alluded to in **PP15**, and the rationale for being able to urgently respond to environmental challenges is laid out in **PP16**. Some of UN Environment's current and historical approaches to conflicts are outlined in **PP17** and **OP5**. Whereas **OP7** highlights the important role that post-crisis assessments play in identifying sources of harm. **OP10** endorses the continuation of partnerships with specialist agencies in the UN system for tackling specific environmental threats.

We believe that pollution is a prime example of a conflict-linked environmental problem that requires a more effective response from the UN system. UN Environment's experience suggests that it can provide leadership on these threats, and how this could be improved should be assessed. **OP8** invites just such an assessment and we welcome its inclusion. Meanwhile **OP6** provides one means through which this could be achieved, proposing a deeper collaboration between UN Environment and a range of stakeholders in the remote monitoring and early identification of pollution hazards.

An initiative of this type was proposed in September at the UN Environment/OCHA Environment and Emergencies Forum, and measures such as this should feature in any future consideration of how UN Environment and the wider UN system can improve the speed and effectiveness of its response to the human suffering and environmental degradation caused by armed conflicts.

16. A/HRC/36/41 (2017) Guidelines to Good Practices, Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes: http://www.srtoxics.org/wp-content/uploads/2017/09/Good-Practice-Guidelines-1.pdf ; See also: Zwijnenburg, W. (2016) UN Special Rapporteur calls for action on toxic remnants of war to protect children, New Security Beat: https://www.newsecuritybeat.org/2016/09/special-rapporteur-calls-action-toxic-remnants-war-protect-children