Briefing paper: Comments on the 9th November draft of the UNEA-3 resolution Pollution prevention and control in areas affected by terrorist operations and armed conflicts.

INTRODUCTION

This briefing on the 9th November 2017 draft of the UNEA-3 resolution ‘Pollution prevention and control in areas affected by terrorist operations and armed conflicts’, tabled by Iraq, highlights potential improvements to the text for consideration by delegations. It also reviews the changes proposed during consultations and suggests desirable outcomes for the text as a whole. The briefing has been prepared by the Toxic Remnants of War Network, NGOs from the fields of the environment and humanitarian disarmament advocating for a greater standard of environmental protection before, during and after armed conflicts.

PRIORITIES FOR THE TEXT AS A WHOLE

In our previous briefing in October, we identified five priorities for States negotiating the resolution, in it we argued that the final text should:

1. Reaffirm core principles on the humanitarian impact of conflict pollution;
2. Promote awareness and understanding of conflict pollution;
3. Address the causes, as well as the consequences of conflict pollution;
4. Encourage rapid assistance for affected communities;
5. Strengthen UN Environment’s capacity to monitor and respond to conflict pollution.

We believe that these five priorities provide a useful benchmark against which to review the changes to the resolution from the most recent consultations, and act as a guide for any States considering further changes to the draft. A number of States have questioned whether this resolution will add value to the UNEA-2 resolution on the Protection of the environment in areas affected by armed conflict; if the new text meets the above criteria then we believe that it will.

OUR VIEWS ON THE 9th NOVEMBER DRAFT

The most recent draft text, dated November 9th, contains a number of minor as well as substantive changes. Our comments on the changes, which are included below, are guided by the five point criteria outlined above. For brevity we have focused only on the substantive changes suggested by delegations. Our comments address: preambular paragraphs 4, 6, 7, 9 and 11; and operative paragraphs 2, 3, and 7.

The Toxic Remnants of War Network is a civil society network working to reduce the humanitarian and environmental impact of pollution generated by conflict and military activities. The Network supports the development of a stronger standard of environmental and civilian protection before, during and after armed conflict and was founded in 2015 by Article 36, Green Cross International, IALANA, Norwegian People’s Aid, PAX and the Toxic Remnants of War Project.

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PREAMBLE

PP4

Mindful of the importance of safeguarding the natural environment in times of armed conflict and from the negative effects of certain terrorist acts for the sake of future generations and to consolidate efforts for the protection of our common environment, (11/09/2017)

Pp4 alt. Bearing in mind the potential issues concerning environment and natural resources to have the ability to trigger conflicts, further amplified by climate change, and the importance of protecting the environment and natural resources in areas affected by armed conflicts and terrorist operations, and their vital role in building and consolidating peace (EU) (11/09/2017)

The original PP4 utilised language from PP1 of the UNEA-2 resolution 2.15. The EU’s proposal to broaden PP4 to consider a more holistic view of conflict and the environment – such as the role of natural resources in peacebuilding, and the security risks of climate stress - has merit. A broader PP4 would help locate conflict pollution within this wider context, which is useful as there are clear linkages between these topics. The proposed revision would benefit from further refinement to help articulate these ideas more clearly.

PP6

Also recognizing the need to mitigate and minimize the specific negative effects of pollution caused by the deliberate scorched earth policy targeting mineral and natural resources (DRC) in areas affected by armed conflicts and terrorist acts on people in vulnerable situations, including children, persons with disabilities, older persons, and internally displaced persons, (11/09/2017) (EU propose merge with pp.6)

The purpose of PP6 is to highlight the often disproportionate health and socio-economic impact of conflict pollution on vulnerable societal groups. The suggested addition from the DRC would limit this only to harm from deliberate scorched earth policies, whereas in reality the sources of conflict pollution are far broader than these comparatively rare but high profile events. In this regard, the proposed DRC inclusion would restrict the primary purpose of PP6.

The EU’s proposal to merge PP6 and PP8 (on the illegal exploitation of natural resources) would again serve to confuse the original purpose of PP6, which relates to one of the core issues concerning the humanitarian consequences of conflict pollution: its impact on the rights and wellbeing of vulnerable groups.

PP7

Further recognizing the specific negative effects of pollution on women and girls and the need to apply a gender perspective with respect to addressing pollution resulting from armed conflict and terrorist acts

As with PP6, PP7 on gender is also vital for the resolution’s humanitarian objectives. The re-insertion of armed conflict in the text is welcome. Gender perspectives in determining the harm from conflict pollution, or in ensuring effective participation in remediation programmes, are relevant to all forms of conflict pollution, not just the pollution caused by terrorist acts.

PP9

Expressing its grave concern about pollution and environmental [degradation] (MEX) (PAK del) impact (PAK) caused [from] (PAK del) by (PAK) armed conflict and (DRC) terrorist acts (MEX, DRC requests clarification re. scorched earth) through targeting natural resources, industrial facilities and vital civilian infrastructure, including water filtration facilities, sanitation and electricity networks, and to residential properties and military sites by terrorists, (11/09/2017)

As with PP7, it is vital that PP9 not restrict itself only to pollution caused by terrorist acts, doing so would, for example, ignore the widespread harm caused by the growing trend in recent conflicts towards attacks on environmentally sensitive infrastructure. Deliberate scorched earth policies,\(^1\) actions intended to damage

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\(^1\) The Oxford Encyclopedia of Public International Law defines scorched earth policy as a strategy of warfare whereby the retreating armed forces destroy or devastate whole towns, facilities, agriculture, transport routes, and general infrastructure in order to deprive the advancing enemy forces or the belligerent population of food, shelter, fuel, communications, and other valuable resources that may be useful for them. Scorched earth strategies regularly have a negative impact on the civilian population left behind. Although not specifically defined under international
or disrupt critical civilian infrastructure such as water or power networks, the use of explosive weapons in industrial or residential areas, and attacks on sensitive military facilities all have the potential to cause serious health risks and environmental degradation from the pollution they generate.

While such tactics are commonly used by non-State actors, or may feature in terrorist acts, they are also employed by States. If the text is to increase global awareness and understanding of conflict pollution, and its causes, PP9 must make reference to all the practices employed during armed conflicts that generate toxic remnants of war, irrespective of the status of the belligerents involved.

**PP11**

Noting the long-term socio-economic consequences of the degradation of the environment and natural resources resulting from pollution caused by terrorist acts and armed conflicts, which includes, inter alia, the partial and complete loss of biodiversity, the loss of crops or livestock, and the lack of access to clean water and agricultural land, the irreversibility of negative impacts on ecosystem services and their impact on sustainable recovery, contributing to further environmental migration. (11/09/2017)

Our Network welcomes the inclusion of additional language in PP11 on the socio-economic consequences of environmental degradation caused by conflict pollution. Biodiversity loss, damage to ecosystem services and the contribution of environmental degradation to migration are all highly relevant to the purposes of the text.

**OPERATIVE PART**

Overall, the current text includes very few commitments for States. Of these, the original language in OP2 and OP3 has been watered down considerably during consultations. As these both dealt with the obligations on States to address the causes and consequences of conflict pollution, this is regrettable. Without clear commitments for States to begin to address the causes of conflict pollution, this resolution risks being one of the only UNEA-3 texts that fails to tackle the root causes of the issue it seeks to highlight.

**OP2**

Urges Member States to carry out their [respective international legal obligations] (PAK del and requests clarification) (SA refers to UNEA res 2/15) related to minimizing and controlling pollution in situations of armed conflict and terrorist acts; (11/09/2017)

That all feasible precautions must be taken to avoid, and in any event to minimise, incidental damage to the environment in the conduct of military operations, has customary status in international humanitarian law. Similarly, many of these types of targets are protected under the general prohibition concerning attacks on civilian objects. The original purpose of OP2 was to reflect these obligations upon States, which are clearly relevant to avoiding incidents that generate conflict pollution, such as the deliberate targeting of industrial facilities.

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Equally, States have a range of domestic and international obligations under environmental law, which serve to address the health and environmental consequences of pollution and which, unless clearly stated otherwise, continue to apply in situations of armed conflict – be it international or non-international in character - or in areas of terrorist activities. Human rights law also continues to apply during conflicts, it too placing obligations on States to minimise harm from conflict pollution.

Finally, States should also be conscious of the principle of reciprocity. Although many non-state actors may operate well beyond the norms of international law, there are a number of groups, particularly those that may aspire to statehood, who develop environmental policies informed by both international law and the conduct of States. In this regard, the conduct and principles promoted by States can
directly influence the behaviour of non-state actors.

Our Network therefore urges States to ensure that OP2 fully reflects these humanitarian, environmental and human rights norms and obligations, and in doing so tackles some of the root causes of conflict pollution.

**OP3**

Invites all member States, upon request of affected countries, to cooperate closely on preventing, minimizing and mitigating the negative impacts of pollution on the environment, resulted from armed conflicts and terrorist acts; (11/09/2017)

As originally drafted, OP3 built on the legal obligations in OP2 in outlining an obligation on all States to reduce conflict pollution by preventing or minimising damage to potentially hazardous infrastructure and facilities during conflicts, and to cooperate closely on controlling pollution where it does occur. States affected by conflicts can take steps to reduce the risks that facilities pose, just as belligerents can modify their conduct to avoid damage to environmentally sensitive sites. Such actions would make a significant contribution to reducing conflict pollution.

In its current formulation, OP3 places the onus on affected States to request assistance, and for that assistance to seek only to address the impacts of pollution in the wake of incidents. As such, OP3 has lost all emphasis on the vital preventative measures necessary to avoid conflict pollution.

Our Network urges States to revisit OP3 in the spirit of the original draft and to seek consensus language that addresses the causes of conflict pollution, as well as helping to address its consequences.

**OP7**

Requests also the Executive Director, within available resources and in conformity with the Programme’s [mandate] (PAK requests clarification) to explore ways to improve [find a modality to enhance the capacity of] (EU del) UNEP work on [Post-conflict and Disaster Management Branch to monitor and respond to] (EU del) pollution threats arising from armed conflicts and terrorist acts (11/09/2017)

In the wake of resolution 2.15, and in light of the serious environmental consequences of recent and ongoing conflicts, this resolution is a valuable opportunity to encourage an assessment of UN Environment’s work on conflict pollution. As such, we welcome the objective of OP7. However, it is questionable whether any improvement deemed necessary by a review of current capacity could be achieved without additional resources. In this respect, the removal of the “available resources” caveat would help improve OP7.

The EU’s proposed addition that the Executive Director “explore ways to improve” seems a useful formulation and one that would allow some flexibility in terms of both the analysis and outcome.