

Research Report | 30th Annual Session

Environment Commission

Tackling environmental damage in post-conflict areas



MODEL UNITED NATIONS
THE INTERNATIONAL SCHOOL OF THE HAGUE

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Forum	Environmental Commission
Issue:	Tackling environmental damage in post-conflict areas
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Introduction

The link between environment, natural resources and conflict is now well recognized. Natural resources and the environment are very important in articulating a peace dividend, but they can also contribute to stabilization, conflict transformation, and to the prevention of conflict relapse during a fragile peace process. They also have important implications for all four dimensions of peacebuilding: the socio-economic dimension, the governance dimension, the security dimension and the justice, truth and reconciliation dimension. Even though the environmental factors are rarely the sole cause of violent conflict, the exploitation of natural resources and related environmental stresses can be implicated in all phases of the conflict cycle.

The United Nations Environment Programme (UNEP) has conducted over twenty post-conflict assessments, since 1999, to determine the environmental impacts of war. Despite the protection afforded by several important legal instruments, the environment continues to be the silent victim of armed conflicts worldwide. UNEP has found that armed conflict causes significant harm to the environment and the communities that depend on natural resources. Direct and indirect environmental damage together with the collapse of institutions, lead to environmental risks that can threaten people's health, livelihoods and security. Ultimately this can undermine post-conflict peacebuilding.

Decisions about the restoration, management, and protection of natural resources have fundamental implications for short-term stability, longer-term sustainable development, and successful peacebuilding. These decisions should therefore not be made lightly and should be based on assessments of the post-conflict environment, the remediation of environmental hot spots, the restoration of natural resources and ecosystems, and the environmental dimensions of infrastructure and reconstruction.



Definition of Key Terms

Environment¹

The environment is the sum of all external conditions affecting the life, development and survival of an organism. In the context of this guidance, environment refers to the physical conditions that affect natural resources (climate, geology, hazards) and the ecosystem services that sustain them (e.g. carbon, nutrient and hydrological cycles).

Natural resources²

Natural resources are actual or potential sources of wealth that occur in a natural state, such as timber, water, fertile land, wildlife, minerals, metals, stones, and hydrocarbons. In most post-conflict countries, natural resources are the foundation for rural livelihoods, essential services and economic development.

Livelihood³

A livelihood comprises the capabilities, assets (including both material and social resources) and activities required for a means of living.

General Overview

In 2005 the Post-Conflict and Disaster Management Branch (PCDMB) was established by the UNEP, after the linkages between natural resources, conflict, and peacebuilding became more complex and multifaceted. PCDMB's mandate is to conduct post-conflict environmental assessments at the request of member states, and to help integrate environmental and natural resource consideration into UN reconstruction, peacebuilding, and humanitarian assistance efforts.

The United Nations General Assembly declared, on 5 November 2001, 6 November of each year as the International Day for Preventing the Exploitation of the Environment in War and Armed Conflict. This day aims to raise awareness of the fact that damage to the environment during armed conflict impairs ecosystems and natural resources long after the period of conflict, and extends beyond the limits of national territories and the present generation. The environment and natural resources are crucial for building and consolidating

¹ Definition as stated by United Nations Environment Programme (UNEP), March 2009.

² Definition as stated by United Nations Environment Programme (UNEP), March 2009.

³ Definition as stated by United Nations Environment Programme (UNEP), March 2009.



peace and it is therefore of crucial importance that their protection in times of armed conflict is strengthened, which will also decrease the amount of environmental damage in post-conflict areas.

The assessment

The Post-Conflict Needs Assessment (PCNA) methodology, developed by the United Nations Development Group (UNDG) and the World Bank (WB), was reviewed by a multi-stakeholder group in 2006. Who gave multiple guidance notes, including one on how to better integrate the environment in this methodology.

The first step in the PCNA methodology is assessing the environmental aspects of a given conflict in a desk study. This study will examine the risks, impacts and opportunities related to environment and natural resources. Desk studies use existing documentation and data combined with off-site interviews of relevant organizations, experts and stakeholders to gather and synthesize the available information regarding the environmental dimensions of the conflict. The desk study should be linked to any pre-existing accord, treaty, peace agreement, as well as any ongoing process on a national level.

The study should frame key environmental issues related to conflict risks, impacts, and peacebuilding opportunities that should be addressed in the full assessment and analysis phase. The study should also assess how the identified risks, impact and opportunities could potentially influence peacebuilding. Furthermore it should identify key stakeholders related to the conflict and natural resources, including their interrelationships, as well as the actors that should be included in the assessment. Additionally should it help guide the prioritization of interventions related to the environment and natural resources, with a specific focus on those with a high peace dividend and potential for stabilization. As well as outlining the steps required in anticipation of the assessment phase, including the identification of knowledge gaps, and suggesting methods of operation and expected outcomes for the final assessment. Lastly it should identify key guidance and tools, as the PCNA team will need to decide which tool or methodologies to use to conduct environmental assessments.

The study should help answer the following questions:

- How did natural resources and the environment contribute to the conflict and how could they contribute to conflict relapse?



- How were natural resources and the environment impacted by the conflict and what are the implications for human health, livelihoods and security?
- What opportunities exist for natural resources and the environment to concretely contribute to peacebuilding?

After answering these questions, the study ascertains the main risks, impacts and opportunities to be addressed within the full assessment and analysis phase. Natural resources and the environment can increase the risk of conflict or conflict relapse by: contributing to the outbreak of conflict, financing and sustaining conflict, undermining peacemaking (for example, the prospect of peace may be undermined by individuals or groups that could lose access to the revenues generated by resource exploitation if peace were to prevail). Conflict can impact on natural resources and the environment, as well as environmental institutions by: directly damaging natural resources and ecosystems, indirectly damaging natural resources and ecosystems, reducing the management capacity of relevant institutions and policy mechanisms. Natural resources and the environment can play an important role in peacebuilding by: supporting economic recovery, developing sustainable livelihoods, contributing to dialogue, cooperation and confidence building.

The study should also note which issues have had the largest impact in the past, and which can be expected to play a significant role in the future. It should furthermore assess the national and sub-national capacity for resource management and environmental governance. This helps determine the degree of international technical assistance required and where capacity-building efforts should be focussed.

The final desk study should have achieved five key outcomes: raise awareness of national environmental issues, identify key environmental focal points (to ensure an adequate flow of information on environmental issues), brief cluster leads (on the key environment and natural resource impacts of conflict in the country, and the environment-related peacebuilding risks and opportunities), enable a determination of next steps, identify knowledge gaps (about the role of environment and natural resources in the conflict that can be prioritized during the field assessment).

Once the composition of the environmental team and organization within the mission has been established, the linkages explored in the pre-assessment phase must be effectively validated and expanded upon during the actual assessment.



The field analysis should be focused on several main tasks. First, it must evaluate the assumptions and conclusions made in the desk study to determine their applicability and usefulness. Insofar as possible, any gaps in knowledge identified in the desk work should also be investigated on the ground. Second, the field analysis should strengthen the desk evaluation of national and sub-national capacities, in order to set capacity building priorities and determine the type of assistance that international actors can supply in the implementation phase. Third, the fieldwork must determine which of the risks and impacts identified in the desk phase are of the highest priority, and if any risks and impacts were initially missed. Finally, the analysis should ascertain what the opportunities for peacebuilding from natural resources and environmental management are, and how the international presence can best assist the peace consolidation process through these avenues. This analysis also outlines the specific measures that will take time to realize fully (for example preventing the illegal trade of natural resources from financing continued conflict, kick-starting economic growth), but should begin in the near term, the measures in the medium term (governments must incorporate good governance and resource management practices into the economic development and livelihoods opportunities that occur as societies stabilize) and the longer-term activities (which focus on the systematic prevention of conflict relapse, continued environmental capacity-building and the creation or continuation of development initiatives with more extended horizons).

Several types of outcomes are commonly considered when monitoring frameworks that have been developed to indicate progress towards environment and natural resource goals. The following are six sample outcomes that could be included to indicate environmental progress: an effective legal and regulatory system (for environmental and natural resource management), capacity developed at national and sub-national levels (to effectively manage natural resources, and to protect and restore environment), equitable ownership of, and access to, natural resources, sustainable natural resource use (contributing to economic productivity and recovery), explicit use of natural resources as a tool for peace (negotiations and consolidation), public participation and buy-in (in the resource management process).

To ensure that environment and natural resource priorities are effectively put into practice when implementing the outcome of the study several key actions are needed: support and strengthen national counterparts, practice adaptive management, maintain funding to development stage, include non-resident agencies and partners in implementation and monitoring.⁴



Gaps in the law

UNEP has also contributed to identifying gaps and weaknesses in international laws that protect the environment during war, due to these gaps and weaknesses the problem of post-conflict environmental damage has been able to grow. In 2016 and 2017 resolutions passed at UN Environment Assemblies demonstrated Member States their recognition of the need to improve protection of the environment in times of armed conflict. We particularly praise the International Law Commission's adoption, on 8 July 2019, of 28 draft legal principles to address the causes and consequences of war and armed conflict on the environment.

The existing international legal framework contains many provisions that either directly or indirectly protect the environment and govern the use of natural resources during armed conflict. In practice, however, these provisions have not always been effectively implemented or enforced. Where the international community has sought to hold States and individuals responsible for environmental harm caused during armed conflict, results have largely been poor. The only notable exception is when Iraq was held accountable for damages caused during the 1990-1991 Gulf War, including for billions of dollars worth of compensation for environmental damage. Several gaps and weaknesses in international laws will be mentioned in the paragraphs below.

Article 35 and 55 of Additional Protocol I to the 1949 Geneva Conventions do not effectively protect the environment during armed conflict due to the stringent and imprecise threshold required to demonstrate damage. The articles prohibit "widespread, long-term and severe" damage to the environment, however all three conditions must be broken for a violation to occur, which is near impossibly due to the imprecise definitions of "widespread", "long-term" and "severe".

Provisions in humanitarian law that regulate the means and methods of warfare (in particular weapons) or protect civilian property and objects provide indirect protection of the environment, although new technologies (such as the use of depleted uranium) are not yet addressed – except by the general principles of the law of war.

The majority of international legal provisions protecting the environment during armed conflict were designed for international armed conflicts and do not necessarily apply to

⁴ Most of the text under "the assessment" has been copied from "Integrating Environment in Post-Conflict Needs Assessment", by UNEP in March 2009.



internal conflicts. There are also no institutionalized mechanisms to prevent the looting of natural resources during armed conflict or to restrict the granting of concessions by combatants that may lack legitimacy or legal authority. In addition, there are no systematic mechanisms to prevent States or corporations from aiding and abetting civil war parties in causing environmental damage or looting natural resources.

There is a lack of case law on protecting the environment during armed conflict because of the limited number of cases brought before the courts: The provisions for protecting the environment during conflict under the four bodies of international law have not yet been seriously applied in international or national jurisdictions. Moreover, in cases where decisions were handed down, procedural rather than merit-based reasoning has predominated.

There is no permanent international mechanism to monitor legal infringements and address compensation claims for environmental damage sustained during international armed conflicts.

There is no standard UN definition of what constitutes a “conflict resource” and when sanctions should be applied to stop illegal exploitation and trade of such resources. A standard definition by the UN is required for identifying “conflict resources”, considering the frequent role of high-value natural resources in providing revenue streams for the purchase of weapons and hiring combatants. Such a definition would facilitate a more consistent and effective international approach to sanctions.⁵

The Special Rapporteur

In 2013, the International Law Commission decided to include the topic “Protection of the environment in relation to armed conflicts” in its programme of work. The commission appointed a Special Rapporteur for this topic. The Special Rapporteur presented three reports on this topic. The main findings indicate that a substantive collection of legal rules exists, that enhances environmental protection in relation to armed conflict. However, this collection of laws as a whole is a blunt tool, since various parts seem to work in parallel streams. In addition to the fact that the complete implementation of this body of law sometimes seems to be lacking, there are no existing developed tools or processes to encourage States, international organizations and other relevant actors to utilize the entire

⁵ Most of the text under “Gaps in the law” has been copied from “Protecting the Environment During Armed Conflict”, by UNEP in November 2009.



body of already applicable rules. The reports also state that there is a clear link between the law concerning the situation before the outbreak of an armed conflict and the law concerning the situation after an armed conflict. Furthermore, the report stresses that an important element for future work on this topic continues to be consultation and contact with international organizations and bodies, such as the UN, UNEP, UNESCO (United Nations Educational, Scientific and Cultural Organization) and ICRC (International Committee of the Red Cross), and relevant non-governmental organizations. Additionally it stresses the importance to continue to actively seek the views of States.

Major Parties Involved

United Nations Environment Programme (UNEP)

UNEP has conducted over 20 post-conflict assessments, since 1999, to determine the environmental impacts of war. UNEP has also contributed to identifying gaps and weaknesses in international laws that protect the environment during war and armed conflict.

Iraq

Iraq is the only notable occurrence of a country that has been held accountable for damages caused during armed conflict.

International Law Commission (ILC)

The international Law Commission appointed a Special Rapporteur, which has presented several reports on the relation between environment and armed conflict and post-conflict areas. The ILC also adopted several draft principles on this topic.

Colombia

Colombia received post-conflict development help in the form of technical recommendations and training for the effective implementation of environmental peace-building projects; strategic environmental assessment of key post-conflict interventions; advice on measures to improve social, economic and environmental conditions for the extractive sector and to remediate damage caused by illegal operations; and strengthening of the institutional and technical capacities for the Participatory Territorial



Planning and Monitoring, including improving public access to environmental information, from UN Environment in 2017. After a desk study and a field study were completed.⁶

Timeline of Key Events

1999 and onwards	Several post-conflict assessments conducted by UNEP.
5 November 2001	The UN General Assembly declared 6 November of each year as the International Day for Preventing the Exploitation of the Environment in War and Armed Conflict.
2013	The ILC appoints Ms. Marie G. Jacobsson as Special Rapporteur for the topic "Protection of the environment in relation to armed conflicts".
2016-2017	Various passed resolutions at UN Environment Assemblies, demonstrating Member States their recognition of the need to improve protection of the environment in times of armed conflict.
August 2017	UN Environment assisted Colombia with overcoming the environmental degradation legacy of the internal conflict which lasted for more than 50 years.
8 July 2019	The ILC adopted 28 draft legal principles addressing the causes and consequences of war and armed conflict on the environment.

UN involvement, Relevant Resolutions, Treaties and Events

- Observance of the International Day for Preventing the Exploitation of the Environment in War and Armed Conflict, 13 November 2001 (A/RES/56/4)

⁶ Most of the text under "Colombia" has been copied from "UN Environment will support environmental recovery and peacebuilding for post-conflict development in Colombia", by UNEP in August 2017.



- Third report on the protection of the environment in relation to armed conflicts, 3 June 2016 (A/CN.4/700)⁷
- Protocols Additional to the Geneva Conventions of 12 August 1949 (Article 35 and 55)
- The Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, adopted in 1976 and entered into force in 1978 (A/RES/31/72)

Previous Attempts to solve the Issue

The Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques was intended to prevent states from using tactics or technologies that could alter the weather, and thereby cause catastrophic environmental change. The Additional Protocol I to the 1949 Geneva Conventions, contained two important articles (35 and 55) that were designed to afford the environment some measure of protection during international armed conflict by prohibiting “widespread, long-term and severe” damage to the environment. However, due to the fact that all three conditions must be violated for a violation to occur, combined with the vague definitions of the concepts, it is near impossible to violate these articles. These advances in international law did nothing, however, to prevent the environmental damage that occurred during the 1990-1991 Gulf War; nor did they prevent Saddam Hussein’s government draining 90 percent of the Mesopotamian marshlands in the years following the 1990-1991 Gulf War.

In 2005 UNEP established the Post-Conflict and Disaster Management Branch (PCDMB). PCDMB’s mandate is to conduct post-conflict environmental assessments at the request of member states, and to help integrate environmental and natural resource considerations into UN reconstruction, peacebuilding, and humanitarian assistance efforts. Due to the fact that PCDMB can only assess environmental situations at the request of member states, it has not had the expected impact.

Environmental damage that contributes to war crimes, crimes against humanity and genocide is a criminal offence under international law and is therefore subject to criminal

⁷ This report includes multiple other resolutions and treaties. Not all have been listed in this section, but all can be found in the report, which will be linked in the appendix.



liability and prosecution by the International Criminal Court (ICC) and national criminal jurisdictions of Parties to the ICC. This applies to both internal and international armed conflicts. International environmental law continues to apply during armed conflicts, unless stated otherwise. The notion that international humanitarian law replaces international environmental law as the operational body of law during armed conflict is no longer the opinion of legal experts, including the ILC. Both of the aforementioned laws could be used to prosecute (for example) the practice of looting natural resources during conflicts. However, due to the fact that these laws have not been implemented and enforced well enough, it has nearly never been used and has therefore not had the hoped impact.

Possible Solutions

There are multiple possibilities to solve the issue. This section will mostly be focussed on preventing future environmental damage in post-conflict areas.

The terms “widespread”, “long-term” and “severe” should get a more detailed definition. Taking the 1976 ENMOD convention as the basis; “widespread” namely encompasses an area on the scale of several hundred square kilometres, “long-term” covers a period of months, and “severe” involves serious or significant disruption or harm to human life, natural economic resources or other assets.

There should be better explanations on the continual application of international environmental law during armed conflict and on how damage to the environment can be a criminal offence. This will ensure that these laws will be better implemented and will have their hoped impact.

The ILC should examine the existing international law for protecting the environment during armed conflict and recommend how it can be clarified, codified and expanded.

International legal practitioners should be trained on enforcing the existing international law protecting the environment during armed conflict. The development of case law would help bring clarity to existing provisions and increase deterrence by adding a credible threat of prosecution for violation.

It is also of utmost importance that countries protect the environment in national legislation, since this will develop a stronger standing ground for prosecution of offenders.



A permanent UN body to monitor violations and address compensation for environmental damage should be considered: Even though the UN Compensation Commission (UNCC) was established by the Security Council to process compensation claims relating to the 1990-1991 Gulf War, Member States of the United Nations may want to consider how a similar structure could be established as a permanent body, either under the General Assembly or under the Security Council. Such a body could investigate and decide on alleged violations of international law during international and non-international armed conflicts, as well as handle and process compensation claims related to environmental damage and loss of economic opportunities.

The UN should consider defining “conflict resources” and articulating the extent to which the misuse of certain natural resources constitutes a “threat to peace and security.” Conflict resources could be defined as natural resources whose systematic exploitation and trade in a context of conflict contribute to, benefit from or result in the commission of serious violations of human rights, violations of international humanitarian law, or violations amounting to crimes under international law. Once conflict resources are identified and international sanctions are issued, a new mechanism will be needed for monitoring and enforcement. One option could be to review and expand as appropriate the mandate of peacekeeping operations for monitoring the illegal exploitation and trade of natural resources fuelling conflict as well as protecting sensitive areas covered by international environmental conventions.

The UN General Assembly should consider requesting the Secretary-General to submit a report annually on 6 November on the environmental impacts of armed conflicts. The report should detail the direct, indirect and institutional environmental impacts caused by ongoing and new international and non-international armed conflicts in the reporting year. The report should also recommend how the environmental threats to human life, health and security can be addressed as well as how natural resources and the environment in each can be used to support recovery and peacebuilding.

As the Special Rapporteur said, an important element for the future work on this topic continues to be consultation and contact with international organizations and bodies such as the UN, UNEP, UNESCO, ICRC and relevant non-governmental organizations. It is likewise important to continue to actively seek the views of States.

Human rights law, commissions and tribunals can be used to investigate and sanction environmental damage caused during international and non-international armed conflicts.



Linking environmental damage to the violation of fundamental human rights offers a new way to investigate and sanction environmental damages, particularly in the context of non-international armed conflicts.

For the current situation, the best that can be done is making sure that all Member States are aware of the fact that they can ask PCDMB to assess the situation in their country. When these assessments have been conducted the UN, with the help of Member States, would be able to give the necessary help to tackle the sustained environmental damage.⁸

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⁸ Most of the text under “Possible Solutions” has been copied from “Protecting the Environment During Armed Conflict”, by UNEP in November 2009.



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Appendices

- I. Third report on the protection of the environment in relation to armed conflicts

<https://legal.un.org/docs/?symbol=A/CN.4/700>

- II. Additional Protocol I to the 1949 Geneva Conventions

https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf

- III. Post-conflict support from UN Environment in Colombia

<https://www.unenvironment.org/news-and-stories/story/un-environment-will-support-environmental-recovery-and-peacebuilding-post>

